Republic of Moldova

CONSTITUTIONAL COURT

JUDGMENT

on the approval of the Report on the Exercise of Constitutional Jurisdiction in 2021

CHIŞINĂU

20 January 2022

In the name of the Republic of Moldova,
The Constitutional Court composed of:

Ms. Domnica MANOLE, *President*,
Mr. Nicolae ROȘCA,
Ms. Liuba ȘOVA,
Mr. Serghei ȚURCAN,
Mr. Vladimir ȚURCAN, *judges*,
with the participation of Ms. Elena Tentiuc, Head of the Court's Secretariat,

having examined in the plenary sitting the Report on the exercise of constitutional jurisdiction in 2021,

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

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

HOLDS:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2021, according to the Annex.

2. This Judgment shall be published in the „*Official Gazette of the Republic of Moldova*".

President **Domnica MANOLE**

Chișinău, 20 January 2022,
JCC no. 1

Approved
by Judgment of the Constitutional Court
no. 1 of 20 January 2022

Report
on the Exercise of Constitutional Jurisdiction in 2021

TITLE I. THE AUTHORITY OF CONSTITUTIONAL JURISDICITON IN THE REPUBLIC OF MOLDOVA

A. The status and powers of the Constitutional Court

The status of the Constitutional Court, the only authority of constitutional jurisdiction in the Republic of Moldova, autonomous and independent from the legislative, executive and judicial powers, is enshrined in the Constitution, which establishes, at the same time, the principles and main functional attributions of the Court. The status of the Constitutional Court is determined by its primary role to ensure the observance of the values of the rule of law: guaranteeing the supremacy of the Constitution, ensuring the principle of separation of powers in the State, ensuring the responsibility of the State towards the citizen and of the citizen towards the State. These major functions are performed through the instruments guaranteed by the Constitution.

The constitutional powers, provided by Article 135 of the Constitution, are further developed in Law no. 317-XIII of 13 December 1994 on the Constitutional Court and the Constitutional Jurisdiction Code no. 502-XIII of 16 June 1995, which regulates, *inter alia*, the procedure for examining applications, the manner of electing the judges of the Constitutional Court and the President of the Court, their powers, rights and responsibilities. Thus, based on the constitutional provisions, the Constitutional Court:

a) exercises, upon application, the constitutional review of laws, rules and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government, as well as of the international treaties to which the Republic of Moldova is a party;

b) interprets the Constitution;

c) formulates its position on initiatives of revision of the Constitution;

d) confirms the results of the republican referendums;

e) confirms the results of the parliamentary and presidential elections in the Republic of Moldova, and validates the mandates of the members of parliament and the President of the Republic of Moldova;

f) ascertains the circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova or the interim office of the

President, as well as the impossibility of the President of the Republic of Moldova to fully exercise his/her functional duties for more than 60 days;

g) resolves the exceptions of unconstitutionality of legal acts;

h) decides over matters dealing with the constitutionality of a party.

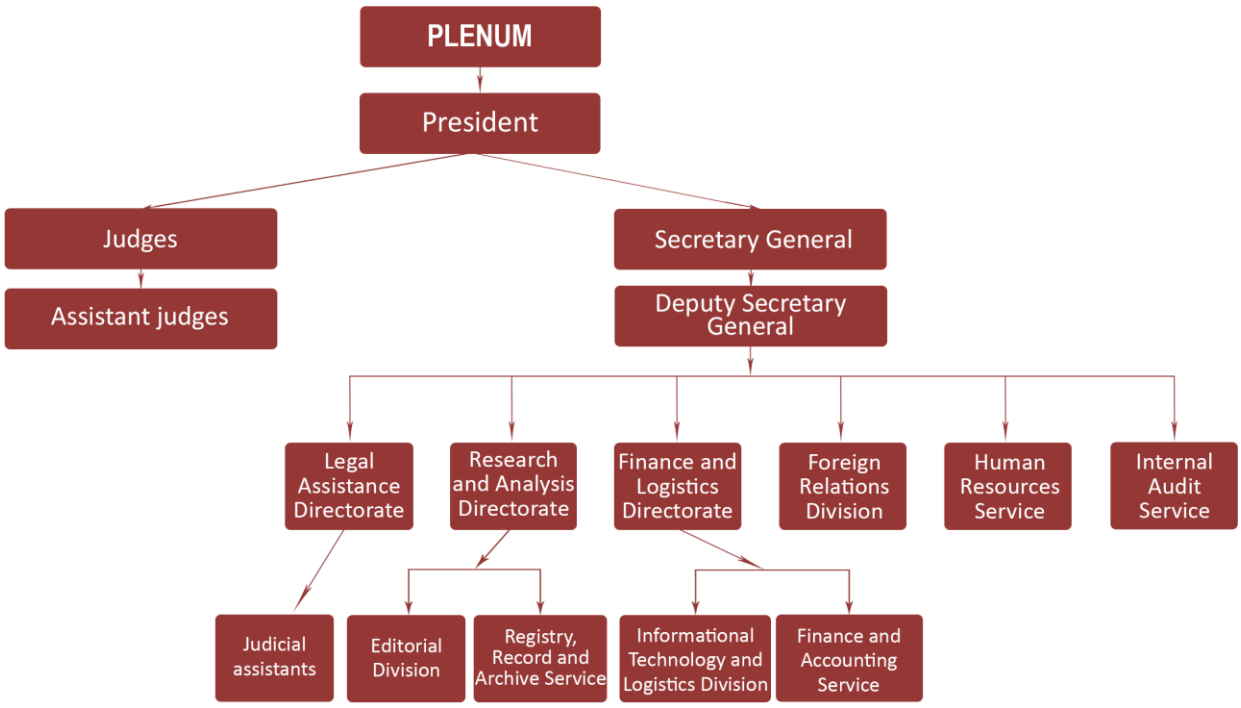
B. Judges of the Constitutional Court

According to Article 136 of the Constitution, the Constitutional Court is composed of six judges, appointed for a term of six years. Following the death of Mr. Eduard Ababei, constitutional judge, on 27January 2021, the Plenum of the Constitutional Court had the following composition:

Ms. Domnica MANOLE, *President*,
Mr. Nicolae ROȘCA,
Ms. Liuba ȘOVA,
Mr. Serghei ȚURCAN,
Mr. Vladimir ȚURCAN, *judges*.

C. The organizational structure

The Constitutional Court carried out its activity based on the organizational structure approved by Decision no. 9 of 23 March 2018.



D. Lodging an application with the Court

The Constitutional Court exercises its powers upon application by the subjects empowered with this right. Thus, according to Article 25 of the Law on the Constitutional Court, including the amendments operated by *Law no. 99 of 11 June 2020*, and Article 38 para. (1) of the Constitutional Jurisdiction Code, the following have the right to lodge an application with the Constitutional Court:

a) the President of the Republic of Moldova;

b) the Government;

c) the Minister of Justice;

d) the judges/panels of the Supreme Court of Justice, the courts of appeal and the courts of law;

d^1) the Superior Council of Magistracy;

f) the Prosecutor General;

g) Members of Parliament;

h) Parliamentary factions;

i) the Ombudsman;

i^1) the Ombudsman for children;

j) the councils of the first and second level administrative-territorial units, the People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases of exercising the constitutional review of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions, ordinances and provisions of the Government, as well as the international treaties to which the Republic of Moldova is a party, which do not comply with Article 109 and, respectively, Article 111 of the Constitution of the Republic of Moldova.

The applications lodged by the subjects empowered with this right need to be motivated and to meet the formal and substantial requirements established in Article 39 of the Constitutional Jurisdiction Code.

TITLE II. JURISDICTIONAL ACTIVITY

A. The Court's assessment deduced from the judgments delivered

During 2021, the Court issued 39 decisions which consolidated the constitutional case-law in the following areas.

1. THE RIGHTS OF PERSONS BORN IN PLACES OF REPRESSION OR ON THEIR WAY TO THEM

On January 12, 2021, the Constitutional Court issued a Judgment on the constitutional review of Article 1 of Law no. 296 of November 23, 1994 for the interpretation of several provisions of Law no. 1225 of December 8, 1992 on the rehabilitation of victims of political repression[1].

The Court held that, by challenging the text "children of persons subject to repression who were born in place of repression or on their way to repression are considered children from marriage concluded before the repression" of Article 1 of the Law on the interpretation of provisions of the Law on rehabilitation of victims of political repression, the applicant raised an issue of ensuring equal rights for several categories of victims of political repression during the totalitarian regime.

The Court noted that, by including in the category of victims of repression children born in places of repression or the way they, the Parliament of the Republic of Moldova recognized by Law no. 1225 of December 8, 1992 that these persons had to bear together with their parents all the hardships and sufferings of deportations and that they have the right to be compensated by the state. According to the wording of the above-mentioned Law, the situation of all children born in places of repression or on the way to them was similar, regardless of whether their parents married before or during repression or whether the repressed woman who gave birth was married or not.

The Court found that the official interpretation made by Article 1 of Law no. 296 of 23 November 1994 led to the exclusion from the category of victims of political repression and possible beneficiaries of the rehabilitation of persons born in places of repression or on their way: (i) from an unmarried repressed woman, and (ii) from a marriage entered into during the repression.

The Court noted that respect for the principle of equality implies the granting of the same benefits to all persons in similar situations, unless it is demonstrated that differentiated treatment is objectively and reasonably justified. This condition demonstrates that the principle of equality does not mean the prohibition of any differential treatment, but only unjustified different treatment (see JCC no. 19 of September 24, 2019, § 31).

The Court found that the differential treatment of persons born in or on the road to repression allowed by the contested rule lacks a legitimate aim and has no objective and reasonable justification. This provision unjustifiably lacks the citizens of the Republic of Moldova born in places of repression and on their way to them from a repressed unmarried woman or from a marriage concluded during the repression of the right to social protection provided by the Law on Rehabilitation of Victims of Political Repression. As it does not pursue any legitimate aim and does not have an objective and reasonable justification, the contested provision infringes the provisions of Articles 28 [*intimate, family and private life*], 47 [*right to social assistance and protection*] and 16 [*equality*] of the Constitution.

Therefore, the Court declared as unconstitutional the impugned text. For the propose of the present decision, the Court gave transitional solution and mentioned that until the amendment of the text declared unconstitutional, victims of political repression are also considered children who were born in places of repression or on their way, if at least one parent is a victim of political repression.

2. ACCESS TO PERSONAL INFORMATION

[1] Judgment no. 2 of 12.01.2021 on the constitutional review of Article 1 of Law no. 296 of November 23, 1994 for the interpretation of some provisions of Law no. 1225 of December 8, 1992 on the rehabilitation of victims of political repression

On January 14, 2021, the Constitutional Court issued a Judgment on the exception of unconstitutionality of Articles 4 para. (2), 7 para. (2) let. c), 8 para. (1) and 11 para. (1) point 3) of Law no. 982 of 11 May 2000 on access to information are contrary to Articles 1 para. (3), 4 para. (2), 20, 23 para. (2), 34 paras (1) and (2) and 54 of the Constitution[2].

The Court has analyzed this exception in the light of the right of access to information [Article 34 of the Constitution] in corroboration with Articles 23 para. (2) [*which guarantees the quality of law*] and 54 [*restriction on the exercise of certain rights and freedom]* of the Constitution.

II. The Court noted that according to Article 4 para. (2) of the Law on Access to Information, the exercise of the right of access to information may be subject to restrictions for specific reasons, corresponding to the principles of international law, including the protection of national security or privacy.

In this regard, the Court noted that the provisions of Article 4 para. (2) of the above-mentioned Law respects the reasons of Article 54 para. (2) of the Constitution, which establishes, *inter alia*, that the exercise of rights and freedoms may not be subject to other restrictions than those provided by law, for national security interests, protecting the rights, freedoms and dignity of others and preventing disclosure of confidential information. The term "restrictions" from Article 4 para. (2) of the Law on access to information is a synonym of the term “limitation” from Article 54 para. (2) of the Constitution.

Therefore, the Court did not notice any inconsistency in Article 4 para. (2) of the Law on access to information with the provisions of Article 54 para. (2) of the Constitution. The correct application of these contested legal provisions rests with the information providers and the courts.

Article 7 para. (2) let. c) of the above-mentioned Law provides that access to official information cannot be restricted, except personal information, the disclosure of which is considered an interference with private life, protected by the law on the protection of personal data.

With regard to this Article, the Court noted that the expression “may not be restricted, except ...” in Article 7 para. (2) of the Law is synonymous, from the perspective of the language of constitutional law, with “it cannot be subject to other restrictions, except ...” from Article 54 para. (2) of the Constitution. The term "interference" in Article 7 para. (2) let. c) of the Law is equivalent to an “unmotivated interference”, which represents, in fact, an unjustified restriction or interference, i.e. a violation of the right to privacy. However, the violation of that fundamental right can be established only by the courts of common law, after balancing the relevant competing interests in the cases before them. Article 7 para. (1) of the Law allows restrictions (interference) of the right to privacy, but these restrictions must be justified, i.e. not constitute "interference" (according to Article 7 paragraph (2) let. c) of the Law, i.e. violations).

The Court emphasized that the mere restriction (interference) of a fundamental right does not amount to a violation of a fundamental right. From a constitutional point of view, unjustified restrictions on fundamental rights are not allowed. The justified or unjustified nature of a restriction (interference) of the right to privacy in a litigious situation can be established only by the court, after applying the proportionality test.

Article 8 para. (1) of the Law on Access to Information establishes that personal information belongs to the category of official information with limited accessibility and consists of data relating to an identified or identifiable natural person, whose disclosure would constitute a violation of privacy, privacy and family.

[2] Judgment no. 3 of 14.01.2021 on the exception of unconstitutionality of Articles 4 para. (2), 7 para. (2) let. c), 8 para. (1) and 11 para. (1) point 3) of Law no. 982 of 11 May 2000 on access to information

In this respect, the Court noted that the legislator used the notion of "violation" of private, intimate and family life contrary to the language of constitutional law and European human rights law. The term "violation" is an infringement, i.e. an unjustified restriction. Therefore, the Court noted that the provisions of Article 8 para. (1) of the Law on Access to Information does not rise any constitutional issue, since they allow the proportionality test to be performed, according to Article 54 of the Constitution.

As to the provisions of Article 11 para. (1) § 3) of the Law on Access to Information, the Court noted that restrictions on access to information may occur in order to protect confidential information, privacy and national security. The Court emphasized that these special purposes provided by the legislator are found in the purposes established by Article 54 para. (2) of the Constitution. The Court therefore held that the contested legal provisions were not contrary to the constitutional provisions relied on.

The Court noted that the public authorities and institutions that provide the information attributed to personal data are obliged to create conditions that would ensure the protection of such data, in compliance with the principles and balancing criteria established by the Court in Judgment no. 29 of December 12, 2019. Rejecting the request to provide personal data must be proportionate and justified by the legitimate aims provided for in Article 54 para. (2) of the Constitution.

Also, the Court did not find any issue of constitutionality either from the perspective of Article 23 para. (2) of the Constitution.

Finally, the Court stated that the contested provisions from of Articles 4 para. (2), 7 para. (2) let. c), 8 para. (1) and 11 para. (1) point 3) of Law no. 982 of 11 May 2000 on access to information are in accordance with the constitutional standards established by articles 23 para. (2), 34 and 54 of the Constitution.

3. GRANTING A SPECIAL STATUS TO THE RUSSIAN LANGUAGE

On January 21, 2021, the Constitutional Court issued a Judgment on the constitutional review of Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova[3].

The Court began its analysis, verifying the compliance of the impugned Law with Article 13 of the Constitution.

According to Article 13 para. (1) of the Constitution, in the interpretation of the Constitutional Court Decision no. 36 of 5 December 2013, the State language of the Republic of Moldova is Romanian. The constitutional endorsement of Romanian as a State language grants it the status of the official language of the State. The second paragraph of the same Article provides that the State recognizes and protects the right to the preservation, development and use of Russian and other languages spoken on the territory of the State. The mention of Russian in this constitutional text, is merely an example and does not give Russian, in the Republic of Moldova, a more special status than that of other languages spoken on the territory of the country (Ukrainian, Gagauz, Bulgarian, Romani, etc.). Para. (4) of Article 13 of the Constitution stipulates that the usage of languages on the territory of the Republic of Moldova shall be established by organic law. From this paragraph, the existence of a positive obligation of the Parliament to regulate by organic law the use of languages on the territory of the Republic of Moldova can be deduced. In this respect, the margin of the Parliament's discretion is limited by the constitutional provisions.

[3] Judgment no. 4 of 21.01.2021 on the constitutional review of Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova

From the provisions of Article 13 of the Constitution it can be deduced that it recognizes and protects two values: *(i)* the official nature of Romanian as a State language and *(ii)* the right to the preservation, development and usage of other languages spoken within the country.

The Court noted that the Preamble to the Constitution of the Republic of Moldova establishes, *inter alia*, as an objective to fulfill the interests of citizens of different ethnic origin who constitute the people of the Republic of Moldova, and Article 10 para. (2) of the Constitution requires the State to recognize and guarantee the right of all citizens of the Republic of Moldova to the preservation, development and expression of their ethnic identity.

In order to settle the applications, the Court used the statistical data collected in the 2014 Population Census on the structure of the population by mother tongue and those on the structure of the population by mother tongue in territorial profile. The Court noted that the obligation imposed to the State by Article 13 para. (2) of the Constitution to acknowledge and protect the right to the preservation, development and usage of other languages spoken on the territory of the State takes into account the mother tongues of its citizens, not the languages usually spoken by citizens.

Therefore, according to the data on the structure of the population by mother tongue obtained in the 2014 Census, out of a total population of 2 804 801 citizens, of which 2 723 315 declared their mother tongue, 1 544 726 speak Moldovan as their mother tongue, 639 339 - Romanian, 107 252 - Ukrainian, 263 523 - Russian, 114 532 - Gagauz, 41 756 - Bulgarian, 7 574 - Romani and 4613 - other languages. Starting with the assumption that the glossonym "Romanian" comprises the term "Moldovan", in the Republic of Moldova, Romanian is the mother tongue of 2 184 065 citizens. By percentage, Romanian is the mother tongue of at least 77.86% of the citizens of the Republic of Moldova. Russian is the mother tongue of at least 9.39% of the citizens of the Republic of Moldova, Gagauz is the mother tongue of at least 4.08% of the citizens, Ukrainian is the mother tongue of at least 3.82% of the citizens, and Bulgarian is the mother tongue of at least 1.48% of the citizens.

The Court also noted the data on the structure of the population according to the Romanian, Ukrainian and Russian mother tongues in territorial profile, obtained from the 2014 Census. Thus, out of a number of 2 723 315 citizens who declared their mother tongue, the weight of Ukrainian in territorial profile is greater than the weight of Russian in nine districts. Apart from these districts, the difference between the weights of Russian and Ukrainian is not more than 2% in 15 of the 32 districts.

The Court examined the impugned law on the basis of Article 13 of the Constitution, in particular from the perspective of two issues: (a) the existence of a balance between Romanian, the State language of the Republic of Moldova, and Russian, the language of an ethnic minority; and (b) the legal position of other ethnic minorities languages in the Republic of Moldova, taking into account the constitutional guarantees.

The Court noted that the aim pursued by the regulation of Articles 10 and 13 in the Constitution is explained by the need to guarantee the identity and unity of the people of the Republic of Moldova. The State language is considered, in this aspect, as having a constitutional value, as a symbol of the people's unity, being an integral part of the constitutional identity of the Republic of Moldova.

The Court noted that the protection and establishment of a State language aims at addressing the identity needs of the majority of State citizens and aims at establishing a language that ensures communication between different parts of the population in all areas of life and throughout the State’s territory. The protection and promotion of the official language of the State also aims at achieving social cohesion and the integration of ethnic minorities. Every citizen who lives on the State’s territory and tends to integrate into society, to effectively participate in the democratic processes of the State, to benefit from the opportunities provided

by the State of the Republic of Moldova needs to know the State language. In this context, the Venice Commission emphasized that it is legitimate and commendable for states to promote the consolidation of the State language, its mastery by all citizens and the adoption of measures to promote its learning by everyone, in order to redress the existing inequalities and facilitate the effective integration into society of persons belonging to national minorities.

At the same time, the Court noted that the interest of protecting and promoting the State language must be balanced with the interest of recognizing and protecting the linguistic rights of citizens belonging to ethnic minorities.

The Court noted that Article 2 of the Law grants Russian a privileged status over other languages of ethnic minorities in the Republic of Moldova, a status that does not derive from the Constitution. There are districts (*e.g.*, Briceni, Drochia, Edinet, Falesti, Glodeni, Hancești, Ocnita, Rascani, Soldanesti) where Ukrainian, for example, carries more weight than Russian. It can be seen that, in several districts, Russian carries a small weight, of less than 3% (*e.g.*, Cantemir, Calarasi, Criuleni, Dubasari, Hancești, Ialoveni, Nisporeni, Orhei, Straseni, Soldanesti, Telenesti). However, being elevated to the level of interethnic language of communication, Russian, the language of an ethnic minority, acquires along Romanian a quasi-official status. Also, several Articles of the impugned Law emphasize the dominant role of the Russian language throughout the territory of the Republic of Moldova in relation to the languages of other ethnic minorities, without distinguishing between districts where its weight is unsubstantial and districts where its weight is significant, in order to establish such strict legal obligations.

The Court notes that the provisions of Article 13 of the Constitution recognize only one State language and do not contain the phrase "language of interethnic communication". The constitutional status of the State language precisely implies the function of the State language to be the language of communication between all the citizens of the Republic of Moldova, regardless of their ethnic origin. In this sense, there are also the provisions of Article 10 para. (1) of the Constitution, according to which the State is founded on the unity of the people of the Republic of Moldova, which is the common and indivisible motherland of all its citizens.

Despite this fact, the impugned Law grants Russian a status similar to that of the State language. This status is observed from Article 2 para. (2) of the Law, which mentions that Russian is the language of interethnic communication on the territory of the Republic of Moldova, used at the same level as the State language.

Under the impugned Law, Russian benefits from such preferential treatment regardless of the number of members of ethnic minorities who use it in the country's districts. People have to choose, in the great majority of cases, between Romanian and Russian. This fact practically supposes that Romanian will not be able to fulfill its function as a State language. The Court noted that Article 13 of the Constitution of the Republic of Moldova does not authorize such an option. By granting Russian a status similar to Romanian, the impugned Law diminishes the integrative force of the official language.

The preferential treatment of Russian compared to other ethnic minorities languages, by placing it at the level of the State language, is contrary to Article 13 of the Constitution. This treatment is not in accordance with the principles enunciated by the Preamble of the Constitution and renders the prescription of Article 10 para. (2) of the Constitution devoid of substance in respect to other ethnic minorities who speak another language than Russian.

The impugned Law does not contain a stable, sustainable and clearly defined language policy, from the perspective of constitutional requirements. The lack of such policy damages the interests of society and makes the Parliament not respect its positive obligation that arises from Article 13 para. (4) of the Constitution with the legislature failing to settle one of the major challenges in the political and social life of the Republic of Moldova, in terms of constitutional

principles. Therefore, Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova is contrary to Article 13 of the Constitution.

The Court noted that in order to ensure the application of the provisions of the impugned Law, the State authorities will have to allocate additional financial means, which have not been estimated yet, e.g. for the translation of official documents of the State and public administration bodies, for the translation of the public institutions names, for the preparation of the name inscriptions on the public authorities plates, for the translation of the names of the products, of the instructions, as well as any other visual information on manufactured products in the Republic of Moldova, for the training of officials in learning Russian, for the employment and remuneration of translators, etc. In accordance with the provisions of Article 131 paras. (4) and (6) of the Constitution, any legislative proposal which entails the increase of the budget expenditures may be adopted only following an approval by the Government and no budget expenditure may be approved without prior specification of the funding source.

In its case-law, the Court found that the adoption of a law with a budgetary impact in the absence of the Government's advisory opinion leads to a violation of the procedure provided by Article 131 para. (4) and Article 6 of the Constitution, which obliges the State authorities to exercise their competences on the established limits of the Constitution.

The Court noted that no document was attached to the section reserved for the Government's advisory opinion on the Parliament's website, to the draft Law preceding the impugned Law. Neither does the Informative note on the draft Law point out any source of funding for the implementation of the Law. On the contrary, it states that "in general, the implementation of the adopted legislative act will not imply any financial expenses at the organizational level other than those provided in the budget".

In this respect, the Court found a violation of Articles 6 and 131 paras. (4) and (6) of the Constitution. Thus, the Court was exempted from further examining the observance of the procedure for adopting the impugned Law based on Articles 1 para. (3), 64 and 73 of the Constitution, invoked by the authors of the application.

In conclusion, the Court declared *unconstitutional* Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova.

4. APPOINTMENT OF ANOTHER CANDIDATE FOR THE OFFICE OF PRIME MINISTER THAN THE ONE NOMINATED BY A FORMALIZED ABSOLUTE PARLIAMENTARY MAJORITY

On February 23, 2021, the Constitutional Court issued a ruling on the constitutional review of Decree of the President of the Republic of Moldova no. 32-IX of 11 February 2021 on the appointment of the candidate for the position of Prime Minister[4].

The Court analyzed the referral through the lens of Article 98 para. (1) of the Constitution, which provides that, after consulting the parliamentary factions, the President of the Republic of Moldova appoints a candidate for the position of Prime Minister.

The Court held that Article 98 para. (1) of the Constitution provides the exclusive attribution of the President of the Republic to nominate a candidate for the position of Prime Minister. At the same time, the Court noted that, although being an exclusive attribution, the appointment assignment cannot be discretionary, as the President shall appoint a candidate for the position of Prime Minister only after consulting the parliamentary factions. The vote of the Parliament is essential during the procedure of formation and investiture of the Government. The

[4] Judgment no. 6 of 23.02.2021 on the constitutional review of Decree of the President of the Republic of Moldova no. 32-IX of 11 February 2021 on the appointment of the candidate for the position of Prime Minister

Government have a political responsibility to the Parliament, which can dismiss it. The starting principle in democratic states, regardless of the form of government, is that the Government must express the will of the political majority in Parliament, and in order to govern, it must benefit from the support of this parliamentary majority. Analyzing the weight of each of the two public authorities in the procedure of forming the Government, the Court concluded that the role of the Parliament is a decisive one in relation to the role of the President of the Republic. This difference in weight is due to the parliamentary form of government. In addition, in accordance with the provisions of Article 60 para. (1) of the Constitution, the Parliament is the supreme representative body of the people of the Republic of Moldova (JCC no. 32 of 29 December 2015, §§ 58, 84, 88 and 89; JCC no. 23 of 6 August 2020, § 17).

In its case-law, the Court interpreted the meaning of the text "consultation of parliamentary factions" from Article 98 para. (1) of the Constitution and noted that the purpose of the consultations is to identify the political support of the MPs for a certain person, able of forming a Government that enjoys the confidence of the Parliament. What matters in these consultations is obtaining political support for the person who could be appointed as a candidate for the position of Prime Minister. The Court also noted that the President of the Republic can make his/her own proposal to the consultations, which could be accepted. In this sense, the Court mentioned that the President cannot subordinate the political dialogue partners whom he/she consults. In this role, the President of the Republic acts only as a representative of the State, who has the right and responsibility to find a way of dialogue and evaluation of the will and the ability of the consulted MPs to support a candidate from a parliamentary point of view. By appointing the candidate for the position of Prime Minister, the President of the Republic must prove his/her impartiality and political neutrality, equidistance towards all parliamentary groups. The President does not have the constitutional right to replace parliamentary factions (JCC no. 32 of 29 December 2015, §§ 91-94; JCC no. 23 of 6 August 2020, §18).

The Court held that the President of the Republic cannot be denied the right to evaluate the qualities, competence, experience and, basically, the capacity of a person, politically involved or not, to lead the Government and attract the political support of the parliamentary majority, which will support it throughout the entire legislature. However, the President cannot impose his/her own candidate. Thus, the President intervenes exclusively as a representative of the State, to establish and formalize through the significance and solemnity of his/her position and to maintain with the authority of his/her power the balance between the Parliament and a possible future Government. The Court emphasized that the interpretation of the Constitution, in the meaning of a discretionary right of the President of the country to appoint the candidate for the position of Prime Minister, may lead to the emergence of institutional conflicts (JCC nr. 32 of 29 December 2015, §§ 95 and 117; JCC no. 23 of 6 August 2020, § 19).

The Court held that there was no constitutional and democratic reason for the President of the Republic not to designate as a candidate for the position of Prime Minister the person who has the support of the formalized parliamentary majority, whether if he/she is opposed by the President. When no party has an absolute majority in the Parliament, the President must consult the MPs not only *pro forma*, but to designate the candidate supported by this majority, even if the political party approved by the President is not part of the majority. The President of the Republic appoints for the position of Prime Minister the candidate who meets the designation and appointment conditions and who enjoys the support of the formalized parliamentary majority (JCC no. 32 of 29 December 2015, §§ 118-120; JCC no. 23 of 6 August 2020, § 20).

The President should act as an authority that ascertains, but does not interpret or modify the result of the elections, being constrained, by Article 98 para. (1) of the Constitution, to designate a candidate for the position of Prime Minister according to the will expressed by the voters in the parliamentary elections, to designate the person proposed by the party or coalition that won

the absolute majority of mandates (JCC no. 32 of 29 December 2015, § 122; JCC no. 23 of 6 August 2020, § 21).

The Court held that this solution is the only one likely to eliminate, at least in this aspect, the risk of institutional conflict, being a natural act of clarifying the duties of the President of the Republic regarding the appointment of the Prime Minister, under the conditions in which the supremacy of the Parliament is ensured, as a fundamental institution of democracy (JCC no. 32 of 29 December 2015, §125; JCC no. 23 of 6 August 2020, § 22).

The Court noted that the method of electing the President of the Republic (by universal, equal, direct, secret and freely expressed vote or by Parliament) does not influence in any way how the head of State exercises his/her attribution regulated by Article 98 para. (1) of the Constitution (JCC no. 23 of 6 August 2020, § 24).

Therefore, the discretionary margin of the President when appointing the candidate for the position of Prime Minister is limited. If a formalized absolute parliamentary majority is established, the President of the Republic is compelled to appoint the candidate nominated by this majority for the position of Prime Minister. If a formalized absolute parliamentary majority is not established, the President of the Republic is obliged to, after consulting the parliamentary factions, appoint a candidate for the position of Prime Minister, even if the parliamentary factions do not agree with the President`s proposal (JCC no. 23 of 6 August 2020, point 2 of the operative part of the decision).

The Court reiterated that the interpretation given to the constitutional provisions has an official and binding character for all subjects of legal relations. The decision by which a constitutional text is interpreted has the force of the Constitution and is binding, including its considerations, for all the authorities of the Republic of Moldova. It applies directly, without any other formal condition (JCC no. 33 of 10 October 2013, § 47; JCC no. 2 of 20 January 2015, § 143; DCC no. 4 of 26 February 2016, § 13; DCC no. 51 of 6 June 2017, § 26).

In order to see whether the impugned Decree complies with the requirements laid down in Article 98 para. (1) of the Constitution, as interpreted by the Court's case-law, the Court has verified: a) whether the candidate for the position of Prime Minister has been nominated by a formalized absolute parliamentary majority; b) whether the President of the Republic of Moldova appointed the candidate nominated by a formalized absolute parliamentary majority for the position of Prime Minister.

a) Whether the candidate for the position of Prime Minister has been nominated by a formalized absolute parliamentary majority

In its case-law, the Court held that the President of the Republic is obliged to appoint the candidate who was proposed by a formalized absolute parliamentary majority for the position of Prime Minister (JCC no. 32 of 29 December 2015, para. (3) a), b) and c) of the operative part). The Court emphasized that the phrase "parliamentary majority" means the absolute majority of the MPs, i.e. at least 51 MPs who, on the basis of the constitutional provisions, may grant a vote of confidence to the Government (see JCC no. 32 of 29 December 2015, § 114). In the same Judgment, the Court held that the parliamentary majority must be formalized, not only declared, with the specification of the MPs who constitute it, the willingness to support a certain candidacy for the position of Prime Minister and with officially notifying the President of the Republic of Moldova (§ 128).

The Court noted that the condition to formalize the absolute parliamentary majority should not be interpreted in accordance with the provisions of infra-constitutional acts, for example, in accordance with the Parliament's Rules of Procedure. Paragraph (3) c) of the operative part of Judgment of the Constitutional Court no. 32 of 29 December 2015 explicitly states that this

condition is met if: (i) the act certifying the formalization of the parliamentary majority contains data on the number and concrete MPs who constitute the absolute parliamentary majority; (ii) the act reflects the willingness of the MPs to support a particular candidacy for the position of Prime Minister; (iii) the act is officially communicated to the President of the Republic of Moldova.

In this case, the Court noted that on 11 February 2021, 54 MPs signed a Declaration establishing a parliamentary majority to support Ms. Mariana Durlești**e**anu as the candidate for the position of Prime Minister. The Declaration in question was also read in the plenary sitting of the Parliament and communicated to the President of the Republic. In view of the above, the Court held that the condition for the nomination of a candidate for the position of Prime Minister by a formalized absolute parliamentary majority is met.

b) Whether the President of the Republic of Moldova appointed the candidate nominated by a formalized absolute parliamentary majority for the position of Prime Minister

In order to fulfill this condition, the President of the Republic is obliged to issue a decree appointing the candidate nominated by a formalized absolute parliamentary majority for the position of Prime Minister (JCC no. 23 of 6 August 2020, para. (2) of the operative part).

In this case, the Court noted that on 11 February 2021, after the communication of the Declaration establishing a parliamentary majority to support Ms. Mariana Durlești**e**anu as the candidate for the position of Prime Minister, the President of the Republic consulted the parliamentary factions and issued Decree no. 32-IX, by which Ms. Natalia Gavrili**ț**a was appointed as the candidate for the position of Prime Minister.

In its case-law, the Court noted that the President of the Republic can assess the qualities, competence, experience and, in essence, the ability of the candidate proposed by the parliamentary majority to lead the Government and draw the political support of the parliamentary majority (JCC no. 32 of 29 December 2015, § 95; JCC no. 23 of 6 August 2020, § 19).

In this case, the President of the Republic, when issuing Decree no. 32-IX of 11 February 2021, did not object to the personal and professional qualities of the candidate proposed by the parliamentary majority. The objections of the President of the Republic of Moldova were directed to the MPs who supported that candidate.

Thus, because the candidate for the position of Prime Minister nominated by the formalized parliamentary majority was not appointed, the impugned Decree contravenes Article 98 para. (1) of the Constitution, as it was interpreted in the Court's case-law.

With regard to the request of the applicants to assess whether by refusing to appoint the candidate of the parliamentary majority for the position of Prime Minister, the President of the Republic: (i) violated the provisions of the Constitution and/or the Decisions of the Constitutional Court; (ii) violated the obligation of impartiality and political neutrality in the process of appointing the candidate for the position of Prime Minister, the Court held the following. In its case-law, the Court noted that in order to assess whether the refusal of the President of the Republic to appoint the candidate of the parliamentary majority for the position of Prime Minister is a serious act, within the meaning of Article 89 para. (1) of the Constitution, the above-mentioned elements must be taken into account (JCC no. 23 of 6 August 2020, § 55). At the same time, in § 54 of the judgment cited, the Court held that it can assess whether an action or inaction of the President of the Republic constitutes a serious act justifying his/her suspension from office and his/her dismissal, provided that the application is lodged on the basis of Article 135 para. (1) f) of the Constitution [*finding the circumstances that justify the*

dismissal of the President of the Republic of Moldova]. In this case, the application was lodged on the basis of Article 135 para. (1) a) of the Constitution [*constitutional review of the decree of the President of the Republic of Moldova*]. Therefore, this part of the application was declared inadmissible.

At the same time, the Court noted the deficient nature of the cooperation between the President of the Republic and the Parliament during the second round of consultations on the appointment of the candidate for the position of Prime Minister.

The Court reiterated that the purpose of the consultations was to identify the political support of a parliamentary majority for a person capable of forming a Government that enjoys the confidence of the Parliament. The consultations resulting from Article 98 para. (1) of the Constitution is an authentic dialogue undertaken by the parties, which must be conducted in good faith, in a sincere and responsible manner, so as to achieve the above-mentioned purpose.

Therefore, the President of the Republic and the MPs must show a loyal constitutional behavior and show mutual respect in order to ensure an essential cooperation in the process of forming a Government and, implicitly, in the good functioning of the State. Thus, in order to avoid an institutional deadlock caused by a lack of a dialogue based on respect and diligence between the President of the Republic and the Parliament, the Court considered it necessary for the parties to resort to new consultations which respect the Constitution and comply with the Court's case-law.

As a result, the Court declared Decree of the President of the Republic of Moldova no. 32-IX of 11 February 2021 on the appointment of the candidate for the position of Prime Minister unconstitutional.

5. THE POWERS OF A GOVERNMENT WHOSE MANDATE HAS ENDED

On March 14, 2021, the Constitutional Court issued a Judgment on the constitutional review of Articles 15 paras. (2) d) e) f) and (3), 23 paras. (3) and (6) and 26 paras. (6)-(9) of Law on the Government no. 136 of 7 July 2017[5].

As regards the prohibition of a Government whose mandate has ended to make governmental reshuffles, the Court noted that the change in the modality of election of the President of the Republic did not lead to an increase or decrease in his/her or the Prime Minister's powers in the field of governmental reshuffles. Since the adoption of the Constitution and until now, the powers of the President of the Republic and the Prime Minister in the field of governmental reshuffles have remained unchanged. In Judgment no. 7 of 18 May 2013, the Court held that, in the case of a Government who has resigned, the mandate of the interim Prime Minister is *a fortiori* limited to the restricted mandate of the Government who has resigned of which he/she is a member. The interim Prime Minister may not be given the same powers as a Prime Minister with full power in the field of governmental reshuffles. At paragraph 92 of the Judgment cited, the Court mentioned the dangers of applying Article 98 para. (6) of the Constitution in the case of a Government whose mandate has ended. The Court noted that if governmental reshuffles were allowed to take place in such a Government, the interim Prime Minister and the President of the Republic could change, one by one, the entire composition of the Government whose mandate had ended, eluding any form of parliamentary control. Moreover, a Government whose mandate has ended can no longer be sanctioned by the Parliament with a motion of no confidence (see § 115 of the Judgment cited). In this regard, at paragraph 96, the Court held that this situation is contrary to the spirit of the Constitution and

[5] Judgment no. 7 of 04.03.2021 on the constitutional review of Articles 15 paras. (2) d) e) f) and (3), 23 paras. (3) and (6) and 26 paras. (6)-(9) of Law on the Government no. 136 of 7 July 2017

poses a danger to parliamentary democracy. In a State governed by the rule of law, it is inadmissible to adopt norms that would allow the permanence of an interim Government.

The Court noted that the Judgment cited was delivered in the context in which the Government was dismissed by a motion of no confidence. However, as Article 103 para. (2) of the Constitution establishes equal powers for both a dismissed Government and a resigning Government, the Court considered that the danger of changing the composition of a Government by eluding parliamentary control is valid for all reasons of termination of the Government's mandate (i.e. vote of no confidence or resignation). Therefore, in view of the above reasoning, the Court held that Article 98 para. (6) of the Constitution can be applied only in the case of a Government with full power. This Article is not applicable in the case of governmental reshuffles within a Government whose mandate has ended.

As regards the limitation of the discretionary margin of the President of the Republic in the appointment of an interim Prime Minister, the Court held that, on the one hand, Article 101 para. (2) of the Constitution provides that in the case of impossibility of the Prime Minister to exercise his/her powers or in the case of his/her death, the President of the Republic shall appoint another member of the Government as interim Prime Minister until the formation of a new Government. The interim period during the impossibility to exercise the powers ends if the Prime Minister resumes his/her activity in the Government. On the other hand, Article 23 para. (3) of the Law on the Government stipulates that until the appointment of an interim Prime Minister, his/her duties are exercised by the First Deputy Prime Minister, in the absence of the First Deputy Prime Minister - by the oldest Deputy Prime Minister, and in the absence of deputy prime ministers - by the oldest minister. In this respect, the Court noted that the constitutional norm regulates a situation different from the one established by the impugned provision. Thus, the constitutional norm becomes applicable in the case of "impossibility of the Prime Minister to exercise his/her powers or in the case of his/her death". To resolve this issue, the Constitution provides that the President of the Republic must appoint another member of the Government as interim Prime Minister until the formation of a new Government. Contrary to this circumstance, Article 23 para. (3) of the Law on the Government regulates a situation prior to the one provided by Article 101 para. (2) of the Constitution, because it intervenes "until the appointment of an interim Prime Minister [by the President of the Republic]". Thus, in order to avoid intermittency, the exercise of the powers of the interim Prime Minister is done by a member of the Government *ope legis*. At the same time, in the situation provided by Article 101 para. (2) of the Constitution, the interim is exercised on the basis of the Decree of the President of the Republic on the appointment of an interim Prime Minister. From the moment of issuance by the head of the State of the Decree in question, the exercise of the powers of interim Prime Minister ends, based on the provisions of Article 23 para. (3) of the Law on the Government. Therefore, considering the lack of connection between the impugned provisions and the object regulated by the Constitution, the Court held the inapplicability of Article 101 para. (2) of the Constitution regarding this part of the application.

As regards the deficient regulation of ensuring the interim of the office of minister by another minister, the Court reiterated that the constitutional rules invoked by the applicant (Articles 2 and 7) are of a general nature, they represent imperatives underlying any legal regulations and they cannot be individual and separate landmarks. Also, the applicant did not motivate the contradiction between the impugned provisions and the nominated constitutional rules. Therefore, the Court held that this part of the application was inadmissible.

As regards the prohibition of concluding international treaties involving financial commitments, the prohibition of concluding contracts and the prohibition of assuming commitments for a certain period of time by a Government whose mandate has ended,

the Court notes that the applicant raises a question of interpretation of the impugned legal provisions. The aspects related to the interpretation and application of the law do not fall within the competence of the Constitutional Court. Therefore, this part of the application is inadmissible.

As regards the prohibition to appoint, propose for appointment or dismiss persons holding public office (other than ministers) or in the civil service by a Government whose mandate has ended, the Court has noted the following.

In this respect, the Court had to interpret the concept of "public affairs management" in Article 103 para. (2) of the Constitution. The Court considered it necessary to clarify its previous case-law in the field of the powers of the Government whose mandate had ended. Thus, the Court noted that the issue of the powers of such a Government highlights a tension between two competing principles: on the one hand, the principle of political legitimacy of the Government whose mandate has ended, and on the other hand, the principle of necessity to manage public affairs.

The first principle concerns the lack of political legitimacy of a Government whose mandate has ended in relation to the political legitimacy of a Government with full power based on the confidence granted to it by the Parliament. Political legitimacy has an effect on the powers of a Government whose mandate has ended. Thus, the Constitution establishes that this Government "fulfills only the functions of public affairs management" [Article 103 para. (2) of the Constitution].

The second principle, i.e. the principle of necessity, is based on the fact that the lack of political legitimacy must not prevent a Government whose mandate has ended to take urgent and necessary measures for society. Moreover, in the event of failure to adopt the measures in question, the public interest and the interests of individuals may be jeopardized, sometimes with negative effects on the exercise of fundamental rights. The Court noted that the two principles carry equal weight.

In order to establish a correct balance between the principle of political legitimacy of the Government whose mandate has ended and the principle of necessity, the Court instituted a test.

The test in question is based on the case-law of the Court and implies a scrutiny on the following issues: (i) the necessity of the measures adopted by a Government whose mandate has ended; (ii) the repercussions of the measures adopted by a Government whose mandate has ended on the powers of the next Government with full power; (iii) whether the next Government with full power may annul the measure adopted by the Government whose mandate has ended.

The first stage of the test, in which the stringent nature of the necessity of the measure is established, results from the teleological interpretation of the text "fulfills only the functions of public affairs management" in Article 103 para. (2) of the Constitution. This presupposes that the Government whose mandate has ended may be guided by the criterion of necessity, this is to say to adopt only the measures which seek to solve three categories of problems, namely: (1) the day-to-day affairs of the State; (2) the ongoing affairs, which have been initiated by the Government with full power and which must be completed, and (3) the urgent affairs, which must be resolved imperatively in order to avoid very serious dangers for the State and citizens, for economic and social life (see JCC no. 7 of 18 May 2013, § 113).

The Court noted that the criterion of necessity does not grant the Government whose mandate has ended unlimited flexibility. The implications of the measures taken by such a Government must be assessed on a case-by-case basis. For this reason, the measures in question can be challenged before the Constitutional Court or, possibly, before the courts of common law. At this stage of the test, the authorities are called upon to strike a fair balance between the principle of political legitimacy of the Government whose mandate has ended and the principle of necessity. In that regard, they must examine the measures in question from their compliance

with the substantial element standpoint, that is to say they must examine whether the aim pursued by the Government whose mandate has ended and the necessity of that aim can be determined from the content of those measures.

The second stage of the test - whether the measures adopted by a Government whose mandate has ended have repercussions on the powers of the next Government with full power - results from the phrase "until the oath is taken by the members of the new Government" in Article 103 para. (2) of the Constitution. Thus, if the Constitution provides that the Government whose mandate has ended has a limited period of activity, the Court has held that the measures adopted by it must take effect only within that period. The lack of political legitimacy of the Government whose mandate has ended does not allow it to affect, through its measures, the mandate of the new Government. The new Government, which will have full power, must not be bound by the measures taken by a Government whose mandate has ended. On the contrary, it must be able to implement its program of government accepted by the Parliament's vote of confidence. If the measures adopted by a Government whose mandate has ended have effect on the mandate of a Government with full power, they may be challenged either before the Constitutional Court or, where appropriate, before the courts of common law, in accordance with the powers of those institutions. At this stage of the test, the authorities are called upon to examine the measures in question from their compliance with the temporal element standpoint, that is to say whether their effects do not exceed the mandate of a dismissed or resigning Government.

In the third stage of the test, the question of whether the measure adopted by a Government whose mandate has ended can be overturned by the next Government with full power will be examined. The purpose of this stage is to establish a mechanism that would allow a Government with full power to remedy the measures adopted by a Government whose mandate has ended which have effects on the mandate of the former. Thus, if the phrase "until the oath is taken by the members of the new Government" in Article 103 para. (2) of the Constitution imposes on the dismissed or resigning Government the obligation to limit the scope of its measures only to the duration of its mandate, the third stage of the test ensures, on the one hand, the compliance with this obligation and, on the other hand, it grants the Government with full power the possibility to annul the measures adopted by a Government whose mandate has ended which have effect on its mandate. At this stage of the test, the Court must examine whether the legal provisions allow a Government with full power to carry out an *ex post* control over the measures adopted by a Government whose mandate has ended.

The Court emphasized that the above-mentioned test must be applied: a) by the Parliament when regulating the powers of the Government whose mandate has ended; b) by a Government whose mandate has ended in each case where it considers it necessary to adopt a precise measure; c) by the courts of law in each case in which they are called upon to verify the legality of the measures adopted by a Government whose mandate has ended; d) by the Constitutional Court in each case in which an application is lodged to review the constitutionality of the measures adopted by a Government whose mandate has ended or the constitutionality of the legal provisions regulating these measures, if it falls within its competence, as established in Article 135 para. (1) a) of the Constitution. In such cases, these authorities must strike the right balance between the principle of political legitimacy of a Government whose mandate has ended and the principle of necessity, on the basis of the test set out above.

a) Whether the impugned provisions allow a Government whose mandate has ended to analyze the necessary nature of the appointment, proposal for appointment or dismissal of persons

The Court noted that the impugned provisions lay down an absolute prohibition on a Government whose mandate had ended in the field of appointment, proposal for appointment or dismissal of persons holding public office (other than ministers) or in the civil service. They do not allow a Government whose mandate has ended to balance the principle of political legitimacy of the dismissed or resigning Government and the principle of necessity, and to examine whether the appointment of persons for public office (other than ministers) or in the civil service is necessary.

The Court noted that the appointment of such officials may be dictated by an urgent need, for example, to appoint a head of a public authority if the interim cannot be ensured by deputies, or to appoint civil servants in order to ensure the functionality of the institution in the case of lack of staff. These reasonings also apply in the case of proposals for appointment.

As regards the prohibition to dismiss officials referred to in the impugned provisions, the Court admitted, in the event that such a measure would be allowed, that it might be considered necessary.

However, in order to verify whether the impugned prohibition falls within the notion of "public affairs management" established by Article 103 para. (2) of the Constitution, it must be examined in the light of the following stages of the test.

b) Whether the impugned provisions allow a Government whose mandate has ended to analyze the effects of appointments, proposals for appointment or dismissals on the powers of the next Government with full power

The Court noted that a measure can satisfy this stage of the test if the dismissed or resigning Government can limit its effects to its term.

In this case, the Court noted that the impugned provisions do not allow the Government whose mandate has ended to appoint persons for public office (other than ministers) or in the civil service for a specified term, i.e. until a new appointment (of the same person or another) made by a Government with full power. Again, the impugned provisions do not allow a Government whose mandate has ended to balance the principle of political legitimacy of that Government and the principle of necessity and to limit the effects of the appointment of those officials, without prejudice to the mandate of the new Government with full power. These reasonings also apply in the case of proposal for appointment.

With regard to the prohibition to dismiss officials referred to in the impugned provisions, the Court held that, in the event that the measure would be allowed, the Government whose mandate had ended could not limit its effects without affecting the powers of the next Government with full power. Moreover, the effects of dismissal are immediate, and the reinstatement of the person dismissed from the position previously held can only take place through judicial proceedings. At the same time, the Court noted that the above considerations do not affect the dismissal of persons holding public office or civil servants in cases of objective impossibility to perform their duties.

c) Whether the impugned provisions allow the next Government with full power to annul appointments, proposals for appointment or dismissals by a Government whose mandate has ended

The Court noted that a measure can satisfy this stage of the test if a Government with full power can carry out an *ex post* control over the measures adopted by a Government whose mandate has ended, with the possibility of annulling them.

With regard to the prohibition to appoint and to propose for appointment officials referred to in the impugned provisions, the Court held that, in the event that such a measure would be allowed for a specified period, i.e. until a new appointment (of the same person or another) is made by a Government with full power, the latter could terminate the service relations with the officials in question in connection with the expiry of the term for which they were employed. The Court noted that, in this case, a Government with full power may carry out an *ex post* control over any fixed - term employment carried out by a Government whose mandate has ended.

With regard to the prohibition to dismiss officials referred to in the impugned provisions (except in cases of objective impossibility to perform their duties), the Court held that, in the event that such a measure would be allowed, a Government with full power could not overturn the decisions to dismiss officials, because, as mentioned above, the effects of dismissal are immediate and the reinstatement of the persons released from their previous position can only happen through legal proceedings.

In conclusion, the Court noted that when regulating the prohibition of the Government whose mandate has ended to appoint or to propose for appointment persons for public office (other than ministers) or in the civil service, the Parliament did not strike a fair balance between the principle of political legitimacy of a Government whose mandate has ended and the principle of necessity to manage public affairs.

Regarding the prohibition to dismiss officials referred to in the impugned provisions (except in cases of objective impossibility to perform their duties), the Court held that the Parliament had struck a fair balance between the above principles.

At the same time, the Court considered it necessary to issue a Request to the Parliament in order to regulate the powers of a Government whose mandate has ended and to amend the related legislation in accordance with the reasoning of this Judgment.

The Court ruled that until the amendment of the law by the Parliament, the Government whose mandate has ended will be able to appoint or propose for appointment persons for public office (other than ministers) or in the civil service for a fixed term until a new appointment (of the same person or another) is carried out by the Government with full powers.

6. PROCEDURE FOR ADOPTING LAWS WITH BUDGETARY IMPACT

On March 11, 2021, the Constitutional Court delivered a Judgment on the constitutional review of Law no. 236 of 16 December 2020 on the amendment of certain laws and Law no. 240 of 16 December 2020 on the amendment of certain laws [6].

The Court began its analysis by verifying the compliance of the impugned Laws with Articles 1 para. (3), 6 and 131 paras. (4) and (6) of the Constitution.

In order to establish whether the Parliament has complied with the procedures provided for in Article 131 para. (4) of the Constitution, the Court examined whether the following conditions were met: (1) whether or not the legislative proposal or amendment had the effect of increasing or decreasing budget revenues or loans, as well as increasing or reducing budget expenditures, and (2) whether the legislative proposal or amendment adopted by the Parliament has been previously accepted by the Government by an approval.

With regard to compliance with the first condition, the Court held that it had the power to determine whether or not the adoption of the impugned provisions by the applicants had the

[6] Judgment no. 8 of 11.03.2021 on the constitutional review of Law no. 236 of 16 December 2020 on the amendment of certain laws and Law no. 240 of 16 December 2020 on the amendment of certain laws

effect of increasing or reducing budget revenues or loans, and increasing or decreasing budget expenditures, if the effect in question evidently results from the impugned provisions.

The Court noted that if several provisions of the draft law obviously attract an increase or decrease in budget revenues/expenditures, then the draft law, which is a legislative proposal within the meaning of Article 131 para. (4) of the Constitution, may be adopted only after it has been accepted by the Government.

In this respect, regarding Law no. 236 of 16 December 2020, the Court noted that the Information Note states that "for the implementation of this draft law, the expenditures will have a budgetary origin. Under these conditions, the Government, through the Ministry of Finance, is going to plan and identify resources from the budget for 2021". The Court also noted that the costs of home delivery of compensated medicines for people with severe disabilities will be paid from the compulsory health insurance funds, which is part of the national public budget. The Court also noted that the selling of medicines in mobile units involves the payment of taxes on revenue from the marketing of medicines, which ultimately leads to an increase or decrease in budget revenues/expenditures. Therefore, the Court established that Law no. 236 of 16 December 2020 involves budgetary expenditures and/or revenues within the meaning of Article 131 para. (4) of the Constitution.

Regarding Law no. 240 of 16 December 2020, the Court observed that, in order to ensure the application of the said Law, the Government will have to allocate financial means (e.g. for the implementation of the national electronic prescribing system, for the establishment of the Price Catalog for compensated medicines, etc.). The Court also noted that, on the basis of the electronic medical prescription (electronic prescription), medicines from the compulsory health insurance funds will be compensated, which involves financial means from the national public budget. At the same time, the Court noted that the change in the methodology for calculating the price from "tax free (ex works)" to "CIP (Carriage and Insurance Paid to - transport and insurance paid to [agreed place of destination])" implies a change in the modality of payment of mandatory charges that are likely to influence budget revenues. Therefore, the Court considered that draft Law no. 302 of 6 December 2019 and the amendments to this draft (Law no. 240 of 16 December 2020) attract the increase or, as the case may be, the decrease of budgetary expenditures/revenues within the meaning of Article 131 para. (4) of the Constitution.

With regard to compliance with the second condition, the Court noted that, in legislative procedures with a budgetary impact, the provisions of Article 131 para. (4) of the Constitution establish a direct decision-making dependence of the Parliament on the Government, the prior acceptance of the Government regarding the legislative proposals involving the increase or decrease of the budget expenditures/revenues is an imperative condition, from which the legislature cannot derogate. Failure to comply with this condition is a violation of the procedure established by the Constitution in the field of budgetary legislation. In its case-law, the Court has found that the adoption of a law with a budgetary impact in the absence of the Government's approval leads to a breach of the procedure provided for in Article 131 paras. (4) and (6) and Article 6 of the Constitution, which imposes on the State authorities the obligation to exercise their powers within the limits established by the Constitution.

As regards Law no. 236 of 16 December 2020, first of all, the Court noted that although in the approval adopted by Decision no. 643 of 26 August 2020 the Government expressly stated that it "does not support the draft Law subject to approval" (i.e. Law no. 236 of 16 December 2020), the approval does not refer to the budgetary impact of the impugned Law. The Court held that the main task of the Government in the procedure established by Article 131 para. (4) of the Constitution is to decide by an approval whether or not to accept the legislative proposal or the legislative amendment from the perspective of the budgetary impact they involve.

However, in the absence of the Government's approval on the budgetary impact of draft Law no. 312 of 9 July 2020 (Law no. 236 of 16 December 2020), the Parliament adopted this draft.

Secondly, the Court noted that the amendments tabled by MPs Serghei Sîrbu and Liviu Vovc were forwarded to the Government for approval on 15 December 2020, and on 16 December 2020 the Parliament voted in the second reading draft Law no. 312, which also included several amendments, without waiting for the Government's approval.

Therefore, establishing that the adoption by the Parliament of Law no. 236 of 16 December 2020 took place in the absence of the Government's approval on its budgetary impact and in the absence of the Government's approval on the amendments to this Law tabled by MPs, the Court found a violation of Articles 1 para. (3), 6 and 131 paras. (4) and (6) of the Constitution.

Regarding Law no. 240 of 16 December 2020, first of all, the Court observed that although by the approval adopted by Decision no. 111 of 26 February 2020, the Government conditionally approved draft Law no. 302 of 6 December 2019 and proposed amendments/supplements to this draft, it did not comment on the budgetary impact of the impugned Law. However, the Court noted that in the absence of the Government's approval on the budgetary impact of Law no. 240 of 16 December 2020, the Parliament adopted the said Law in the second reading.

Secondly, the Court emphasized that, on 10 December 2020, Mr. Serghei Sîrbu had tabled an amendment to draft Law no. 302 of 6 December 2019, which involves budget expenditures. Therefore, the Court noted that this amendment was voted in the second reading and was included in Law no. 240 of 16 December 2020 in the absence of the Government's approval on the budgetary impact of the amendment.

Therefore, establishing that the adoption by Parliament of Law no. 240 of 16 December 2020 took place in the absence of the Government's approval on its budgetary impact and in the absence of the Government's approval on the amendment to this Law tabled by a MP, the Court found a violation of Articles 1 para. (3), 6 and 131 paras. (4) and (6) of the Constitution.

From these reasonings, the Court was exempted from further analyzing the constitutionality of Laws no. 236 and no. 240 of 16 December 2020 in the light of Articles 9 para. (3), 36, 64, 72 para. (3) and 126 para. (2) b) of the Constitution.

7. THE ISSUANCE OF STATE BONDS IN ORDER TO ENSURE THE STABILITY OF THE FINANCIAL SYSTEM

On March 8, 2021, the Constitutional Court delivered a Judgment on the constitutional review of Law no. 230 of December 16, 2020 for the abrogation of Law no. 235/2016 regarding the issuance of State bonds in order to execute by the Ministry of Finance the payment obligations derived from the State guarantees no. 807 of 17 November 2014 and no. 101 of 1 April 2015 [7].

The Court began its analysis by verifying the compliance of the impugned Law with Articles 1 para. (3), 6 and 131 para. (4) of the Constitution.

In order to establish whether the Parliament has complied with the procedures provided for in Article 131 para. (4) of the Constitution, the Court examined whether the following conditions were met: (1) whether or not the legislative proposal or amendment had or had not the effect of increasing or decreasing budget revenues or loans, as well as increasing or

[7] Judgment no. 9 of 18.03.2021 on the constitutional review of Law no. 230 of December 16, 2020 for the abrogation of Law no. 235/2016 regarding the issuance of State bonds in order to execute by the Ministry of Finance the payment obligations derived from the State guarantees no. 807 of 17 November 2014 and no. 101 of 1 April 2015

decreasing budget expenditures, and (2) if the legislative proposal or the amendment adopted by the Parliament has been accepted in advance by the Government by opinion.

With regard to compliance with the first condition, the Court held that, in principle, it has jurisdiction to determine whether or not the adoption of the impugned provisions by the complainants had the effect of increasing or reducing budget revenues or loans and increasing or reducing expenditure, especially in cases where the effect in question is obvious.

The Court noted that the budgetary impact of Law no. 230 of 16 December 2020 is obvious, because Law no. 235 of 3 October 2016, which regulated the conditions for issuing government bonds - bearing interest (5% annually) and which the issuer (Ministry of Finance) was to redeem at maturity.

As it results from the letter addressed to the Court no. 31-002 / 9/415 of 12 February 2021, the National Bank States that, from the date of issue (October 4, 2016) and until 31 January 2021, the Ministry of Finance repurchased four government bonds worth 730 million lei, and the amount interest calculated for the period October 4, 2020 – 31 January, 2021 is 199,871,869 lei.

Also, examining the amendment of a member of Parliament (AS no. 55 of December, 2020) to the draft State Budget Law for 2021 on the suspension in 2021 of payments to the National Bank for State bonds issued under Law no. 235/2016, the government rejected the amendment, "because the suspension of payments for previously issued government bonds could lead to the decapitalization of the National Bank of Moldova. Therefore, the State budget will incur additional expenses to cover State securities issued to increase the statutory capital of the National Bank of Moldova".

The Court therefore concluded that Law no. 230 of 16 December 2020 has a budgetary impact within the meaning of Article 131 para. (4) of the Constitution.

With regard to compliance with the second condition, the Court held that the provision of Article 131 para. (4) of the Constitution establishes a direct decision-making dependence of the Parliament on the Government, in the sense that the existence of the prior acceptance of the Government regarding amendments or legislative proposals involving the increase or reduction of expenses, revenues or loans is an imperative condition, from which the legislature cannot derogate. It is unequivocally deduced from the constitutional provision that the Government's approval must precede the adoption of draft laws with a budgetary impact in the final reading. Failure to comply with this condition constitutes a violation of the procedure established by the Constitution in the field of budgetary legislation. In its case-law, the Court has found that the adoption of a law with a budgetary impact in the absence of the Government's approval leads to a violation of the procedure provided for in Article 131 para. (4) and Article 6 of the Constitution, which obliges State authorities to exercise their powers. of the Constitution.

The Court noted that in the case of a draft law having a budgetary impact, Parliament must seek the Government's opinion on the project in question, and the Government is obliged to approve the draft submitted by Parliament on the basis of the procedure provided for in Article 131 para. (4) of the Constitution. The Court found that such an Opinion was not annexed to the section reserved for the Government's opinion on Parliament's website.

In the public hearing of the Constitutional Court, the Government representative confirmed the lack of prior acceptance of the Government on the draft of the impugned Law.

Moreover, in the opinion sent to the Court, the Government of the Republic of Moldova confirmed that it did not endorse the draft law and Stated that the Parliament did not comply with Article 131 para. (4) of the Constitution, affecting the purpose of this constitutional provision identified in the case-law of the Constitutional Court.

Therefore, the Court found that the Parliament adopted Law no. 230 of 16 December 2020, in the absence of the prior approval of the Government. In conclusion, when adopting the

impugned law, the Parliament violated the provisions of Articles 1 para. (3), 6 and 131 para. (4) of the Constitution.

8. DISCRETIONARY MARGIN OF THE PRESIDENT OF THE REPUBLIC WHEN APPOINTING THE CANDIDATE FOR THE OFFICE OF PRIME MINISTER

On March 22, 2021, the Constitutional Court delivered a ruling on the constitutional review of Decree of the President of the Republic of Moldova no. 47-IX of 16 March 2021 on the appointment of the candidate for the position of Prime Minister[8].

The Court analyzed the referral through the lens of Article 98 para. (1) of the Constitution, which provides that after consulting the parliamentary factions, the President of the Republic of Moldova appoints a candidate for the position of Prime Minister.

The Court held that Article 98 para. (1) of the Constitution provides for the exclusive power of the President of the Republic to appoint the candidate for the position of Prime Minister. At the same time, the Court noted that, although exclusive, the power to appoint may not be discretionary, as the President appoints the candidate for the position of Prime Minister only after consulting the parliamentary factions. The vote of the Parliament is essential during the procedure of formation and investiture of the Government. The Government have a political responsibility to the Parliament, which can dismiss it. The starting principle in democratic states, regardless of the form of government, is that the Government must express the will of the political majority in Parliament, and in order to govern, it must benefit from the support of this parliamentary majority. Analyzing the weight of each of the two public authorities in the procedure of forming the Government, the Court concluded that the role of the Parliament is a decisive one in relation to the role of the President of the Republic. This difference in weight is due to the parliamentary form of government. In addition, in accordance with the provisions of Article 60 para. (1) of the Constitution, the Parliament is the supreme representative body of the people of the Republic of Moldova.

The Court interpreted in its case-law the meaning of the phrase "consultation of parliamentary factions" from Article 98 para. (1) of the Constitution and the Court held that the purpose of the consultations is to identify the political support of the MPs for a particular person, capable of forming a Government that enjoys the confidence of the Parliament. What matters in these consultations is obtaining political support for the person who could be appointed as candidate for the position of Prime Minister. The Court also noted that the President of the Republic can make his/her own proposal to the consultations, which could be accepted. In this sense, the Court mentioned that the President cannot subordinate the political dialogue partners whom he/she consults. In this role, the President of the Republic acts only as a representative of the State, who has the right and responsibility to find a way of dialogue and evaluation of the will and the ability of the consulted MPs to support a candidate from a parliamentary point of view. By appointing the candidate for the position of Prime Minister, the President of the Republic must prove his/her impartiality and political neutrality, equidistance towards all parliamentary groups. The President does not have the constitutional right to replace parliamentary factions.

The Court held that the President of the Republic cannot be denied the right to evaluate the qualities, competence, experience and, basically, the capacity of a person, politically involved or not, to lead the Government and attract the political support of the parliamentary majority, which will support it throughout the entire legislature. However, the President cannot impose

[8] Judgment no. 10 of 22.03.2021 on the constitutional review of Decree of the President of the Republic of Moldova no. 47-IX of 16 March 2021 on the appointment of the candidate for the position of Prime Minister

his/her own candidate. Thus, the President intervenes exclusively as a representative of the State, to establish and formalize through the significance and solemnity of his/her position and to maintain with the authority of his/her power the balance between the Parliament and a possible future Government. The Court emphasized that the interpretation of the Constitution, in the meaning of a discretionary right of the President of the country to appoint the candidate for the position of Prime Minister, may lead to the emergence of institutional conflicts.

The Court held that there was no constitutional and democratic reason for the President of the Republic not to designate as a candidate for the position of Prime Minister the person who has the support of the formalized parliamentary majority, whether if he/she is opposed by the President. When no party has an absolute majority in the Parliament, the President must consult the MPs not only *pro forma*, but to designate the candidate supported by this majority, even if the political party approved by the President is not part of the majority. The President of the Republic appoints for the position of Prime Minister the candidate who meets the designation and appointment conditions and who enjoys the support of the formalized parliamentary majority.

The President should act as an authority that ascertains, but does not interpret or modify the result of the elections, being constrained, by Article 98 para. (1) of the Constitution, to designate a candidate for the position of Prime Minister according to the will expressed by the voters in the parliamentary elections, to designate the person proposed by the party or coalition that won the absolute majority of seats.

The Court held that this solution is the only one likely to eliminate, at least in this aspect, the risk of institutional conflict, being a natural act of clarifying the duties of the President of the Republic regarding the appointment of the Prime Minister, under the conditions in which the supremacy of the Parliament is ensured, as a fundamental institution of democracy.

The Court noted that the method of electing the President of the Republic (by universal, equal, direct, secret and freely expressed vote or by Parliament) does not influence in any way how the head of State exercises his/her attribution regulated by Article 98 para. (1) of the Constitution.

Therefore, the discretionary margin of the President when appointing the candidate for the position of Prime Minister is limited. If a formalized absolute parliamentary majority is established, the President of the Republic has the obligation to appoint the candidate nominated by this majority for the position of Prime Minister. If a formalized absolute parliamentary majority is not established, the President of the Republic is obliged to, after consulting the parliamentary factions, appoint a candidate for the position of Prime Minister, even if the parliamentary factions do not agree with the President`s proposal

Application of the principles in the present case

In order to see whether the impugned Decree complies with the requirements laid down in Article 98 para. (1) of the Constitution, as it has been interpreted in the constitutional case-law, the Court must verify: a) whether the President of the Republic consulted the parliamentary factions until the issuance of the impugned Decree; b) whether after consulting the parliamentary factions a formalized absolute parliamentary majority that supports a candidate for the position of Prime Minister was identified; c) whether the refusal of Ms. Mariana Durlești̦eanu to be appointed as candidate for the position of Prime Minister influenced the existence of the formalized absolute parliamentary majority; d) whether the President of the Republic appointed the candidate for the position of Prime Minister within her margin of discretion allowed by the Constitution.

a) Whether the President of the Republic consulted the parliamentary factions until the issuance of the impugned Decree

In its case-law, the Court held that Article 98 para. (1) of the Constitution provides for the exclusive power of the President of the Republic to appoint the candidate for the position of Prime Minister. At the same time, the Court noted that, although exclusive, the power to appoint may not be discretionary, as the President appoints the candidate for the position of Prime Minister only after consulting the parliamentary factions (see JCC no. 32 of 29 December 2015, § 84; JCC no. 23 of 6 August 2020, § 17; JCC no. 6 of 23 February 2021, § 40).

In this case, the Court noted that on 16 March 2021, the President of the Republic consulted the parliamentary factions in order to appoint a candidate for the position of Prime Minister. Moreover, both the applicants and the President of the Republic confirmed that the parliamentary factions were consulted until the issuance of the Decree. Therefore, the Court found that the minimum condition regarding the consultation of parliamentary factions, established by Article 98 para. (1) of the Constitution, is fulfilled. The Court will rule on the outcome of these consultations.

b) Whether after consulting the parliamentary factions a formalized absolute parliamentary majority that supports a candidate for the position of Prime Minister was identified

In its case-law, the Court held that the purpose of the consultations is to identify the political support of the MPs for a particular person, capable of forming a Government that enjoys the confidence of the Parliament. What matters in these consultations is obtaining political support for the person who could be appointed as candidate for the position of Prime Minister (JCC no. 32 of 29 December 2015, § 91; JCC no. 23 of 6 August 2020, § 18; JCC no. 6 of 23 February 2021, § 41).

The Court noted that the applicants mention that, on 16 March 2021, during the consultations between the President of the Republic and the parliamentary factions, the formalized absolute parliamentary majority reiterated the candidacy of Ms. Mariana Durlești to be appointed as candidate for Prime Minister, a candidacy which was previously proposed by the Declaration of 11 February 2021. On the other hand, the President of the Republic notes that after consulting the parliamentary factions on 16 March 2021, the President found that there is no formalized absolute parliamentary majority to support Ms. Mariana Durlești anymore.

The Court found that the MPs who constituted the absolute parliamentary majority formalized by the Declaration of 11 February 2021 did not explicitly withdraw or annul this Declaration. Those MPs did not give up the candidacy of Ms. Mariana Durlești, who was nominated to the position of Prime Minister neither until the consultations, nor during them, nor after the end of the consultations.

Therefore, the Court noted that after consulting the parliamentary factions on 16 March 2021, a formalized absolute parliamentary majority that supported the candidacy of Ms. Mariana Durlești for the position of Prime Minister was identified.

c) Whether the refusal of Ms. Mariana Durlești to be appointed as candidate for the position of Prime Minister influenced the existence of the formalized absolute parliamentary majority

In Judgment of the Constitutional Court no. 6 of 23 February 2021, § 53, the Court held that the Declaration of 11 February 2021 establishing a parliamentary majority in support of Ms.

Mariana Durleșteanu as candidate for the position of Prime Minister fulfilled the condition of nominating the candidate for the position of Prime Minister by a formalized absolute parliamentary majority.

Regarding the validity of the withdrawal of Ms. Mariana Durlești from her nomination as candidate for the position of Prime Minister, the Court admitted the argument of the President of the Republic that the withdrawal in question, publicly expressed through a social platform, is valid and effective from the moment of announcement, i.e. 16 March 2021. Moreover, if Judgment of the Constitutional Court no. 16 of 17 June 2015 provides that the public announcement of the resignation of the Prime Minister is effective from the moment it was made and it entails the resignation of the Government, without fulfilling another formal or procedural condition, the same reasoning applies to the person proposed by a formalized parliamentary majority as candidate for the position of Prime Minister. Therefore, the Court considered unfounded the arguments of the applicants who claim that only the official refusal of Ms. Mariana Durlești, communicated to the Parliament, is valid.

Regarding the effects of Ms. Mariana Durlești's withdrawal from her nomination as candidate for the position of Prime Minister, the Court considered that this fact invalidated the Declaration of the parliamentary majority of 11 February 2021, depriving it of object. The Court noted that the existence of a precise candidacy for the position of Prime Minister is an essential condition for the formalization of an absolute parliamentary majority. Moreover, in its case-law, the Court held that the condition of formalizing the absolute parliamentary majority is fulfilled if: (i) the act certifying the formalization of the parliamentary majority contains data on the number and concrete MPs constituting the absolute parliamentary majority; (ii) **the act reflects the willingness of the MPs to support a particular candidacy for the position of Prime Minister**; (iii) the act is officially communicated to the President of the Republic of Moldova (see JCC no. 6 of 23 February 2021, § 52 and the case-law cited there).

Therefore, the Court noted that since the withdrawal of Ms. Mariana Durlești from her nomination as candidate for the position of Prime Minister, the absolute parliamentary majority formalized by the Declaration of 11 February 2021 ceased to exist.

d) Whether the President of the Republic appointed the candidate for the position of Prime Minister within her margin of discretion allowed by the Constitution

In its case-law, the Court held that the margin of discretion of the President of the Republic to appoint the candidate for the position of Prime Minister is limited. If a formalized absolute parliamentary majority is established, the President of the Republic is obliged to appoint the candidate nominated by this majority for the position of Prime Minister. If a formalized absolute parliamentary majority is not established, the President of the Republic is obliged, after consulting the parliamentary factions, to appoint a candidate for the position of Prime Minister, even if the parliamentary factions do not agree with the proposal.

According to the applicants, after the refusal of Ms. Mariana Durlești to be nominated as the candidate for the position of Prime Minister, the President of the Republic had to repeatedly consult the formalized majority to find out its current option or to appoint Mr. Vladimir Golovatiuc who was nominated by the parliamentary majority formalized by the Declaration of 18 March 2021. On the other hand, the President of the Republic considers that since the refusal of Ms. Mariana Durlești to be nominated as candidate for Prime Minister, the parliamentary majority ceased to exist, and the appointment of Mr. Igor Grosu was based on the constitutional obligation of the President of the Republic, established by the case-law of the Court, to appoint a candidate for the position of Prime Minister in the absence of a formalized absolute parliamentary majority.

Examining these arguments, the Court noted that from the text of Article 98 para. (1) of the Constitution and the case-law of the Court it is explicit that the stage of consultation of the parliamentary factions must have a finality, namely the appointment by the President of the Republic of a candidate for the position of Prime Minister. Thus, if, after consulting the parliamentary factions, the President of the Republic finds that there is a formalized absolute parliamentary majority, the President must appoint the candidate proposed by that majority, without proceeding to further consultations. The President of the country must also appoint a candidate, even if the parliamentary factions do not agree with the proposal, if he/she finds, after consulting the parliamentary factions, that there is no formalized absolute parliamentary majority and a candidate nominated by it.

In this case, the Court noted that the impugned Decree was issued after the President of the Republic found that the formalized absolute parliamentary majority had ceased to exist, following the withdrawal of Ms. Mariana Durlești from her nomination as candidate for the position of Prime Minister.

The Court noted that Article 98 para. (1) of the Constitution does not set the term during which the President must appoint, after consulting the parliamentary factions, the candidate for the position of Prime Minister. The term in which the President of the Republic must issue the decree appointing the candidate for the position of Prime Minister falls within his/her discretion. The margin is limited by the constitutional term made available to the candidate appointed for the position of Prime Minister to request the vote of confidence of the Parliament, i.e. 15 days, as per Article 98 para. (2) of the Constitution.

At the same time, the Court held that both the refusal of the person to stand as candidate for Prime Minister by the formalized absolute parliamentary majority and the fact that the parliamentary majority did not make sure that the candidate nominated is still determined to stand as candidate may not be imputed to the President of the Republic.

Based on Article 98 para. (1) of the Constitution, as it was interpreted in the Court's case-law, the President of the Republic had the obligation to appoint, after concluding the consultations with the parliamentary factions, a candidate for the position of Prime Minister. Thus, if he/she found that there was no formalized absolute majority supporting a candidate, the President of the country had the power to appoint a candidate for the said position, even if the parliamentary majority disagreed with the proposal.

Regarding the announcement of the establishment on 18 March 2021 of a new formalized parliamentary majority that nominated Mr. Vladimir Golovatiuc for the position of Prime Minister, the Court noted the following.

In its case-law, the Court ruled that the basic principle of democracy is that of the majority. The decision is made by the majority and by those who represent a majority of voters, regardless of how many parties the majority is made of or whether there is a larger party (in the minority) than each of the parties that make up the majority. At the same time, the Court reiterated that the parliamentary majority must ensure a fair and adequate treatment of parliamentary minorities, without abusing its dominant position.

In the present case, the Court examined whether the absolute parliamentary majority whose formalization was announced after the issuance of the impugned Decree enjoys sufficient constitutional guarantees in the situation invoked by the applicants, i.e. the margin of discretion of the President of the Republic regarding the maintenance or annulment of the decree appointing a candidate for the position of Prime Minister, if the formalization of an absolute parliamentary majority is announced after the issuance of the decree.

First of all, the Court noted that the parliamentary majority has the right to not grant a vote of confidence to the activity program and to the entire list of the Government, a vote that will be requested by the candidate for the position of Prime Minister. In its case-law, the Court ruled

that in the procedure of formation and investiture of the Government the vote of the Parliament is essential, and in accordance with the provisions of Article 98 para. (3) of the Constitution, the Parliament entrusts the Government with the vote of the majority of the elected MPs. Also, in this situation, in case of new consultations after the failure to grant the vote of confidence, the formalized absolute parliamentary majority can nominate a candidate for the position of Prime Minister.

Secondly, in the event that no new consultations will take place within the meaning of Article 98 para. (1) of the Constitution due to the expiry of the time-limit provided in Article 85 para. (2) of the Constitution, the absolute parliamentary majority will have the possibility to address the issue of the Government's investiture in the mandatory consultations with the President of the Republic that must take place, according to Article 85 para. (1) of the Constitution, in case of dissolution of the Parliament.

Therefore, the Court held that the safeguards in question balance the discretion of the President of the Republic to maintain or annul the decree appointing a candidate for the position of Prime Minister, if the annulment is requested by an absolute parliamentary majority whose formalization was announced after the issuance of the decree.

Based on the above, the Court considered that the impugned Decree was issued in compliance with the provisions of Article 98 para. (1) of the Constitution, as it was interpreted in the case-law of the Court.

9. FORCED BRINGING OF THE DEBTOR BEFORE THE BAILIFF

On March 25, 2021, the Constitutional Court delivered a judgment on the constitutional review of Articles 72 and 73 of the Enforcement Code adopted by Law no. 443 of December 24, 2004, regarding the forced bringing of the debtor[9].

The Court found that Article 73 of the Enforcement Code provides that if, at the repeated request of the bailiff, the debtor does not appear before the bailiff, the court orders his forced bringing. Based on the court decision, the internal affairs body in whose territorial area the debtor has his domicile will forcibly bring the debtor before the executor. The forced bringing of the debtor implies the application of coercive measures contrary to the will of the person and, therefore, the constitutional provisions regarding the individual freedom of article 25 of the Constitution are applicable.

The Court noted that, when examining a similar case in which Article 5 § 1 of the European Convention was applied, the correspondent of Article 25 of the Constitution of the Republic of Moldova, the European Court noted that the accompanying and the presence of a person at the police station was a "deprivation of liberty". Given the requirements of the legislation, there was nothing to suggest that the person could freely decide not to follow the police officers to the police station or that, once there, to leave the police station at any time, without suffering any consequences. Even though the person objected to the order of the police officer to follow him/her to the sector, he/she was still taken there by the police. The European Court held that there had been an element of coercion during the events which, despite the short duration of the proceedings, constituted a deprivation of liberty within the meaning of Article 5 § 1 (see, *mutatis mutandis, Creangă v. Romania*, 23 februarie 2012, §§ 94-98; *Rozhkov v. Russia* (no. 2), January 31, 2017, § 79; *Tsvetkova și others v. Russia*, April 10, 2018, §§ 107-108).

[9] Judgment no. 11 of 25.03.2021 on the constitutional review of Articles 72 and 73 of the Enforcement Code adopted by Law no. 443 of December 24, 2004

The Court held that the provisions of Article 73 of the Enforcement Code are prerequisites for restricting the debtor's right to liberty, and in order to determine whether or not such a restriction is constitutional, the Court carried out tests of legality and proportionality.

The Court has established that the provisions of Article 73 of the Enforcement Code meet the requirements of the quality of law.

The Court noted that Article 1 of the Enforcement Code provides that the enforcement procedure has the aim of contributing to the realization of the rights of creditors recognized by an bailiff document submitted for enforcement under the law. In this regard, the Court found that the general purpose of the Enforcement Code is to enforce bailiff's documents.

The Court held that the forced bringing of the debtor is an exceptional, coercive and custodial measure, which must pursue a legitimate aim. In this case, the Court held that the forced bringing of the debtor before a bailiff does not contribute to the achievement of the purpose of the enforcement procedure.

The purpose of the procedure provided for in Article 73 of the Enforcement Code is to bring to the attention of the debtor the acts of the bailiff, in order to realize the rights of other persons and the interest of guaranteeing the authority of justice. This purpose is also implemented at the previous stage covered by Article 67 of the Implementing Code. Article 67 of the Code sets out in detail the procedure for notifying the debtor of bailiff's documents. After informing them, it is presumed that the debtor knows about the existence of the documents in question. Therefore, forcibly bringing the debtor before the bailiff for his information is unnecessary. Being unnecessary, this action becomes arbitrary, and therefore contrary to Article 25 of the Constitution, interpreted in the light of the requirements of Article 5 § 1 of the Convention.

Considering the fact that the contested provision does not contribute to the achievement of a legitimate purpose allowed by article 54 para. (2) of the Constitution, the Court was exempted from moving to the next stage of the proportionality test.

The Court concluded that the provisions of Article 73 of the Enforcement Code are contrary to Article 25 in conjunction with Article 54 of the Constitution and are therefore unconstitutional.

10. THE LEGISLATIVE OMISSION TO INCLUDE THE SPOUSE AS THE SUCCESSOR OF THE INJURED PARTY OR THE CIVIL PARTY IN THE CRIMINAL PROCEEDINGS

On April 6, 2021, the Constitutional Court delivered a judgment on the constitutional review of Articles 77, 81 and 315 of the Code of Criminal Procedure, regarding la the legislative omission to include the spouse as the successor of the injured party or the civil party in the criminal proceedings[10].

The Court based its analysis only on Article 81 of the Code of Criminal Procedure. This article establishes, in its relevant parts, that in criminal proceedings, the quality of successor of the injured party or of the civil party is recognized to one close relatives of the victim, who has expressed a desire to exercise the rights and obligations of the deceased injured party or who, as a result of the offense, has lost the ability to consciously express his or her will. Also, the recognition of the quality of successor of the injured party or of the civil party in the case of the close relative who requests it is decided by the prosecutor leading the criminal investigation or, as the case may be, the criminal investigation officer or the court. If several close relatives request this status, the decision to choose the successor rests with the prosecutor or the court.

[10] Judgment no. 12 of 06.04.2021 on the constitutional review of Articles 77, 81 and 315 of the Code of Criminal Procedure

The Court noted that the main argument of the author of the exception of unconstitutionality is the omission to include in the criminal procedural law of the spouse as a possible successor of the injured party.

In its case law, the European Court of Human Rights has distinguished between direct victims and indirect victims. With regard to indirect victims, the European Court has acknowledged that if the alleged victim of an infringement died during legal proceedings, then a close relative or heir could, in principle, continue the proceedings, as the person has a sufficient interest in the matter.

The persons who could be indirect victims and, respectively, who could be admitted to a trial could be, for example: parents, children, siblings, sisters, grandparents, grandchildren, the universal legatee unrelated to the deceased, unmarried partner or de facto partner. This list may also include the wife of the deceased victim. Therewith, the European Court has ruled that several people, not only one, can be indirect victims. The persons in question must have a legitimate interest and a "sufficient connection" with the deceased victim.

In view of these issues, the Court has accepted that the provisions of Article 81 of the Code of Criminal Procedure constitute an interference with the right of free access to justice guaranteed by Article 20 of the Constitution, in terms of the legislative omission to include the spouse in the category of potential successors of the deceased injured party.

Also, being a master of characterization, the Court noted that the provisions of Article 81 para. (2) thesis II of the Code of Criminal Procedure rises the issue of the number of potential successors of the injured party or the civil party. The provisions state that, "if several close relatives request this quality, the decision to choose the successor rests with the prosecutor or the court". Therefore, it follows that only one person can be accepted and, respectively, can participate in the criminal proceedings, as the successor of the injured party or of the civil party. The provisions in question limit the right to free access to justice of other potential successors of the injured party or the civil party.

The Court noted that there is a tendency in several states to include a spouse in the category of relatives or close persons. The spouse is given the opportunity to obtain the status of successor of the victim. The spouse may have a legitimate interest in participating in the criminal proceedings and may also have a "sufficient connection" with the deceased victim, given the family relationships resulting from a marriage. The Court did not find any legitimate aim to justify the legislator's choice not to include the spouse in the circle of persons who could obtain the status of successor of the injured party or the civil party.

Equally, the Court has not confirmed the existence of any legitimate aim for the normative provisions according to wich the quality of successor of the injured party or of the civil party is offered only one person.

The Court concluded that Article 81 of the Code of Criminal Procedure infringes, in so far as the legislative omission to include the spouse as a potential successor in the criminal proceedings of the injured party or the civil party, Article 20 in conjunction with Article 54 of the Constitution and is, therefore, unconstitutional.

At the same time, pending the amendment of Article 81 of the Code of Criminal Procedure by Parliament, the Court instituted an interim solution, according to which the spouse could be recognized as a successor in the criminal proceedings of the injured party or the civil party. In this regard, the Court issued an Address to Parliament.

The Court also concluded that the text "If several close relatives request this status, the decision to choose the successor rests with the prosecutor or the court." from article 81 para. (2) of the Code of Criminal Procedure is contrary to Article 20 in conjunction with Article 54 of the Constitution and is therefore unconstitutional.

11. DISMISSAL OF A CONSTITUTIONAL JUDGE AND APPOINTMENT OF ANOTHER BY THE PARLIAMENT

On April 27, 2021, the Constitutional Court delivered a ruling on the constitutional review of the Parliament Decision no. 73 of April 23, 2021 regarding the cancellation by partial withdrawal of Parliament Decision no. 121 of August 16, 2019 regarding the appointment of a Constitutional Court judge and Parliament Decision no. 74 of April 23, 2021 regarding the appointment of a judge of the Constitutional Court[11].

The Court analyzed the application through the lens of articles 1 para. (3), 5 para. (1), 6, 134 para. (2) and 137 of the Constitution, which guarantees, *inter alia*, the independence of the Constitutional Court and constitutional judges.

The standards regarding the independence of Constitutional Court judges, as well as those regarding the independence of common law judges, are elucidated and well-established by the Constitutional Court in its case-law. Thus, in a judgment in which it analyzed the organization and functioning of the Constitutional Court, the Court pointed out that independence is not an end itself and does not represent a personal privilege, but seeks to provide the judge with protection in order to guarantee the fulfillment of his/her role as protector of the rights and freedoms of citizens (§ 6 of the Report of the Venice Commission on the independence of the judicial system Part I: Independence of judges) [JCC no. 6 of 16 May 2013, § 39].

The Court emphasized that, apart from the task of protecting the fundamental rights guaranteed by the Constitution, it must ensure that public authorities from different branches of State power remain within the limits prescribed by the Constitution and that it is forced to resolve, sometimes, the conflicts that arise between them. In this regard, the Court's task is a special one for maintaining the democratic regime. The Venice Commission remined the importance of constitutional courts in the practical implementation of democracy, the rule of law and the protection of human rights. By interpreting the constitutional text, the Constitutional Courts prevent the arbitrariness of the authorities, offering the best possible interpretation of the Constitution (see in this regard, the Opinion on the constitutional situation in Ukraine, Venice, 17-18 December 2010, CDL-AD(2010)044, § 52) [JCC no. 9 of 26 March 2020, § 34].

In its Decision no. 27 of October 31, 2019, at § 71, the Constitutional Court specified that it represents a pillar of democracy and the preeminence of law and contributes to the proper functioning of public authorities within the constitutional relations of separation, balance, collaboration and control of State powers. In order to ensure the supremacy of the Constitution and the separation of powers, it is necessary for the Constitutional Court to exercise its function independently of any other public authority.

In its case-law, the Court held that the exercise of any form of pressure on the judges of the Constitutional Court, both before the adoption of the decision and as an act of revenge for the adopted solutions, is inadmissible, being incompatible with respect for the rule of law, the authority of the Court and the supremacy of the Constitution (JCC no. 18 of 2 June 2014, § 101; JCC no. 9 of 26 March 2020, § 30).

For these reasons, the judges of the Constitutional Court must be protected from any political influence, due to their position, which is particularly exposed to criticism and pressure from other state powers. Therefore, Constitutional Court judges need strong guarantees for their

[11] Judgment no. 13 of 27.04.2021 on the constitutional review of the Parliament Decision no. 73 of April 23, 2021 regarding the cancellation by partial withdrawal of Parliament Decision no. 121 of August 16, 2019 regarding the appointment of a Constitutional Court judge and Parliament Decision no. 74 of April 23, 2021 regarding the appointment of a judge of the Constitutional Court

independence (see *Amicus curiae* opinion of the Venice Commission no. 967/2019 regarding the criminal liability of Constitutional Court judges, adopted at its 121st plenary session, on 6-7 December 2019, CDL-AD(2019)028, § 28) [JCC nr. 9 din 26 March 2020, § 31].

The Court specified that one of the guarantees of independence is the irrevocability of the Constitutional Court judge's mandate. Article 137 of the Constitution, "Independence", establishes that the judges of the Constitutional Court are irremovable and independent and they only submit to the Constitution. Irrevocability implies the impossibility of dismissal, revocation or replacement.

At the same time, there is not and cannot be the possibility of revoking the judges of the Constitutional Court by the authorities that appointed them, the judges being irremovable, which represents a guarantee of their independence in exercising their mandate. This principle primarily protects judges from external influences when performing their jurisdictional duties. The fundamental idea is that constitutional judges, in exercising their powers, are not employees of the authorities that appointed them. From the moment of taking the oath, judges are independent, irrevocable and they only submit to the Constitution (JCC no. 6 of 16 May 2013, §§ 51 and 52). Irrevocability protects judges from any imposed removal and transfer, except for very serious mistakes and according to judicial procedure (JCC no. 18 of 2 June 2014, § 52).

The ban on revoking the mandate of a constitutional judge acts in an absolute manner in the case of authorities delegating constitutional judges. Moreover, if it were possible to revoke the delegated mandate, the values whose protection the Constitution ensures through articles 1 para. (3), 5 para. (1), 6, 134 para. (2) and 137 of the Constitution, which guarantees, *inter alia*, the independence of the Constitutional Court and its judges. Considering its conclusions, the Court analyzed whether the contested decisions in this case ignore the clear texts of the Constitution, regarding the immutability of the mandate of a constitutional judge.

The Court observed that the operative part of Parliament Decision no. 73 of annulment by partial withdrawal of Parliament Decision no. 121 of August 16, 2019, regarding the appointment of a judge of the Constitutional Court contains, at Article 1, the provision for revoking the mandate of a judge of the Constitutional Court. The Court inferred the same purpose from the informative note accompanying the draft of the aforementioned decision.

Considering the meanings of the word "withdrawal", the Court concluded that the Parliament's Decision on annulment by partial withdrawal of the Parliament's Decision no. 121 of August 16, 2019, violates the clear text of Article 137 of the Constitution. The Court noted the precise nature of the text of Article 137 of the Constitution and the fact that it does not raise any problems from the perspective of its application. Moreover, the Court reiterated that the judge's mandate cannot be affected, as he/she enjoys special protection in the Constitution system.

These considerations allowed the Court to conclude that the Parliament's Decision does not only seek to cancel the constitutional guarantee of the immutability of the mandate of a constitutional judge, rather, it attacks the very essence of the Constitution of the Republic of Moldova, reconfiguring the system of *checks and balances*. For these reasons, the Constitutional Court finds the unconstitutional nature of Parliament Decision no. 73 of annulment by partial withdrawal of Parliament Decision no. 121 of August 16, 2019, regarding the appointment of a judge of the Constitutional Court.

Establishing the fraud of the Constitution by Parliament Decision no. 73 of annulment by partial withdrawal of Parliament Decision no. 121 of August 16, 2019 regarding the appointment of a judge of the Constitutional Court, the Court also noted the fraudulent character of Parliament Decision no. 74 of April 23, 2021, for appointing a judge of the Constitutional Court, by referring to the constitutional provisions applicable to this case.

12. THE PROCEDURE ADOPTIONING A LAW WHICH WOULD EXCLUDE SEVERAL ATTRIBUTIONS OF THE PRESIDENT OF THE REPUBLIC OF MOLDOVA REGARDING THE INTELLIGENCE AND SECURITY SERVICE

On April 27, 2021, the Constitutional Court delivered a ruling on the constitutional review of Law no. 218 of December 3, 2020, for the modification of several normative acts[12].

The Court began its analysis, verifying compliance with the legislative procedure of the contested Law. In its case-law, the Court held that it can verify the constitutionality of a law from a procedural limb, *i.e.* through the procedure for adopting the law in question, only if the authors of the application present criticisms regarding the failure to respect the decision-making quorum, the vote of the majority of the elected MPs, to examine in at least two readings, to send the law for promulgation and publication in the Official Monitor of the Republic of Moldova, requirements that are expressly established in the Constitution. In this case, considering the evolution of its case-law in this matter, the case-law of the European Court of Human Rights and the Opinion of the Venice Commission no. 1020/2021 of March 23, 2021, the Court has extended its jurisdiction to examine both compliance with parliamentary rules expressly established by the Constitution, as well as rules implied by the Constitution. The Court held that the issues invoked by the authors of the applications – during the plenary session, the lack of debates upon the adoption of the contested Law, – may affect the parliamentary rules expressly established or implicitly deduced from articles 1 para. (3), 5 para. (1), 73, 74 para. (1) of the Constitution. The Court also found the incidence of Articles 77 para. (2) and 87 para. (4) of the Constitution regarding the role of the President as guarantor of sovereignty, national independence, unity and territorial integrity.

The Court noted that, according to Article 60 para. (1) of the Constitution, the Parliament is the supreme representative body of the people of the Republic of Moldova and the only legislative authority of the State. Considering this aspect, the constituent did not grant another authority the competence to regulate the structure, organization and functioning of the Parliament, but established that these matters can be regulated, autonomously, only by the Parliament, through a Regulation, which it must adopt through an organic law. Thus, the Parliament is sovereign in regulating the procedure for adopting laws. However, Parliament's sovereignty is not absolute, it being limited by the constitutional principles in this matter. In this sense, both the regulation of parliamentary procedures and their application, i.e. upon the adoption of normative acts, the Parliament must ensure the correct balance between the principle of parliamentary autonomy and the other principles applicable in parliamentary procedures, which are expressly established or which can be clearly deduced from the Constitution.

Given the sovereign character of the Parliament in adopting laws, the Court held that its competence in controlling the constitutionality of the parliamentary procedure is limited. In this area, the Court must show judicial deference to Parliament's role as an autonomous legislator. In this regard, the Court can control the constitutionality of a law from a procedural limb only if, when adopting it, the Parliament affected any essential element of the legislative process, which results expressly from the Constitution or which can be deduced from a constitutional principle.

The Court held that within the legislative procedures, the principle of political pluralism implies that the Parliament must ensure the possibility of the parliamentary opposition participation in the adoption of laws. Thus, even if the parliamentary majority has a

[12] Judgment no. 14 of 27.04.2021 on the constitutional review of Law no. 218 of December 3, 2020, for the modification of some normative acts

consolidated view on the necessity of a law and its votes would be sufficient to adopt it, the majority in discussion must ensure the right of MPs from the parliamentary opposition to participate by formulating questions and proposals to the draft law. Moreover, the Court held in its case-law that the parliamentary majority must ensure a fair and adequate treatment of the parliamentary minorities, without abusing its dominant position.

At the same time, the Court held that, within the legislative procedures, the Parliament must provide the MPs with the possibility to examine the content of the draft law through an exchange of opinions. Debates are the essence of parliamentarism and offer the MPs, by virtue of their representative mandate, the opportunity to politically combat opinions, arguments and ideas. This stage of the legislative process is necessary because it gives the MPs the opportunity to understand the essence of the draft law proposed for examination and contributes to building the trust of the society that the law has been widely discussed until its adoption.

On the other hand, based on the principle of parliamentary autonomy, the Parliament has a wide discretionary margin regarding the way of holding the plenary sessions. At the same time, in the field of legislation, Parliament's autonomy is not absolute. It is limited by the need to respect constitutional principles, for example, the principle of political pluralism and the principle of parliamentary debate on draft laws.

Examining the applications, the Court observed that since the presentation of the report of the Legal Commission, Appointments and Immunities on the contested Law in the plenary session (at about 3:27 p.m.), until it was voted in two readings (at about 3:28 p.m.) about a minute had passed. It is obvious that in such a short period, the MPs from the parliamentary opposition did not have the opportunity to debate on the contested Law by formulating questions and making speeches, although their disagreement regarding the adoption of the contested Law was known from the beginning of the plenary session.

Moreover, considering the fact that in the last five years, the competence of the President of the Republic to coordinate the activity of the Intelligence and Security Service has been subject to frequent changes, the Court held that the interest of the parliamentary opposition to raise questions and speak on the necessity of the proposed changes was justified. The Court noted thus that giving the MP the opportunity to support his/her point of view regarding the draft law under consideration is a central element of the parliamentary procedure.

In this context, the Court held that the voting of the contested Law in an accelerated regime, without ensuring the parliamentary opposition the opportunity to ask questions or speak on the subject under examination, exceeds the discretionary margin of the Parliament in the field of organizing parliamentary procedures. Even if the parliamentary procedures were accompanied by protests from the parliamentary opposition, this fact cannot justify the adoption of the disputed Law in a procedure devoid of debates. To reconcile the conflicting principles, the parliamentary majority could consider alternative procedures, such as, for example, postponing the plenary session, organizing consultations with the parliamentary opposition on the topics on which there are differences, etc.

As the legislator did not observe a correct balance between the competing principles, the Court found that the provisions of Articles 1 para. (3), 5 para. (1) and 74 para. (1) of the Constitution.

II. On respecting the right of MPs to legislative initiative

The Court noted that compliance with parliamentary procedures is not limited only to ensuring the possibility for MPs to ask questions and have interventions at the Parliament's tribune regarding the draft laws under consideration. This approach would be too formalistic if MPs did not have the possibility to request amendments to the bills. For this reason, Article 73

of the Constitution guarantees MPs the prerogative to present proposals and amendments to the draft law. The prerogative in question allows MPs to propose changes to draft laws if, for example, they contain provisions that disproportionately affect the rights and freedoms of individuals. Therefore, this element can be considered central to the parliamentary procedure. The Basic Law does not set a time limit for the exercise of the right in question. In order for this right to be guaranteed, MPs must be given a reasonable period of time to formulate proposals and amendments to draft laws examined by Parliament.

In this case, the Court observed that, on December 1, 2020, the draft of the disputed Law was registered at the Secretariat of the Parliament. The following day, on December 2, 2020, the Legal Appointments and Immunities Commission drew up a Report on the disputed draft Law. Later, on December 3, 2020, Parliament adopted the contested Law in two readings.

The Court held that in the examined case the time limit offered by the Parliament for the formulation of proposals and amendments to the draft of the disputed Law in the first reading and in the second reading is insufficient, especially considering the regulatory object of the contested Law, which aimed to exclude powers of the President regarding the Intelligence and Security Service. For this reason, the Court found a violation of Article 73 of the Constitution.

Considering the above-mentioned reasonings, the Court held that it is exempted from further analyzing the constitutionality of the contested Law in the light of Articles 77 para. (2) and 87 para. (4) of the Constitution.

13. PROCEDURE FOR DECLARING STATE OF EMERGENCY

On April 28, 2021, the Constitutional Court delivered a decision on the constitutional review of the Government Decision regarding the proposal to declare a state of emergency no. 43 of March 30, 2021 and the Parliament's Decision on the declaration of the state of emergency no. 49 of March 31, 2021[13].

The Court verified the constitutionality of the contested Decision of the Parliament through the lens of Articles 1 para. (3), 6, 27, 40, 46 and 73 in conjunction with articles 23, 54 and article 85 of the Constitution.

The Court held that declaring a state of emergency is a prerogative that belongs exclusively to the Parliament [Article 66 let. m) of the Constitution]. At the same time, this competence must be exercised with caution, considering the impact it produces on the fundamental rights of individuals. First of all, in order to declare a state of emergency, the Parliament must base its decision on data that require the adoption of urgent measures by the authorities. Second, the decision to declare a state of emergency must be an *ultima ratio* measure, in response to an exceptional danger, which assumes that the usual measures or restrictions for the protection of safety, health and public order must be insufficient. The danger in question must be actual or imminent, and its effects must involve the whole nation to such an extent as to endanger its existence.

On the compliance with the procedure for declaring a state of emergency, The Court observed that the Constitution does not grant the Parliament sufficient tools to independently collect information regarding potential dangers that could seriously affect the functioning of the state or the ordinary life of the population. The competent authority to collect information about the real situation in the country, including information about possible social dangers, and to evaluate the need to declare a state of emergency is the Government, which ensures the

[13] Judgment no. 15 of 28.04.2021 on the constitutional review of the Government Decision regarding the proposal to declare a state of emergency no. 43 of March 30, 2021 and the Parliament's Decision on the declaration of the state of emergency no. 49 of March 31, 2021

realization of the internal and external policy of the state and which exercises the general leadership of the public administration [Article 96 para. (1) of the Constitution], and the President of the Republic of Moldova, if the necessity of the state of emergency is required, inter alia, by ensuring national security or public order [Articles 77 and 87 of the Constitution]. Although Parliament can declare a state of emergency, this competence becomes thus active when the need to declare a state of emergency is requested and duly motivated by the competent public authority. Otherwise, it infringes the provision of Articles 1 para. (3), 6 and 73 of the Constitution.

At the same time, the Court held that the competence of the Parliament to declare a state of emergency is not unlimited. As this measure involves substantial limitations of fundamental rights, changes the social order and assigns additional powers to the executive power, the Court noted that Parliament must provide compelling reasons in its Decision. Parliament must justify to what extent the ordinary powers of the executive are insufficient to overcome the crisis situation, and on the other hand, to what extent the increase in the powers of the executive power can compensate for the deficiency in question.

This obligation of the Parliament results from the general constitutional obligation of the authorities to give reasons for their own decisions, which can be deduced from Article 54 of the Constitution and from the standards of European constitutionalism, dictated by the culture of justification, in which every exercise of power must be justified. In this case, the Court observed that when adopting the contested Decision, the Parliament relied on the draft Decision registered by the deputies. In the informative note of the draft decision, which takes up one page, reference is made to the rate of infection of the population with the SARS-CoV-2 virus and to the Report of the Commission for Exceptional Situations of the Republic of Moldova. However, no arguments are given to justify including the duration of the state of emergency, i.e. two months, according to article 1 of the contested Decision.

Moreover, the Court noted that, by declaring the state of emergency and expanding the powers of the executive to combat the pandemic, The Parliament did not reason to what extent the ordinary powers of the executive are insufficient to overcome the crisis situation and to what extent increasing the powers of the executive power can compensate for the deficiency in question.

At the same time, the Court held that upon the establishment of the state of emergency, the Parliament must not only offer arguments that refer to the restriction of fundamental rights, once a constitutional procedure is triggered that can be obstructed by the establishment of the state of emergency. The Court emphasized that the Basic Law must be read and respected in its entirety, and the eventual Decision of the Parliament establishing the state of emergency must also refer to the constitutional procedures triggered and directly affected by this measure, i.e. the procedure for dissolving the Parliament or the procedure for revising the Constitution.

The Court observed that, in the context of the declaration of the state of emergency by the Parliament, there was a referral on its docket regarding the ascertainment of the circumstances justifying the dissolution of the Parliament, submitted on March 29, 2021, before the adoption of the contested Decision of the Parliament. The circumstance in question should have motivated the authors of the draft Decision to argue the greater weight of the purpose of establishing the state of emergency for a period of two months compared to the purpose of a possible dissolution of the Parliament. This argument should also refer to the insufficiency of other legal measures, compared to the measures that the state of emergency entails, to achieve the intended goal.

The Court emphasized that if the usual legal measures are sufficient, it is not necessary to establish a state of emergency and obstruct constitutional procedures.

From a constitutional point of view, the state of emergency represents an exceptional situation. The exceptional nature demands commensurate reasons, and the establishment of the state of emergency derives its legitimacy from the reasons underlying it. The Court noticed the lack of an adequate justification of the Parliament's Decision regarding the declaration of the state of emergency, from the perspective of obstructing a possible dissolution of the Parliament. Therefore, the Decision in question violates Article 85 of the Constitution.

As the Parliament's Decision was adopted in violation of the rules of procedure and because it does not meet the minimum requirement regarding the reasons for the decision to declare a state of emergency, The Court held that it contravenes Articles 1 para. (3), 6, 27, 40, 46 and 73, in conjunction with Article 54, and Article 85 of the Constitution.

14. ENSURING THE MAINTENANCE OF STAFF SALARIES FROM THE BUDGETARY UNITS

On May 20, 2021, the Constitutional Court delivered a judgment on the exception of unconstitutionality of several provisions in Article 27 para. (5) from Law no. 270 of November 23, 2018 on the unitary payroll system in the budget sector and of points 2^1 and 8 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018 for the implementation of the provisions of Law no. 270/2018 on the unitary payroll system in the budget sector[14].

The Court emphasized that point 2^1 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018 establishes the payment of the difference in salary for people who had their individual employment contracts/service relationships suspended or who did not work while maintaining their position on December 1, 2018 and were reinstated after March 10, 2020. The Court observed that these provisions are not applicable to the resolution of the case in which the objection of unconstitutionality was raised and, therefore, this claim was declared as inadmissible.

The Court observed that, according to Article 27 para. (1) from the Law on the unitary payroll system in the budgetary sector, in the event that, for several employees from the budgetary units, the monthly salary calculated starting from December 1, 2018 for a position with normal working time is lower than the average monthly salary calculated before the entry into force of this law, they will be paid the difference in salary. The provisions of Article 27 para. (5) of the same Law and point 8 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018 establish that the salary difference is paid for the period of activity in the respective budgetary unit, in the same position or in an advanced position.

The author of the application claimed that the disputed provisions establish a discriminatory treatment between budgetary employees who, until the entry into force of Law no. 270/2018, ensured the interim of an advanced position (*i.e.* of a public management position) and returned, after the entry into force of the Law, to the previously held and employees who worked continuously in the same position, in the same budget unit. Therefore, the budgetary employees who have secured an interim management position do not benefit from the salary guarantees provided for by Article 27 of the Law and point 8 of the above-mentioned Annex.

The Court analyzed the application based on Articles 1 para. (3), 16 and 43 of the Constitution.

[14] Judgment no. 16 of 20.05.2021 on the exception of unconstitutionality of some provisions in Article 27 para. (5) from Law no. 270 of November 23, 2018 on the unitary payroll system in the budget sector and of points 2^1 and 8 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018 for the implementation of the provisions of Law no. 270/2018 on the unitary payroll system in the budget sector

In this case, the author of the exception ensured the interim of a public management position and returned to the previous position based on the change in employment relations.

The Court compared the situation of budgetary employees who worked in the same budgetary institution, whose employment relationships were changed by securing an interim public management position, with the situation of budgetary employees who did not have their employment relationships changed (i.e. who worked in the same position).

The Court observed that, according to Article 27 para. (5) from Law no. 270/2018 and point 8 of the Annex mentioned above, the legislator established the payment of the salary difference for people who worked in the same budgetary unit and in the same position. This case refers to employees whose employment relationships were not modified during the entry into force of the Law on the unitary payroll system in the budget sector. Therefore, the legislator sought to maintain the same salary for the identical work performed by the budgetary employee until and, respectively, after the entry into force of the Law, i.e. December 1, 2018.

The Court held that the person who ensures the interim of a public management office does not become its holder. On the contrary, he/she remains the holder of the office exercised until the establishment of the interim, and when the interim expires, he/she returns to his/her office, being in an uninterrupted service relationship with the budgetary unit.

The Court emphasized that, on the one hand, budgetary employees who worked in the same budgetary unit, in the same office and whose employment relationships were not changed, are paid the salary difference. On the other hand, budgetary employees who have worked in the same budgetary unit, whose employment relationships have changed due to the interim of office, at the end of which they returned to the office held before the interim, are not paid the difference of salary.

The Court found that the comparable situation of these two categories of budget employees is based on: (i) continuous/uninterrupted activity in the same budgetary unit, (ii) maintaining the quality of holding one and the same office, (iii) the exercise of identical or similar duties in terms of complexity by the budget employee who has worked continuously in the same office and the budgetary employee who has returned to the office exercised before the interim and continues to work in the office held before. However, the legislator did not provide equal conditions in the matter of paying the salary difference to the budgetary employees who provided the interim public management office. Thus, the Court held that the budgetary employees in question are in comparable situations, but are treated differently based on the contested provisions.

The Court established that this situation raises the issue of a differentiated treatment between budgetary employees depending on the change in employment relations by providing the interim office regarding the payment of the difference in salary. In order to see if the instituted differential treatment is objectively and reasonably justified, the Court analyzed based on Articles 1 para. (3), 16 and 43 of the Constitution: (i) if it aims to achieve a legitimate purpose and (ii) if there is a reasonable relation of proportionality between the means used and the legitimate goal pursued.

Analyzing the legitimate purpose of the contested provisions, the Court held that the stated purpose of the law is to ensure a salary system for staff in the budget sector a transparent, fair, attractive, simple to manage, able to reflect and reward performance, in which the basic salary represents the main element of staff remuneration. Also, among the principles of the unitary salary system are the principles of non-discrimination, fairness and consistency, meaning ensuring equal treatment and equal remuneration for work of equal value (Article 3 paragraph (1) letter b) of the same Law).

The Court found that the disputed provisions, contrary to the aims and principles declared by the legislator, establish a differentiated treatment of the budgetary employees who secured

the interim of a public management position on the date of entry into force of the Law. The Court did not identify reasoning that would objectively and reasonably justify this differential treatment neither in the law nor in the informative note to the draft law.

Therefore, the Court held that the omission of the legislator to include the budget employees who, on the date of entry into force of Law no. 270/2018 exercised an interim management office and later returned to the office exercised before in the category of employees who are paid the difference in salary does not pursue any of the legitimate purposes provided for in Article 54 para. (2) of the Constitution.

Given this conclusion, the Court did not proceed to the next stage of the test, finding that the analyzed rules were not constitutional because the differential treatment was not objectively and reasonably justified.

Therefore, the Court concluded that the omission identified by the author of the exception of unconstitutionality contravenes Articles 1 para. (3), 16 and 43 of the Constitution and, therefore, is unconstitutional.

Until the amendment of Article 27 para. (5) from Law no. 270 of November 23, 2018 and point 8 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018, budgetary employees who have worked continuously in the same budgetary unit and who on the date of entry into force of Law no. 270/2018 ensured the interim of a public management position, when returning to the position exercised before the interim, will be paid the difference in salary. At the same time, the Court issued an address to the Parliament.

15. THE MODIFICATION OF THE COMPOSITION OF THE SUPERIOR COUNCIL OF MAGISTRATES

On June 10, 2021, the Constitutional Court delivered a ruling on the constitutionality review of Law no. 193 of December 20, 2019 for the amendment of several legislative acts and the Parliament's Decision regarding the appointment of several members of the Superior Council of Magistrates no. 53 of March 17, 2020[15].

The Court observed that from the arguments of the authors of application it can be deduced the following issues: (a) compliance with the legislative procedure by the Parliament when adopting Law no. 193 of December 20, 2019; (b) compliance with the Constitution of Parliament Decision no. 53 of March 17, 2020.

I. On the compliance with the legislative procedure by the Parliament when adopting Law no. 193 of December 20, 2019

As a preliminary matter, the Court noted that, according to Article 60 para. (1) of the Constitution, the Parliament is the supreme representative body of the people of the Republic of Moldova and the only legislative authority of the state.

In its case-law, the Court held that the Parliament is sovereign in regulating the procedure for adopting laws. However, Parliament's sovereignty is not absolute, it being limited by the constitutional principles in this matter. In this regard, both the regulation of parliamentary procedures and their application, i.e., when adopting normative acts, the Parliament must ensure the correct balance between the principle of parliamentary autonomy and the other principles

[15] Judgment no. 17 of 10.06.2021 on the constitutionality review of Law no. 193 of December 20, 2019 for the amendment of some legislative acts and the Parliament's Decision regarding the appointment of some members of the Superior Council of Magistrates no. 53 of March 17, 2020

applicable in parliamentary procedures, which are expressly established or which can be clearly deduced from the Constitution.

Given the sovereign nature of the Parliament in adopting laws, the Court held that its competence in the matter of controlling the constitutionality of the parliamentary procedure is limited. In this field, the Court must show judicial deference to the role of the Parliament as an autonomous legislator. In this regard, the Court can review the constitutionality of a law from a procedural limb only if, when adopting it, the Parliament affected any essential element of the legislative process, which expressly results from the Constitution or which can be clearly deduced from a constitutional principle.

In this case, the Court found that, on December 4, 2019, the Government adopted, based on the right to legislative initiative, Decision no. 611, by which it approved the draft of the contested Law and presented it to Parliament for consideration. The Court observed that Government Decision no. 611 entered into force on December 6, 2019, the date of publication in the Official Gazette of the Republic of Moldova. The entry into force of Government decisions is regulated by Article 102 para. (4) of the Constitution, which provides that the decisions and ordinances adopted by the Government are signed by the Prime Minister, countersigned by the ministers bearing the responsibly to put them into effect and shall be published in the Official Monitor of the Republic of Moldova. Failure to publish the decision and ordinance entails its nullity.

The Court noted that, according to Article 74 para. (1) of the Constitution, organic laws are adopted with the vote of the majority of the elected MPs, after at least two readings In its recent case-law, the Court interpreted the meaning of the text "after at least two readings" from Article 74 para. (1) of the Constitution and established that it contains both a procedural and a substantive element. The procedural element implies that the Parliament must vote in two readings on the draft organic law. The substantial element implies that, until the vote, the Parliament must submit the content of the draft organic law to debates.

Interpreting the text "after at least two readings" from Article 74 para. (1) of the Constitution, the Court developed the procedural element of this article, previously established by Judgment no. 14 of April 27, 2021. Thus, the Court held that compliance with the procedural requirements related to the adoption of laws is as important as compliance with the requirements applicable to the content of the laws. The former protects parliamentary democracy, which must be respected throughout the legislative process and which assures citizens that laws have not been adopted through abuse. The latter prevent the disproportionate limitation of citizens' rights and freedoms.

The Court held that the Basic Law establishes the procedural requirements of the legislative process applicable both at the stage of verifying the content of draft laws (*e.g.* the existence of parliamentary debates, the right to submit amendments, the right to ask questions, the right to debate etc.), as well as at the stage of verifying the fulfillment of the preliminary procedural conditions to be able to start the examination of the documents in question.

Thus, for example, at the stage of verifying compliance with the preliminary procedural conditions to be able to start the examination of draft laws, Parliament must ascertain whether the draft law in question was sent by one of the authorities authorized by Article 73 of the Constitution to submit legislative initiatives and whether, in the case of the Government, the decision approving the draft law entered into force, according to Article 102 para. (4) of the Constitution. The Court held that the issues in question are part of the essential elements of the legislative process, in the sense of the Constitutional Court Judgment no. 14 of April 27, 2021, § 54. The Constitution does not authorize the Parliament to initiate the examination of the content of draft laws as long as the draft law does not meet the conditions for starting the legislative procedure.

The Court held that the Law on the Superior Council of Magistrates is, according to Articles 72 para. (3) let. e) and 123 para. (2) of the Constitution, an organic law. Therefore, the normative acts of the Parliament that amend or supplement this law can only be organic laws, adopted after at least two readings.

In this case, the Court found that although Government Decision no. 611, by which the draft of the disputed Law was approved and presented to the Parliament for examination, entered into force on December 6, 2019, this fact did not prevent the Parliament from examining the draft in question and voting on it in the first reading on December 5, 2019. The Parliament thus did not respect one of the constitutional conditions applicable in cases where the Government initiates a draft law, namely that the draft law under discussion can be submitted to debates and voting only after the entry into force of the Government Decision by which the draft law under discussion was approved. Therefore, the Court held that, during the examination of the draft law in the first reading, the Parliament voted on a non-existent act.

The Court could not overlook this procedural defect and found that the validity of the voting of the disputed Law in the first reading is affected. Considering the aforementioned, the Court found that the contested Law was adopted by the Parliament in a single reading, on December 20, 2019. The adoption of an organic law by the Parliament in a single reading violates Article 74 para. (1) of the Constitution, according to which the organic law is adopted after at least two readings. Therefore, the Court held that the contested Law must be declared unconstitutional.

For these reasons, the Court mentioned that it is exempted from analyzing the constitutionality of the contested Law from based on the other criticisms invoked by the authors of application. In the context of declaring the law in question unconstitutional, the Court ordered the revival of the provisions of Law no. 947/1996 regarding the Superior Council of Magistracy, in the wording prior to Law no. 193 of December 20, 2019.

The Court noted that this solution finds its basis in the constitutional provisions of Article 134 para. (3) regarding the role of the Constitutional Court as guarantor of the supremacy of the Constitution and of Article 140 of the Constitution, which establishes that the decisions of the Constitutional Court are generally binding. In fact, in its case-law, the Court proceeded in a similar manner in other cases that concerned the control of the constitutionality of several normative provisions of repeal, establishing that the solution of unconstitutionality leads to the revival of the legal provisions in the wording prior to their repeal.

II. On the compliance with the Constitution of Parliament Decision no. 53 of March 17, 2020

The Court observed that Parliament Decision no. 53 of March 17, 2020 was adopted based on the provisions of the disputed Law regarding the members of the Superior Council of Magistracy among tenured teachers. The Court takes into account the fact that the declaration of unconstitutionality of the Law that was the basis for the adoption of Parliament Decision no. 53 of March 17, 2020 interferes with the principle of the security of tenure of the members of the Superior Council of Magistrates among tenured teachers.

In its case-law, the Court established that the appointment of the titular professor of law as a member of the Superior Council of Magistrates does not attract the consequence of the recognition of the status of a magistrate. The Court also noted that the term of office of the members of the Superior Council of Magistrates is strictly regulated by the Constitution. Their tenure enjoys constitutional guarantees and can only be interrupted in exceptional cases.

In this context, the Court noted, first of all, that by Law no. 193 of December 20, 2019, the Parliament increased the number of members of the Council from among tenured teachers. By establishing thus two more mandates, the number of members of the Council from among full

professors increased from three to five people. Based on these provisions, the Legal, Appointments and Immunities Commission of the Parliament organized a competition, selected four candidates for the position of member of the Council from among the tenured teachers and proposed them to the Parliament for appointment. The Court also noted that the Decision appointing members of the Council from among full-time teachers was adopted on the basis of an unconstitutional law.

Secondly, the Court held that the flaw that affected the adoption of Law no. 193/2019, in accordance with which the Parliament's Decision appointing the four members of the Council was adopted, represents a manifest violation of the legislative procedures established by the Constitution. The adoption of organic laws **after at least two readings clearly results from Article 74 para. (1) of the Constitution.**

Thirdly, the Court noted that compliance with the provisions of Article 74 para. (1) of the Constitution represents **an essential requirement of parliamentary procedures.**

Fourthly, the Court held that its solution regarding the revival of the previous provisions of the Law regarding the Superior Council of Magistrates implies the return from the number of 15 to the number of 12 members of the Council, implicitly reducing the number of members from among full professors from five to three. This numerical decrease in the composition of the Council makes it impossible to maintain the position of the four tenured professor members appointed by Parliament Decision no. 53 of March 17, 2020.

The Court observed that Parliament Decision no. 53 of March 17, 2020 implemented article III of Law no. 193/2019, and declaring the unconstitutionality of this law and the implementation of the revived rules make the Parliament's Decision contrary to Articles 1 para. (3) and 122 of the Constitution. Therefore, the **Decision had to be declared unconstitutional.** This conclusion exempted the Court from continuing its analysis regarding the constitutionality of Parliament Decision no. 53 of March 17, 2020 from the perspective of the other criticisms invoked by the authors of the application.

The Court held that the revival of the previous rules leads to a numerical decrease of members of the Council from among the tenured teachers (i.e. from five to three) and, consequently, upon the early termination of the mandate of the tenured members of the Superior Council of Magistrates appointed as a consequence of the numerical increase of members.

In its case-law, the Court examined the constitutionality of several legal provisions that regulated the appointment/designation procedure of constitutional dignitaries, for example the case examined in Judgement no. 13 of May 21, 2020 on the submission of candidacy and the appointment of the Prosecutor General of the Republic of Moldova. In that case, the Court established that the *ex nunc* effect of its decisions does not affect the procedures for the appointment of the General Prosecutor and does not apply to legal relationships prior to the entry into force of the Decision. However, that case is different from the current case, because then the question of abolishing the position of Attorney General *per se* did not arise. On the contrary, in this case, by declaring the contested Law unconstitutional and by the revival of the previous provisions, two Council member positions from among full-time teachers are abolished.

The four members of the Superior Council of Magistrates appointed by Parliament Decision no. 53 of March 17, 2020 filled two vacant positions and two positions established under Law no. 193/2019. The Parliament's decision does not identify the members who filled the vacant positions and who were appointed to occupy the newly established mandates.

Considering the above, the Court found that the mandate of the four members of the Council from among the tenured teachers appointed by Parliament Decision no. 53 of March 17, 2020 ceases from the date of this decision.

The Court emphasized that all acts of the Superior Council of Magistrates issued after the adoption of Law no. 193/2019 and Parliament Decision no. 53 of March 17, 2020 until the pronouncement of this Decision will not be affected by the unconstitutionality of the Law and the Decision in question.

16. LIFTING THE MANDATE OF THE CONSTITUTIONAL COURT`S JUDGE AS A RESULT OF ESTABLISHING BY A FINAL ACT OF FINDING OF A VIOLATION OF THE LEGAL REGIME OF CONFLICTS OF INTERES

On July 9, 2021, the Constitutional Court delivered a Judgment on the constitutional review of Article 19 para. (1) let. e) of Law no. 317 of 13 December 1994 on the Constitutional Court [16].

(i) The case-law regarding the independence of the Constitutional Court and constitutional judges

The Court analyzed the application through the lens of Articles 134, 137 and 140 of the Constitution, which guarantees, *inter alia*, the status and independence of the Constitutional Court and of the constitutional judges, as well as the decisions of the Constitutional Court.

The Court noted that the independence of the Constitutional Court is one of the core values of the democratic system, and its existence is essential for the realization of all other values of the system. The foundation of its independence lies in objectivity and neutrality, which are the first principles of the judgment carried out by the Constitutional Court (see JCC no. 22 of 5 September 2013, §§ 52, 54; JCC no. 18 of 2 June 2014, § 44; JCC no. 9 of 26 March 2020, § 35).

The Court specified that the protection of the independence of the Constitutional Court requires no tolerance for acts that could raise doubts about the impartiality of constitutional judges. Guaranteeing this fact is essential for maintaining public confidence in the Constitutional Court's solutions and for ensuring adherence to the rule of law.

(ii) Resolution of potential conflicts of interest of a constitutional judge

The Court observed that the provisions of the Law on the declaration of wealth and personal interests aim to guarantee the objective and neutral exercise of public functions *lato sensu*. The obligations in question also act on a jurisdictional level. At the same time, the Court sustained the incidence of the provisions of article 17 let. a) from the Law on the Constitutional Court, which provides *expressis verbis* the obligation of the constitutional judge to perform his/her duties impartially and to respect the Constitution.

The Court found that there may be a review of compliance with the conflict-of-interest regime in the jurisdictional activity with respect to constitutional judges, i.e., in the event of the adoption of all judgments, decisions, opinions and related procedural acts. However, alleged conflicts of interest in the context of the procedure of constitutional jurisdiction must be decided only by the Constitutional Court and only in the manner established by the Constitution.

The Court has stated that the institution of the recusal of the constitutional judge is also applicable in the event of a conflict of interest in the judicial process, and the one that

[16] Judgment no. 18 of 09.07.2021 on the constitutional review of Article 19 para. (1) let. e) of Law no. 317 of 13 December 1994 on the Constitutional Court

definitively decides on the recusal of a constitutional judge (including in case of a possible conflict of interests) is the Constitutional Court through its judges.

(iii) The reason for the institution of recusal of the constitutional judge

The Court noted that the recusal of a judge in a case, when there are doubts about his/her impartiality, is based on the aims of achieving the right to a fair trial, ensuring the legitimacy of courts and the integrity of judges.

The Court pointed out that, viewed as separated issues, these aims – the fairness of judicial processes, the legitimacy of tribunals and the integrity of judges – appear to favor a quasi-absolute application of the institution of recusal. However, there are rival principles that claim balancing.

The Court pointed out that an automatic recusal of a judge could have absurd consequences. For example, ensuring public confidence in the judiciary and the impartiality of the judiciary is not met when judges are allowed to be continually threatened with recusal and the possibility of their removal, since this very fact induces the perception that the whole system is corrupt. For this reason, proof of a judge's bias must be made in a manner sufficient to overturn the presumption of the judge's impartiality.

Moreover, a rigid system can create an additional burden, increasing the workload of judges, with the consequence of jeopardizing the objective of expeditious administration of justice. Moreover, excessively rigorous standards allow litigants and their lawyers to avoid procedural rigors.

(iv) Balancing and weighing competing principles

The Court specified that the scope of constitutional principles and Article 27 of the Constitutional Jurisdiction Code, which governs the institution of recusal, impose standards of analysis that must take into account the importance of competing principles (*i.e.* the duty of impartiality and the duty to judge a case).

The Constitutional Court is sometimes referred to the review of the constitutionality of acts in which it may have a direct or indirect interest or be called upon to settle disputes giving rise to such controversies. Such cases present at first sight, through the very substance of the problem and through the dilemmas and controversies they raise, doubts regarding the impartiality of constitutional judges.

The Constitutional Court`s case-law confirms eloquently that such cases are periodically the subject of its analysis. However, in these cases, the Court preferred solutions different from those prescribed in the Law on declaration of wealth and personal interests. For example, its ruling on the immunity of the constitutional judges (JCC no. 9 of 26 March 2020), on the financial autonomy of the Constitutional Court (JCC no. 27 of 31 October 2019) or on the procedure for testing the professional integrity of civil servants, including constitutional judges (JCC no. 7 of 16 April 2015).

The Constitutional Court`s case-law confirms the conclusion that there is a standard of necessity that obliges judges to consider cases, despite the reasons for recusal. It follows that the obligation of impartiality does not act in an absolute manner, but requires a balancing of competing principles.

The Constitutional Court is yet the only one competent to decide on this matter, and its solution cannot be subject to control by another authority. For these reasons, the final analysis belongs only to the Constitutional Court, which possesses the necessary tools to weigh and balance the competing interests.

The Court noted that, due to its relative nature, the necessity standard does not guarantee that constitutional judges are immune from any conflict of interest in the exercise of constitutional jurisdiction. There may be cases where the necessity standard does not prevail and steps must be taken to protect the standards of independent and impartial justice.

(v) The control of the conflict-of-interest regime

The Court analyzed whether the disciplinary liability of the constitutional judge is possible in case of committing a violation of the regime of conflicts of interest in the exercise of constitutional jurisdiction.

According to article 17 letters a) and f) of the Law on the Constitutional Court, the judge of the Constitutional Court is obliged to perform its duties impartially and in compliance with the Constitution and to refrain from any action contrary to the status of a judge. Article 83 of the Constitutional Jurisdiction Code provides that constitutional judges bear disciplinary liability for the culpable violation of the provisions of the Law on the Constitutional Court and of the Constitutional Jurisdiction Code.

The Court found that the legal provisions of the Constitutional Jurisdiction Code confirm the existence of measures capable of effectively achieving the aim of the independence and impartiality of constitutional justice.

Consequently, the Court emphasized that an external control of judicial activity cannot be accepted. The only authority competent to carry out such a review is the Constitutional Court. The appointment of an executive body, as the National Integrity Authority, to verify the jurisdictional activity of the Constitutional Court would mean to recognize an executive authority's power to decide in constitutional matters, exactly what the Constitution prohibits.

For this reason, Article 19 para. (1) lit. e) from Law no. 317 of 13 December 1994 on the Constitutional Court violates Articles 134, 137 and 140 of the Constitution.

17. INFORMING THE DEBTOR ABOUT THE SUBMISSION OF THE PLELIMINARY APPLICATION UNTIL THE APPLICATION OF INSURANCE MEASURES BY THE INSOLVENCY COURT

On July 13, 2021, the Constitutional Court delivered a Judgment on the constitutional review of Law no. 252 of December 16, 2020 regarding the amendment of the Insolvency Law no. 149/2012[17].

The Court held that the defects sustained by the author of the application – the lack of debates upon the adoption of the contested Law and the impossibility of deputies to formulate amendments to the draft law – may affect the parliamentary rules expressly established or implicitly deduced from Articles 73 and 74 of the Constitution.

The Court also noted the incidence of Articles 20 [*free access to justice*] and 46 [*right to private property*] of the Constitution with respect to the amendments made to Articles 28 para. (1) and 21 para. (2) of the Insolvency Law.

I) On the extrinsic criticism of constitutionality (alleged violation of Articles 73 and 74 of the Constitution)

[17] Judgment no. 19 of 13.07.2021 on the constitutional review of Law no. 252 of December 16, 2020 regarding the amendment of the Insolvency Law no. 149/2012

The Court mentioned that the Parliament is sovereign in regulating the procedure for adopting laws. However, the Parliament's sovereignty is not absolute, it being limited by the constitutional principles in this matter. In this sense, both the regulation of parliamentary procedures and their application, *i.e.* upon the adoption of normative acts, the Parliament must ensure the correct balance between the principle of parliamentary autonomy and the other applicable principles parliamentary procedures, which are expressly established or which can be clearly deduced from the Constitution.

Given the sovereign character of the Parliament in adopting laws, the Court held that its competence in the matter of the constitutional review of the parliamentary procedure is limited. In this area, the Court must show judicial deference to Parliament's role as an autonomous legislator. In this sense, the Court can check the constitutionality of a law from the procedural aspect only if, when adopting it, the Parliament affected any essential element of the legislative process, which expressly results from the Constitution or which may be inferred from a constitutional principle.

The Court previously held that, in legislative procedures, Parliament must provide MPs with the opportunity to examine the content of the draft law through an exchange of views. This stage of the legislative process is necessary because it gives to MPs the opportunity to understand the essence of the draft law and helps strengthening the society's confidence that the law has been widely discussed before its adoption (see JCC no. 14 of 27 April 2021, §§ 35, 57).

Examining the application, the Court noted that the draft law was registered at the Parliament Secretariat on December 15, 2020. On December 16, 2020, during the plenary session of the Parliament, the project was voted in two readings. From the registration of the project at the Secretariat of the Parliament to its voting in two readings, approximately one day passed. From the presentation in the plenary session of the report of the Legal, Appointments and Immunities Commission on the disputed law to its voting in two readings, about a minute passed.

In this background, the Court held that the term offered by the Parliament for the formulation of proposals and amendments to the contested draft law was insufficient. Consequently, the deputies from the parliamentary opposition did not have the possibility to effectively exercise their right to formulate amendments.

Therefore, because when adopting the disputed Law, the Parliament did not ensure a correct balance between the right of deputies to formulate amendments to draft laws and the principle of parliamentary autonomy, the Court found that the contested law is contravenes Article 73 of the Constitution. The Court considered that this finding exempts it from continuing its analysis through the lens of Article 74 of the Constitution.

II) On the intrinsic criticism of constitutionality (alleged violation of articles 20 and 46 of the Constitution)

While the findings related to non-compliance with parliamentary procedures could exempt the Court from examining, under a substantial aspect, the contested provisions, the Court continued to examine this claim in order to consolidate its reasoning, as well as to provide benchmarks to the legislator in the event of a possible change in the law.

Article 21 para. (2) of the Insolvency Law (in the wording of Law no. 252 of December 16, 2020) provides that the insolvency court resolves the preliminary application by issuing decision, within 20 days from submission. Paragraph 5 of the same article establishes that, through the decision for admitting the introductory request, the insolvency court orders the debtor to be placed under observation, appoints a provisional administrator and applies measures to secure creditors' claims.

Article 28 para. (1) of the Insolvency Law (in the wording of Law no. 252 of December 16, 2020) establishes that until the decision to admit the preliminary application for examination is issued, within three working days from the receipt of the preliminary application submitted by the creditor, the insolvency court will send the debtor a copy of the request in order to present its procedural position by submitting the reference. According to paragraph (2) of the same Article, no later than 10 days after receiving the copy of the preliminary application, the debtor submits to the insolvency court a reference to the preliminary application, through which he/she contests or acknowledges the existence of the state of insolvency.

The Court found that amending these articles, the legislator instituted the obligation of the insolvency court to notify the debtor about the submission of the preliminary application by the creditor in order to submit the reference, until issuing the decision for admitting this application and, respectively, until verifying if the conditions were meet and taking over the case in its own procedure. Also, the term in which the insolvency court can decide on the admission, restitution or refusal to receive the preliminary application has been extended.

The Court observed that until amendments in question, the insolvency court was obliged to admit for examination the preliminary application submitted by the creditor within three days at the most from the submission. After that, within two days from the adoption of the decision admitting the preliminary application, the court shall send the copy of the application to the debtor, requesting him/her to present a reference within 10 days of receiving the request. In other words, the debtor was notified about the submission of the preliminary application only after its admission for examination and after the application of insurance measures.

The Court held that the new legislative solution adopted by the legislator is deficient, because: (i) establishes the obligation of the insolvency court to undertake procedural actions until the case is received/admitted for trial; (ii) informs the debtor about the filing of a preliminary claim against him/her until the insurance measures are applied; (iii) sets a long deadline for the admission of the preliminary application by the insolvency court. Those provisions may compromise the execution of claims in insolvency proceedings and may be used against the patrimonial interests of creditors.

The Court concluded that the legislative measure in question reduced the effectiveness of the insolvency procedure and does not correspond to the state's positive obligation to provide creditors with legal mechanisms capable of ensuring the recovery of claims. Therefore, the changes made by Law no. 252 of December 16, 2020 to Articles 21 para. (2) and 28 para. (1) of the Insolvency Law are contrary to Articles 20 and 46 of the Constitution.

The Court also ordered the revival of the provisions of the Insolvency Law no. 149 of June 29, 2012 in the wording prior to Law no. 252 of December 16, 2020. The Court mentioned that this solution finds its foundation in the constitutional provisions of Article 134 para. (3) regarding the role of the Constitutional Court as guarantor of the supremacy of the Constitution and of Article 140 of the Constitution, which establishes that the decisions of the Constitutional Court are generally binding.

18. CONFIRMATION OF THE RESULTS OF THE SNAP PARLIAMENTARY ELECTIONS OF JULY 11, 2021 AND VALIDATION OF THE MANDATES OF THE ELECTED MPs

On July 23, 2021, the Constitutional Court issued a judgment on the confirmation of the results of the snap parliamentary elections of July 11, 2021 and the validation of the mandates of the elected MPs[18].

According to Articles 62 and 135 para. (1) let. e) from the Constitution, 4 para. (1) let. e) from the Law on the Constitutional Court, 4 para. (1) let. e) and 38 para. (3) of the Code of Constitutional Jurisdiction, the confirmation of the results of the parliamentary elections and the validation of the mandates of the elected deputies are within the jurisdiction of the Constitutional Court.

The Court observed that, according to the data presented by the Central Electoral Commission, after the totalization of the results of the snap parliamentary elections of July 11, 2021, three electoral competitors passed the minimum threshold of representation: the political Party „Partidul Acțiune și Solidaritate", the Electoral Bloc of Communists and Socialists and the „Șor" political party. The Central Electoral Commission has established the number of MPs seats for the electoral contestants who passed the minimum threshold of representation, as follows: the political party „Partidul Acțiune și Solidaritate" – 63 seats; the Electoral Bloc of Communists and Socialists – 32 seats; the pollical party „Șor" – 6 seats.

In its analysis, the Court found no violations likely to influence the voting results and the assignment of the seats. Therefore, the Court confirmed that the snap parliamentary elections of July 11, 2021, were organized and conducted fairly, through universal, equal, direct, secret and freely expressed suffrage.

Article 69 para. (1) of the Constitution establishes that MPs enter into the exercise of their mandate under the condition of validation. Thus, according to Article 62 of the Constitution, upon the proposal of the Central Electoral Commission, the Constitutional Court decides to validate the MP`s mandate or not validate it, in case of violation of the electoral legislation.

According to the information presented by the Central Electoral Commission, all candidates included in the lists are eligible for the office of MP and have submitted declarations on their own responsibility that they are not prohibited from running. The statements and biographical data of the candidates were presented to the Constitutional Court. Also, the Central Electoral Commission did not present information about the existence of any proceedings filed against any candidate in connection with the conduct of the poll. Therefore, the Court decided to validate the MPs` seats to the Parliament of the Republic of Moldova in the snap elections of July 11, 2021, according to the list established by the Central Electoral Commission.

19. PROCEDURE FOR CHANGING THE NOMINAL COMPOSITION OF THE PERMANENT BUREAU OF THE PARLIAMENT

On July 27, 2021, the Constitutional Court delivered a ruling on the constitutional review of the Parliament Decision no. 219 of December 3, 2020 for the amendment of the Parliament

[18] Judgment no. 20 of 23.07.2021 on the confirmation of the results of the snap parliamentary elections of July 11, 2021 and the validation of the mandates of the elected MPs

Decision no. 149 of November 29, 2019 on the numerical and nominal composition of the Permanent Bureau of the Parliament[19].

The Court first reiterated its case-law on the jurisdiction to review the constitutionality of a law on the procedural limb, was developed in Decision no. 14 of April 27, 2021. Thus, in the cited Decision, the Court held that it can verify the constitutionality of a law on the procedural limb only if the Parliament, when adopting the law, has affected an essential element of the legislative process, which is expressly enshrined in the Constitution or which can be clearly inferred from a constitutional principle.

On the alleged restriction of the exercise of the right of MPs to present proposals, to ask questions and to speak on the draft decision, the Court had to first examine whether their right to know the content of the draft decision of the Parliament was applicable.

Analyzing whether the right of MPs to know the content of the draft legislative act until its examination and adoption by the Parliament represents "an essential element of the legislative process", within the meaning of Decision no. 14 of April 27, 2021, the Court held that the guarantees of Article 73 of the Constitution are not limited to the right of MPs to propose draft laws for examination and adoption. In its case-law, the Court has interpreted the scope of this article and established that the right to legislative initiative also encompasses other aspects of parliamentary procedure, which allow MPs to legislate. For example, the Court held that the right to submit amendments and the right of MPs to present proposals to the draft law for examination in the first reading are guaranteed by Article 73 of the Constitution, as they pursue the achievement of the same goal – lawmaking, as well as the right to legislative initiative.

The Court noted that, in general, the communication of draft laws and draft decisions of Parliament to MPS is a stage in which parliamentary legislative procedures are initiated. Communicating to MPs the draft decision of the Parliament, at the stage of its examination and voting, gives them the opportunity to formulate an opinion on the matter under examination. Without the communication of the acts in question, the realization of the other rights of the MPs, as the right to submit proposals and debate on the draft law would become illusory. The Court therefore considered that the MPs` right to know the content of Parliament's draft decision up to the stage of its examination and voting was an inherent element of the right to legislative initiative.

At the same time, the Court held that its solution regarding the constitutionality of restricting the access of MPs to the content of the Parliament's draft decision will also have effects on the alleged violation of the right of MPs to appoint a member of the Permanent Bureau of the Parliament on the part of the parliamentary faction, guaranteed by Article 73 of the Constitution.

The Court held that an essential element of the legislative procedure is that it should be carried out transparently – both at the drafting and consultation stage of draft documents, as well as at the stage of parliamentary debates – so that interested persons have access to the legislative initiatives and can communicate their opinion on the documents in question. The purpose of conducting the parliamentary procedure in a transparent way aims to ensure citizens the opportunity to monitor the implementation of the legislative competence granted to the legislator in the elections, through voting. The Court held that limiting the possibility of having access to legislative initiatives and being able to communicate the opinion on the acts in question can only be done on the basis of convincing reasons.

[19] Judgment no. 21 of 27.07.2021 on the constitutional review of the Parliament Decision no. 219 of December 3, 2020 for the amendment of the Parliament Decision no. 149 of November 29, 2019 on the numerical and nominal composition of the Permanent Bureau of the Parliament

As the Constitution guarantees access to legislative initiatives subject to consultation within the legislative procedures and the possibility of communicating their opinion on the acts in question to interested persons, the Court held that this reasoning applies *a fortiori* in the case of MPs. The latter must have access to the preparatory materials of the legislative acts for the simple reason that legislation is the basic prerogative that was delegated to them by the citizens in the elections, by vote. The Court considered that, without having access to the legislative initiatives subject to examination, the deputies could not form an opinion on the matters subject to examination and, respectively, exercise their other rights, guaranteed by Article 73 of the Constitution (*e.g.* the right to submit proposals to the draft concept, the right to submit amendments, etc.).

On the other hand, on the basis of the principle of parliamentary autonomy, Parliament has a margin of discretion in determining how Parliament's draft laws or decisions are drawn up and communicated to Members. The Basic Law does not set a deadline for the communication of the acts in question. At the same time, in order to ensure that MPs have the opportunity to know the content of Parliament's draft laws or decisions, they should be given a reasonable period of time to analyze them and, respectively, to form an opinion on the subject under examination.

Examining the application, the Court noted that the purpose of the contested draft decision was to change the numerical and nominal composition of Parliament's Permanent Bureau, which is the working body of the legislature and is formed, taking into account the proportional representation of the factions in the Parliament. The numerical and nominal composition of the permanent Bureau is established by a decision of the Parliament, at the proposal of the parliamentary fractions [see Article 12 para. (1) of the Rules of the Parliament].

Although the Constitution does not contain provisions regarding the formation of the permanent Bureau of the Parliament, this fact does not mean that the right of MPs to know the content of the draft acts that seek to modify the composition of the Bureau is not applicable. On the contrary, because the draft of the contested Decision aims to change the composition of a basic body of the Parliament with important powers related to parliamentary activities [see Article 13 para. (1) of the Rules of the Parliament] and because the decisions of this body directly concern the MPs, the Court held that this fact calls for a guarantee of the right of the MPs to know the content of the draft Decision in question, up to the stage of its examination and voting, in order to ensure the possibility for MPs/fractions to designate, in due time, representatives within the Permanent Bureau.

In this case, the draft contested decision was registered at the Parliament Secretariat on December 3, 2020. On the same day, the project was included in the supplementary agenda of the plenary session for examination and was voted by the parliamentary majority. At the request of the Court, the Parliament did not demonstrate that the draft decision in question was communicated to the deputies, in particular the authors of the referral, until its examination and voting. In this background, the Court considered that voting the modification of the composition of Parliament's Permanent Bureau, in an accelerated regime, without providing MPs with the opportunity to know the content of the draft Decision in question, exceeds Parliament's discretion in organizing parliamentary proceedings. Even if the parliamentary procedures were accompanied by protests from the parliamentary opposition, this fact cannot justify the adoption of the contested Decision without its communication to the MPs.

When adopting the contested decision, the Parliament did not strike a fair balance between the principle of parliamentary autonomy and the right of MPs to know the content of Parliament's draft decision until it was examined and voted on. The Court thus found that the Decision of the Parliament violates Article 73 of the Constitution.

20. ADOPTION OF A LAW IN VIOLATION OF PARLIAMENTARY PROCEDURE

On July 29, 2021, the Constitutional Court delivered a ruling on the constitutional review of the of Law no. 217 of December 3, 2020 for the repeal and modification of several normative acts[20].

The Court observed that the authors of the applications raised three issues of the unconstitutionality of the contested Law: (a) that the Law was adopted in violation of parliamentary procedures; (b) that the Law contravenes the norms established by international law and (c) the fact that the Law was not previously approved by the Government.

With regard to the alleged violation of parliamentary procedures, the Court noted that its competence to review the constitutionality of acts of Parliament, in terms of compliance with legislative procedures, was developed in Judgement no. 14 of April 27, 2021. Thus, in the cited Judgment, the Court held that it can verify the constitutionality of a law from a procedural limb only if, when adopting it, the Parliament affected any essential element of the legislative process, which expressly results from the Constitution or which can be clearly deduced from a constitutional principle.

The Court held that, within the legislative procedures, the principle of political pluralism implies that the Parliament must ensure the possibility of the parliamentary opposition`s participation when adopting the laws. Therefore, even if the parliamentary majority has a consolidated view on the necessity of a law and its votes would be sufficient to adopt it, the majority in discussion must ensure the right of MPs from the parliamentary opposition to participate by formulating questions and proposals to the draft law. Moreover, in its case-law, the Court held that the parliamentary majority must ensure a fair and adequate treatment of the parliamentary minorities, without abusing its dominant position.

At the same time, the Court held that, within the legislative procedures, the Parliament must provide the MPs with the possibility to examine the content of the draft law through an exchange of opinions. This stage of the legislative process is necessary because it gives the MPs the opportunity to understand the essence of the draft law proposed for examination and contributes to building the trust of the society that the law has been widely discussed until its adoption. On the other hand, based on the principle of parliamentary autonomy, the Parliament has a wide discretionary margin regarding the way of holding the plenary sessions. At the same time, in the field of legislation, Parliament's autonomy is not absolute. It is limited by the need to respect constitutional principles, for example, the principle of political pluralism and the principle of parliamentary debate on draft laws.

Examining the applications and the transcript of the Parliament session, the Court noticed that from the presentation of the contested Law project by one of the authors in the plenary session to its voting in two readings, approximately three minutes passed. The Court held that in such a short period, the MPs from the parliamentary opposition did not have the opportunity to submit the disputed Law to the debate by formulating questions and taking the floor, although their disagreement regarding the adoption of the contested Law was known from the beginning of the plenary session. In this context, the Court reiterated that the voting of the disputed Law in an accelerated regime, without ensuring the parliamentary opposition the opportunity to ask questions or take the floor on the subject under examination, exceeds the discretionary margin of the Parliament in the field of organizing parliamentary procedures.

The Court noted that compliance with parliamentary procedures is not limited to ensuring the possibility for deputies to ask questions and have interventions from the Parliament's stand

[20] Judgment no. 22 of 29.07.2021 on the constitutional review of the of Law no. 217 of December 3, 2020 for the repeal and modification of some normative acts

regarding draft laws under consideration. This approach would be too formalistic if MPs did not have the possibility to request amendments to the bills. For this reason, Article 73 of the Constitution guarantees MPs the right to present proposals and amendments to the draft law. The right in question allows MPs to propose changes to draft laws if, for example, they contain provisions that disproportionately affect the rights and freedoms of individuals. Therefore, this element can be considered central to the parliamentary procedure. The Basic Law does not set a time limit for the exercise of the right in question. In order for this right to be guaranteed, parliamentarians must be given a reasonable period of time to formulate proposals and amendments to draft laws considered by the Parliament.

In this case, the Court observed that, on December 1, 2020, the draft of the disputed Law was registered at the Secretariat of the Parliament. The next day, on December 2, 2020, the Legal, Appointments and Immunities Committee drew up a Report on the contested draft law. Later, on December 3, 2020, Parliament adopted the contested Law in two readings.

The Court held that in the case under examination, the term offered by the Parliament for the formulation of proposals and amendments to the draft of the contested Law in the first reading and in the second reading is insufficient, especially considering the subject of the disputed Law, which aimed at the transmission for consideration, from the property of the State, of an immovable asset for the construction of the headquarters of the Embassy of the United States of America.

The Court reiterated that Parliament can set deadlines for the submission of amendments. The deadlines under discussion must be reasonable to allow the MPs to analyze the content of the draft law and formulate amendments. Considering the fact that, in this case, the Parliament did not offer a reasonable term for the formulation of proposals and amendments to the draft of the contested Law, its actions do not fall within its discretionary margin in the field of organizing parliamentary procedures.

Therefore, as the Parliament did not ensure when adopting the contested Law, the correct balance between, on the one hand, the principle of parliamentary debate on draft laws, the right of MPs to formulate proposals and amendments to draft laws and, on the other hand, the principle of parliamentary autonomy, the Court held that the contested Law contravenes Articles 64 para. (1), 73 and 74 para. (1) of the Constitution and must be declared as unconstitutional.

For these reasons, the Court was exempted from analyzing the constitutionality of the contested Law from the perspective of the other criticisms invoked by the authors of the applications.

21. THE DATE FROM WHICH THE PERIOD FOR DECLARING THE ORDINARY APPEAL BEGINS TO RUN

On August 5, 2021, the Constitutional Court delivered a ruling on the constitutional review of Article 422 of the Code of Criminal Procedure[21].

The Constitutional Court noted that the State must guarantee an effective right of access to a court when establishing such a court. This conclusion is imposed by Article 20 para. (1) of the Constitution, which states that any individual has the right to effective satisfaction from the competent courts against acts that violate his/her rights, freedoms and legitimate interests. The conclusion is also confirmed by Article 119 of the Constitution. According to this article, against court decisions, interested parties and competent State bodies can exercise appeals, in accordance with the law.

[21] Judgment no. 23 of 05.08.2021 on the constitutional review of Article 422 of the Code of Criminal Procedure

The Court held that the contested provisions allow to file the ordinary appeal within 30 days from the date of the decision of the appellate court. At the same time, these provisions do not specify whether the time-limit in question runs from the date of pronouncing the full decision of the appellate court or from the date of pronouncing the operative part of the decision.

The Court observed that if the time-limit for declaring ordinary appeal runs from the date of pronouncing the operative part of the decision, then the person would be put in a position to wait for the full-reasoned decision. Only in this way he/she could justify the appeal request, so that the requirements imposed by the criminal procedural legislation are respected. Article 429 of the Code provides that the appeal must be motivated, and Article 430 provides that the appeal request must include, *inter alia*, the reasons for the appeal with the argument of the illegality of the contested decision. The appeal request that does not meet the form and content requirements is declared as inadmissible.

The Court held that in the absence of the full-reasoned decision of the appellate court, the person who wants to formulate an appeal against this decision cannot substantiate his/her request. The reason lies in the fact that the author of the application was not made aware of the reasons that were the basis of the decision in question.

The Court found that it could arise situations in which the full-reasoned decision of the appellate court is pronounced after 30 days from the date of the ruling. In such cases, the person could not submit a reasoned request within the 30-day period imposed by Article 422 of the Code of Criminal Procedure. Consequently, the appeal lodged after this deadline may be declared inadmissible.

The Court emphasized that it was appropriate to consider as the starting point of the time-limit for challenging a decision the date from which the full-reasoned decision was given. From this moment on, the person has the opportunity to know, for sure, the content of this decision. Since the State guarantees a right, it must create the conditions for its realization, respecting the constitutional rigors.

The Court therefore concluded that Article 422 of the Code of Criminal Procedure is constitutional on the basis of Articles 23 and 54 in conjunction with Articles 20 and 119 of the Constitution in so far as the time-limit for filing the ordinary appeal of 30 days will start to run from the date of pronouncing the full-reasoned decision of the appellate court.

22. THE DEFINITION OF "TAX SECRET"

On August 10, 2021, the Constitutional Court issued a judgment on the constitutional review of Article 129 point 19) of the Fiscal Code[22].

The Court noted that, under the contested provisions, information constituting tax secret is not disclosed by the tax authorities to persons requesting it. The Court held that the right of access to information was not an absolute right and thus, its exercise could be subject to restrictions under Article 54 of the Constitution. In this regard, the Court examined: if the interference in question was provided by law, if the relevant disposition pursued one or more legitimate aims provided for in the Constitution, if once applied, it achieves one of these aims, if it was necessary and proportionate to the situation which determined it.

a) Regarding the compliance with the standard of quality of the law (whether the interference is „prescribed by law")

[22] Judgment no. 24 of 10.08.2021 on the constitutional review of Article 129 point 19) of the Fiscal Code

The Court noted that the definition and the conditions for providing information which amounts to commercial secret are detailed in other normative acts. For example, Article 2047.3 of the Civil Code provides which information amounts to commercial secret. Also, the Court considered that the text "any available information held by the bodies responsible for tax administration" may refer to information obtained, processed and managed by the tax authorities, given the wide range of functions and powers they have (Articles 1324 and 133 of the Fiscal Code).

Thus, after an abstract analysis of the impugned provision, the Court held that the interference with the right to information is prescribed by law.

b) On the legitimate

As the State Tax Service has the obligation not to disclose information relating to the personal life, honor and dignity of the individual and is responsible for conducting a criminal investigation into offences within its competence, these materials being confidential, the Court held that the protection of such information pursues several general legitimate aims set out in Article 54.2 of the Constitution: protection of the rights, liberties and dignity of other persons, prevention of disclosure of confidential information and prevention of offences.

The Court held that the information held by the State Tax Service may, in some cases, fall not only within the category of tax secrets but also within that of State secrets. Thus, the prohibition on disclosure of this type of information may be justified by two other legitimate aims laid down in Article 54.2 of the Constitution: ensuring national security and the economic well-being of the country.

c) Regarding the compliance with the condition of minimum interference and fair balance between the competing principles

The right of access to information is the first principle from which those requesting information from tax authorities benefit. The principles that compete with the right of access to information are ensuring national security and the economic well-being, protection of the rights, freedoms and dignity of others, prevention of the disclosure of confidential information and prevention of criminal offences. Therefore, the Court noted that all these competing principles have a relative character. In other words, none of these principles has, in abstract, an absolute priority.

The Court noted that it cannot be considered in all cases that the prohibition of providing information by the tax authorities pursues a legitimate aim set out in Article 54.2 of the Constitution. At the same time, some information held by the State Tax Service cannot be qualified as State secret and cannot be excluded from the public interest in abstract. However, the conclusions depend on the factual and legal circumstances of each case, and these conclusions may be reached, on one hand, by the responsible officials of the tax authorities, who are asked for access to this information, and, on the other hand, by the ordinary courts, if seized regarding a refusal of an official to provide access to information.

The Court considered that the absolute prohibition of disclosure of tax secret constitutes an excessive burden on persons requesting information and, therefore, their right of access to information, in abstract, is not sufficiently guaranteed.

In these circumstances, the Court held that there was no fair balance between the competing principles, i.e., the right of access to information, guaranteed by Article 34 of the Constitution and the legitimate aims set out in Article 54.2 of the Constitution (ensuring national security and the economic well-being, protection of the rights, liberties and dignity of others, prevention

of disclosure of confidential information and prevention of offences). The Court considered that a fair balance could be struck by balancing and weighting the competing principles by the tax authorities and the courts of law.

Therefore, the Court held that the tax authorities and the courts of law must assess the requests for information in the light of the factual and legal circumstances of each specific case. This assessment has to be made by balancing the competing rights and interests and by ensuring a fair balance between these principles, based on the criteria and the reasoning set out in the Constitutional Court Judgment No. 29 of 12 December 2019.

The court recognized Article 129 point 19) as constitutional in so far as fiscal bodies and courts can verify, when considering cases regarding access to information, the existence of a legitimate purpose for restricting access to information that constitutes tax secret and can balance the competing principles.

23. THE UNFORESEEABLE NATURE OF THE PROVISION DEFINING CRIMINAL HOOLIGANISM

On August 12, 2021, the Constitutional Court delivered a ruling on the constitutional review of several provisions of Article 287 para. (1) of the Criminal Code[23].

The Court retained in its analysis the following contested texts of Article 287 para. (1) of the Criminal Code: "deliberate actions grossly violating public order" and "as well as actions that by their content are distinguished by an excessive cynicism or impudence".

The Court examined the case in the light of Article 1 para. (3) and Article 22 of the Constitution, which safeguard the principle of lawful incrimination and legality of criminal sanctioning, in conjunction with Article 23 of the Constitution, which establishes the standard of quality of the law.

As regards the text "deliberate actions grossly violating public order", the Court noted that the meaning attributed to this concept by the Supreme Court of Justice in its Explanatory Judgment No. 4 of 19 June 2006 is, in fact, similar to the provision of Article 354 of the Contravention Code relating to minor hooliganism. Minor hooliganism consists in insulting behavior towards an individual in a public place, other similar acts which disturb public order and the peace of individuals. The Court held that the difference between the offence of hooliganism and the contravention lies in the presence or absence of adjacent actions. Adjacent actions are violence towards individuals, threats of violence and violent resistance to authorities' representatives or to other persons who suppress such actions.

Thus, the Court found that in the text "deliberate actions grossly violating public order", only the word "grossly" is problematic from the point of view of the quality of the law. In regulating this term, the legislature referred to the intensity of the breach of public order. However, it is not clear how and by what criteria this intensity is to be assessed, because the presence of any of the adjacent actions involving the application of violence or the threat of violence excludes the applicability of Article 354 of the Contravention Code, the act constituting criminal hooliganism.

Therefore, the Court concluded that, for reasons of clarity and foreseeability of criminal law, the term "grossly" in Article 287.1 of the Criminal Code unnecessarily complicates the wording of the law. It creates legal uncertainty and hinders the interpretation of the Article by the courts of law.

As regards the text "as well as actions that by their content are distinguished by an excessive cynicism or impudence", the Court analyzed the interpretation given by the Supreme Court of

[23] Judgment no. 25 of 12.08.2021 on the constitutional review of several provisions of Article 287 para (1) of the Criminal Code

Justice. It found that the general notion of "excessive cynicism" was explained using other equivocal expressions, e. g. "insistent and demonstrative violation of moral rules", "shameless behavior in the presence of others". However, the explanations given by the Supreme Court of Justice did not clarify the provision in question and did not establish any objective benchmark ensuring the foreseeability of the application of this provision by the prosecuting authorities and the courts of law.

The Court held that, in practice, the determination of the content of the notion of "cynicism" is made, to a decisive extent, on the basis of the personal convictions or subjective perceptions of those applying criminal law. Even if appropriate advice is sought, the addressee of the provision could be deprived of the possibility to comply with the legal provisions. He/she is in a state of legal uncertainty. The Court therefore concluded that this legal provision does not meet the standard of the quality of criminal law.

The Court noted that, compared to actions distinguished by "cynicism", according to the explanation given by the Supreme Court, actions manifested by "excessive impudence" interfere with material objects. The Court acknowledged that, although there are other criminal provisions which ensure the protection of similar values, it is for the persons applying criminal law to distinguish between hooliganism and other acts, depending on the object and consequences of the offence or the contravention, the intention of the offender, the motives, purposes and circumstances of the act. The doubtful aspects of each individual case regarding the application of the notion of "excessive impudence" must be clarified in the light of the rules on the application of criminal law, in particular those on the legal classification of offences. By seeking appropriate advice, an individual could find out which actions can be distinguished by "excessive impudence".

Therefore, the Court held that this part of the application did not raise any problems from the point of view of the standard of quality of the criminal law.

24. THE POWER TO ESTABLISH THE AMOUNT OF LOCAL TAXES

On September 14 2021, The Constitutional Court delivered a judgment on the constitutional review of several provisions of Law no. 257 of December 16, 2020 regarding the amendment of several normative acts [24].

The Court verified whether the disputed provisions comply with the provisions of the Constitution, based on the arguments of the author of the application, which refer to: (i) lack of effective and real consultation with local public authorities and their representative associations and (ii) violation of local autonomy by introducing maximum rates for local taxes.

On the effective and real consultation of local public authorities and their representative associations, the Court held that, according to Article 4 para. (6) of the European Charter of Local Self-Government, local administrative authorities must be consulted, as far as possible, in a timely and appropriate manner during the planning and decision-making process on all matters that directly concern them. The Court held that this condition has a procedural nature and is imposed by Article 109 of the Constitution. The constitutional principle assumes that any amendment to the legislation regarding the operation of the local public finance system will be compulsorily consulted with the representative structures of the local public authorities.

Taking in view the importance of an adequate dialogue with local public authorities, the Court observed that, according to the Congress of Local Authorities of Moldova, the consultations were carried out in a formalistic manner. The contested draft law was sent to

[24] Judgment no. 27 of 14.09.2021 on the constitutional review of several provisions of Law no. 257 of December 16, 2020 regarding the amendment of several normative acts

CLAM two days before the deadline for submission of the opinion, whereas CLAM is composed of seven hundred members, and its internal rules state that any draft of this type must be sent to all members to present their opinions.

In its case-law, the Court held that if the provisions subject to constitutionality control have an impact on the budget revenues of local public authorities and were adopted by the legislature without consulting local entities, the principle of local autonomy, provided by Article 109 para. (1) of the Constitution. Therefore, considering the importance of an effective dialogue between the central and local authorities, the Court held that, in this case, the consultations between the Government of the Republic of Moldova, as the author of the draft law, and the local public authorities and their representative structures were not deployed in a timely and adequate manner, which contravenes Article 109 para. (1) of the Constitution.

On the violation of local autonomy by introducing maximum rates for local taxes, the Court emphasized that Article 81 of Law no. 436 of December 28, 2006 on local public administration establishes concrete guarantees for the realization of the constitutional principle of local autonomy and, by default, of financial autonomy, establishing the right of the local public administration to its own fiscal base, which must be proportional to the powers assigned by the Constitution, the law in question and other normative acts.

According to Article 9 of Law no. 436 of December 28, 2006 on local public administration, to ensure local autonomy, local public administration authorities autonomously develop, approve and manage the budgets of administrative-territorial units, having the right to implement local taxes and duties and to determine their amount in accordance with the law. The European Charter of Local Self-Government provides in Article 9 para. (1) that, within the framework of the national economic policy, local public administration authorities have the right to sufficient own resources, which they can dispose of freely, in the exercise of their powers. Moreover, according to para. (3) of the same article, at least part of the financial resources of local communities must come from local taxes and fees, in the proportions established at the level of local authorities, within the limits of the law.

Although there are several laws in the field of decentralization that strengthen local powers, the contested provisions place local elected officials in a situation where they cannot enjoy adequate room for maneuver in fiscal matters. The freedom to determine the amount of local taxes is an important indicator of the degree of achievement of local autonomy.

The Court held that local public authorities must have real powers to implement their policies. In this regard, the local council decides the implementation and modification, within the limits of its competence, of local taxes and fees, the manner and terms of their payment, as well as the granting facilities during the budget year, and approves the annual budget decision, as well as decisions regarding the amendment of the local budget (Article 14 para. (2) of Law no. 436 of December 28, 2006 on local public administration).

Also, the representative and deliberative authorities of the administrative-territorial units decide the implementation, modification and cancellation of local taxes, within the limits of their competence, establish the size of their quotas and the tax quotas on the real estate of natural and legal persons within the limits of what is provided by the legislation, as well as the granting of tax reliefs.

The Court noted that local councils represent democracy at the local level, and the population that forms an administrative-territorial unit can address issues of local interest that are the subject of its concerns within several forms of consultations, public hearings and conversations with local councilors. Also, the draft decisions of the local council are publicly consulted, in accordance with the law, in compliance with the procedures established by each representative and deliberative authority of the population of the administrative-territorial unit of the first or second level, as the case may be. Therefore, the citizens of the administrative-territorial unit

can address the issues related to the fiscal policy promoted by the local council in public consultations. Moreover, the relevant acts of the local public authorities can be challenged by any interested person before the common law courts, according to the procedures prescribed by the Administrative Code.

The Court held that it is up to each local public authority to adopt and implement policies in order to develop the local economy by creating attractive conditions for the business environment. At the same time, the State must offer these authorities, based on the principle of local autonomy and decentralization, sufficient room for maneuver in this regard.

Imposing general maximum rates for local taxes to all administrative-territorial units without taking into account the economic situation and the specific circumstances of each case could prove ineffective. In this regard, an important aspect is the possibility of missing some revenues to local budgets. As the legislature imposes maximum rates for local taxes, the discretionary margin of the local administration in determining the amount of taxes is considerably restricted, and this fact places the local administration in the impossibility of increasing some local taxes, when necessary and opportune, in a greater amount than the one established by law.

Taking into account the special quality of the addressees of the contested provision, the constitutional and legal rights and obligations and the principles of their organization and operation, the Court found that the establishment of maximum quotas makes local authorities unable to properly establish the volume of their revenues and budget expenditures and to ensure the development, approval and execution of balanced budgets, without a budget deficit.

Therefore, in order to respect the constitutional principles of local autonomy, the Court held that local public authorities must be able to establish their local taxes and their amount without limits and ceilings in this regard from the legislature. Therefore, the Court found that Article VII points 78-87 of Law no. 257 of December 16, 2020 regarding the amendment of several normative acts violates Articles 109 and 132 of the Constitution.

25. POWERS OF THE NATIONAL INTEGRITY AUTHORITY

On September 21, 2021, the Constitutional Court delivered the Judgment no. 29 on the control constitutional review of Law no. 244 of December 16, 2020 for amending several normative acts[25]. The law in question amended the Code of Criminal Procedure, the Law on the National Integrity Authority and the Law on declaration of wealth and personal interests. The National Integrity Authority was thus assigned the status of a finding body regarding the offenses of exercising duties in the public sector in situations of conflict of interests, of illicit enrichment and false statements. Starting a criminal investigation depended on the existence of an act delivered by the National Integrity Authority on finding a violation of the relevant legislation.

The Constitutional Court analyzed Law no. 244 of December 16, 2020 both from the perspective of criticism of extrinsic and intrinsic unconstitutionality.

According to Article 74 para. (1) of the Constitution, organic laws are adopted after at least two readings. The Court held that the constitutional text "after at least two readings" in this article is not limited only to compliance with the formal condition of voting the law twice. During the two readings, Parliament must examine the content of the law in question in a plenary debate.

The Court observed that the draft normative act that was the basis for the adoption of the contested Law was voted on in two readings on the same day, with an interval of one minute.

[25] Judgment no. 29 of 21.09.2021 on the control constitutional review of Law no. 244 of December 16, 2020 for amending several normative acts

The draft law was discussed in the Parliament for the first reading. The President of the Legal, Appointments and Immunities Committee presented the project, and during the presentation an amendment was read and voted on. At the same time, a MP pointed out the existence of technical errors. However, there was no actual debate in Parliament in the second reading. Therefore, the Court found the violation of Articles 1 para. (3) and 74 para. (1) of the Constitution.

Considerations related to non-compliance with constitutional parliamentary procedures could exempt the Court from examining the disputed provisions under a substantial limb. However, the Court also carried out this type of control to consolidate its reasonings, as well as to provide the legislator with constitutional benchmarks for a possible amendment of the law .

Therefore, the intrinsic unconstitutionality criticisms aimed at:

(1) the time-limit within a control of declarations of wealth and personal interests can be carried out and, respectively, the time-limit within the corresponding sanctions can be applied; and

(2) conditioning the initiation of criminal prosecution for some categories of crimes on the existence of an act issued by the National Integrity Authority on finding a violation of the relevant legislation.

On the reduction of the time-limit within a control of declarations of wealth and personal interests can be carried out from three years to one year after the termination of the mandate, the public office or the office of public dignity, The Court emphasized that citizens' trust in the fairness of public officials and in institutions in general constitutes the democratic foundation of their functioning. Although it has a high degree of relativity, trust in institutions is decisively influenced by their representatives. In accordance with the fundamental principle of the rule of law, persons in public office must demonstrate that they meet high standards of integrity.

Reducing the time-limit within a control of declarations of wealth and personal interests can be carried out from three years to one year after the termination of the mandate, public office or position of public dignity, as well as the immediate application of the new time-period in relation to the processes pending at the National Integrity Authority could lead to the impunity of some public officials. Therefore, the control of declarations of wealth and personal interests could become illusory and theoretical. The same conclusion was valid in relation to the term within which the appropriate sanctions can be applied for the violation of the legal regime of conflicts of interest, incompatibilities, restrictions and limitations.

With regard to the existence of a definitive act issued by the National Integrity Authority regarding the finding of a violation of the relevant legislation for the initiation of criminal prosecution for certain categories of crimes, the Court noted the following.

The results of the control regarding compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations carried out by the National Integrity Authority are reflected in a statement of findings. According to its competences, the task of the prosecuting body was to establish whether there is a reasonable suspicion for the initiation of the criminal investigation. At the same time, based on evidence, the criminal prosecution body could reach a different conclusion on the side of what was found by the National Integrity Authority. Also, the person subject to control by the National Integrity Authority could contest the act issued before the court. If the person did not challenge the act of the National Integrity Authority, then that act became final. However, in the event that the act was contested before the court, the start of the criminal prosecution was not possible until a definitive act was issued on the respective case. Moreover, the act of the National Integrity Authority could be annulled by the court for procedural reasons as well. These circumstances could lead to the obstruction of the initiation of the criminal prosecution and, ultimately, to the expiration of the statute of limitations for prosecution.

Therefore, the Court also found a violation of Articles 20 and 124 of the Constitution.

26. RE-EXAMINATION OF THE DISABILITY PENSION

On September 23, 2021, the Constitutional Court delivered the Judgment no. 30 on the exception of unconstitutionality of Article 33 para. (1) let. c) from Law no. 156 of October 14, 1998 on the public pension system[26].

The Court emphasized that the protection of persons with disabilities provided for by Article 51 of the Constitution imposes on the State the obligation to take measures to improve the situation of persons with disabilities who could, due to several objective or subjective factors, suffer exclusion from the usual societal environment.

The Court stated that compliance with the principle of equality requires granting the same advantages to all persons in similar situations, unless it is demonstrated that the differential treatment is objectively and reasonably justified. The principle of equality does not envisage the prohibition of any differential treatment, but only of unjustified differential treatment.

The Court noted that a differential treatment is justified only when it pursues a legitimate objective and when the means of achieving this objective respect a reasonable relationship of proportionality between the means used and the legitimate objective pursued. A differential treatment does not respect a reasonable relationship of proportionality where the means to achieve the objective are neither appropriate nor necessary.

Article 33 para. (1) let. c) from the Law on the public pension system recognizes the right to re-examine the pension in the sense of increasing it (*i*) in the case of old-age pension holders who (*ii*) have been working or who continue to work for at least two years after achieving the right to pension.

The Court mentioned that achieving a correct management of social insurance funds, taking into account factors such as subject classes, contribution periods achieved or retirement age, etc., represents a legitimate objective within the meaning of Article 54 para. (2) of the Constitution. Therefore, the Court recognized the legitimate interest of the state to restructure its social insurance funds and make them more efficient, interest that allows the legislator to restrict the exercise of the rights guaranteed under Articles 16, 47 and 51 of the Constitution.

Generally, the Court found that the state social insurance system takes into account, among other things, the estimated average life expectancy of the insured persons. In this regard, the legislation does not contain a prognosis regarding a specific insured person, but uses general estimates (see, for example, Article 41 of the Law on the Public Pension System). The rationale for such an approach lies in the difficulty of accurately forecasting an individual's insurance risk. For this reason, it is legitimate that, for risk estimation, instead of individual evaluations, a collective approach should be taken. This inherently involves categorization according to relevant criteria. Naturally, under such a regulation, some people will remain outside these categories.

However, the Court noted that due consideration must be given to the data to be assessed. Moreover, any rationale for recognizing a wide discretionary margin of the legislator in the field of social protection would disappear. The Court pointed out that this is the reason that allowed it to emphasize, in Judgment no. 29 of November 22, 2018, at § 55, that the discretionary margin of the legislator can be subject to the control of the Court, which verifies whether it acted within the limits of this margin.

[26] Judgment no. 30 of 23.09.2021 on the exception of unconstitutionality of Article 33 para. (1) let. c) from Law no. 156 of October 14, 1998 on the public pension system

The Court found that it is a scientifically proven fact that, from a physiological point of view, disability presents several health risks, including premature death or the development of diseases associated with disability, etc. Moreover, a person who was diagnosed at a young age with a degree of disability is less likely to reach the general retirement age, compared to the other people.

For these reasons, the Court specified that, in such a situation, the question arises as to whether the re-examination of the disability pension must be properly taken into account, the degree of disability, the person's chances of reaching general retirement age and the period over which payments will be made.

The Court held that a less restrictive measure would be to recognize the right to review the pension at a time interval that takes into account, adequately, factors such as the degree of disability and the age at which the disability was established. The Court noted that, in present, a similar regulation is provided by the Law on the Public Pension System. Article 20 of the Law establishes different conditions regarding the age and length of service required to obtain the disability pension. At the same time, the Court observed that there is also a classification of disability into categories, depending on the concrete degree of disability (average, accentuated or severe). Therefore, the legislation provides for individualized conditions and able to ensure the fair distribution of the right to the re-examination of the disability pension.

The Court noted that the discretionary margin recognized to the legislator in this field gives it, in principle, the possibility to, for administrative reasons, waive particular analyses. However, the Court pointed out that it does not foresee such a difficulty in this case. Moreover, even if there might be difficulties, they do not justify a standard of differentiation that excludes an entire class of subjects from the benefit of a right. Moreover, in such a situation there are also measures able to ensure savings to the social funds to compensate for the hypothetical expenses. In any case, the expenses incurred do not justify, by themselves, depriving disabled people of the right to pension review.

The Court pointed out that depriving disabled people of the right to a pension review could have the effect of inhibiting them from practicing paid work and may lead them to look for "unofficial" jobs in order to avoid paying social security contributions. In such a case, the objective of correct management of social funds is not achieved. At the same time, the Court found that some disabilities, especially medium and severe disabilities, preserve a work capacity that allows the performance of paid activities. Thus, if a disabled person were to be paid their salary within the period necessary to be able to claim the pension review, they would contribute more time to the state social insurance system. Furthermore, it may be in the interest of protecting disabled people that they continue to work. The reasons are based, on the one hand, on financial considerations (retirement-related income losses) or on personal considerations (fitting into a societal environment, leading an active lifestyle). Therefore, including reasons related to the protection of people with disabilities advocate for a solution that takes into account the interest of people with disabilities when reviewing the pension.

The Court held that there is a very high probability that a disabled person will not survive to reach the general retirement age, so as to fully exercise their right to pension (see, regarding the risks of death in the event of a disability, §§ 25 – of the Judgment). The Court pointed out that there are pertinent and conclusive data that attest to the fact that people with disabilities are exposed more than other people to the risk of premature death or the risk of developing diseases associated with the disability, which can ultimately cause the person's death.

The Court stated that, analyzed as a whole, these elements make the life expectancy of people with disabilities below the general average. Thus, the establishment of differences that properly take into account these elements is a justified measure, because in the case of social security payments, the number of benefits follows, necessarily, from the life expectancy of the

beneficiaries of pension rights. Otherwise, disabled people, who, according to specialized studies, have a lower life expectancy, would be at a disadvantage, unlike recipients of an old-age pension, because the chances of reaching the general retirement age are much lower.

The Court noted that disability characteristics are based on specific biological and physiological conditions for life expectancy. At the same time, the disability and the conditions that determine the disability constitute features that are inseparably linked to the insured person and over which he/she has only a limited influence. Therefore, the health status of certain disabled persons could be so impaired before the general retirement age that they no longer benefit from the social security contributions made. Furthermore, the Court held that these developments are outside the person's control, and in some cases, they have a random character (see, *mutatis mutandis*, JCC no. 29 of 22 November 2018, § 56).

In conclusion, the Court held that if these elements are not properly taken into account, disabled people would suffer damage, not being ensured a reasonable relationship of proportionality between the competing interests. This fact would be able to lead, on the one hand, under the pretext of a theoretical possibility of reaching the general retirement age, to emptying the content of the prohibition of discrimination and to neglect the right to special protection of persons with disabilities and, on the other hand, to results inconsistent with the legitimate aim pursued. The Court emphasized that in a State where respect for human dignity and human rights are recognized as supreme principles, of equality and the special protection of persons with disabilities, such differentiations do not pass the test of the adequacy of the measure, being contrary to articles 16, 47 and 51 of the Constitution. Moreover, the differential treatment of people with disabilities, given the elements Stated above, can lead to a feeling of injustice, powerlessness and frustration.

The Court observed that the Law on the Public Pension System establishes provisions that set retirement conditions below the threshold of those established for the age limit. The mentioned distinction constitutes an argument in favor of establishing a distinction and regarding the conditions for exercising the right to the re-examination of the disability pension. Moreover, unfair treatment would be instituted in relation to people who obtain the old-age pension upon reaching the general retirement age, and excessive pressure would be placed on the public social security system, the objective of fair distribution of social security benefits being neglected.

The Court observed that the solution of the unconstitutionality of Article 33 para. (1) lit. c) from the Law on the public pension system is able to make the right to pension review ineffective and create blockages within the public pension system. For these reasons, to remedy the existing deficiency, the Court reserved its prerogative to establish a provisional solution to regulate the question of the disability pension review, until Parliament intervenes.

However, in order to give effect to the its Judgment in the cases in which the exceptions of unconstitutionality were raised, considering the fact that the exception of unconstitutionality "expresses an organic link, logic between the question of constitutionality and the merits of the main dispute" and has the task "ensuring respect for the fundamental rights and freedoms guaranteed by the Constitution in the process of settling disputes by common law courts", The Court considered it reasonable that it should produce immediate effects for the authors of the referrals.

27. DESTRUCTION OF INTERCEPTED AND RECORDED INFORMATION

On September 23, 2021, the Constitutional Court delivered Judgment no. 31 on the exception of unconstitutionality of Article 132^9 paras. (12) and (15) of the Criminal Procedure Code[27].

The Court analyzed the application by referring to Articles 20, 26 and 54 of the Constitution. These articles establish the standard of fairness of judicial processes and the standard of proportionality of restrictions on fundamental rights.

The Court observed that the contested provisions pursue the legitimate aim of protecting the rights and freedoms of others, as well as preventing the disclosure of confidential information. The Court also admitted that the destruction of information deemed irrelevant by the investigating judge aims to comply with the reasonable term of examining the case and of saving resources at the stage of termination of the criminal prosecution and, respectively, of the trial on merits. Overloading the file with irrelevant and unnecessary information for the resolution of the case could lead to the delay of the trial of the case. This fact can be avoided by filtering the information intercepted during the criminal investigation.

However, according to the European Court`s case-law, the law must detail the precautions measures to be taken in order to communicate intact and completely the recordings made, for the purpose of a possible control of the judge and the defense. Also, in its case-law, the European Court held that, although filing in a case all conversations intercepted from a telephone booth might violate other rights, such as, for example, the right to respect for the private life of others, the person concerned should be given, however, the opportunity to listen to the recordings or challenge their veracity. It follows the need to keep the records intact until the end of the criminal process and, generally, to submit to the criminal investigation file evidence that the person deems relevant for the defense of his/her interests.

Failure to disclose material evidence to the defense containing such information, which would allow the accused to exonerate himself/herself or reduce his/her sentence, would constitute a denial of the necessary facilities for the preparation of the defense and therefore a violation of a fair trial standards.

The destruction of any materials obtained through the interception of telephone communications may lead to the impossibility of the defense to verify its assumptions regarding their relevance and to prove their correctness before the substantive courts.

The Court admitted that during the criminal investigation, the access of the defense to the interceptions made could be restricted, so as to ensure the effectiveness of the criminal investigation. However, these restrictions must be counterbalanced by sufficient guarantees at a later stage, i.e. at the end of the criminal investigation and, respectively, at the trial on merits.

The Court observed that by Article 132^9 para. (15) of the Criminal Procedure Code, the legislator assigned greater protection to the right to respect the private life of other persons and the interest of speedy trial, to the detriment of the accused's rights to a fair trial and defense.

As a result of the application of the disputed provisions, it could arise situations in which the evidence that is, in fact, relevant for the defense were destroyed at the stage of the criminal investigation, and the person in question is deprived of the right to learn about the respective evidence and to use it in his/her defense at the trial of the criminal case.

Moreover, it may happen *prima facie* that some records are not relevant at the stage of the criminal investigation, but later acquire a different weight. The court may be in a position to corroborate the recordings made with some new evidence that comes to light later. Destroying

[27] Judgment no. 31 of 23.09.2021 on the exception of unconstitutionality of Article 132^9 paras. (12) and (15) of the Criminal Procedure Code

the records according to Article 132[9] para. (15) of the Criminal Procedure Code prevents the court – which examines the criminal case directly – to evaluate all the evidence and to be able to ascertain its relevance for the defense, a fact that may deprive the accused of his/her right to a fair trial.

The Court concluded that the text "decides which of the recorded communications are to be destroyed, designating the persons responsible for the destruction. The destruction of information based on the conclusion of the investigating judge is recorded by the responsible person in a report, which is attached to the criminal case" from Article 132[9] para. (15) of the Criminal Procedure Code contravenes Articles 20 and 26 in conjunction with Article 54 of the Constitution.

28. DISCLOSURE OF INFORMATION BY THE CUSTOM AUTHORITY

On October 26 2021, the Constitutional Court delivered the Judgment no. 33 on the exception of unconstitutionality of Articles 17 paras. (1), (2) and (3) of the Customs Code [28]. This article regulates the conditions for communication of customs information.

The Court observed that, on the basis of the impugned provisions, the Customs Service provides only general information and that the other information is not communicated to the persons requesting it, except as expressly provided in Article 17 para (2) of the Customs Code. The Court has ruled that the right of access to information is not an absolute right and therefore its exercise may be subject to restrictions, in accordance with Article 54 of the Constitution. In this regard, the Court examined whether the restriction in question is provided for by law, whether it pursues one or more legitimate aims set out in the Constitution, whether it achieves, once implemented, one of these purposes, and whether it is necessary and proportional with the situation that determined it.

a) On the compliance with the standard of the quality of law (if the interference is "prescribed by law")

The Court noted that the information made available to the customs body by natural/legal persons can only be used for customs purposes, i.e., only in order to exercise the powers they hold (Article 11 of the Customs Code). This data is considered official information with limited accessibility (confidential information or trade secret) and cannot be disclosed to any authority and any third party natural/legal person in customs procedures, with a few exceptions mentioned in Article 17 para. (2) let. a)-e) of the Code. At the same time, only information of a general nature is provided by the customs body to natural/legal persons or the media that request them (Article 17 para. (3) of the Code).

The Court held that interference with the right to information is provided for by law.

b) On the legitimate aim

The Customs Service has the obligation not to disclose information regarding the personal life or the professional or commercial activities of natural/legal persons. The Customs Service also has the task to prevent the commission of customs offenses, and to conduct a criminal investigation into the offenses within its jurisdiction, whose files are confidential. The Court noted that the protection of this information pursues several general legitimate aims provided

[28] Judgment no. 33 of 26.10.2021 on the exception of unconstitutionality of Articles 17 paras. (1), (2) and (3) of the Customs Code

for in Article 54 para (2) of the Constitution: to protect the rights, freedoms and dignity of others, to prevent the disclosure of confidential information and to prevent the commission of criminal offenses.

c) On the fair balance between competing principles

The right of access to information is the first principle enjoyed by persons requesting the communication of information by the customs body. The principles that compete with the right of access to information are the protection of the rights, freedoms and dignity of others, the prevention of the disclosure of confidential information and the prevention of commission of criminal offenses. Therefore, the Court noted that all competing principles are of a relative nature. In other words, none of these principles has, in the abstract, an absolute priority.

However, the Court noted that the legislator gave absolute priority to the legitimate aims that compete with the right of access to information, by establishing that the information available to the customs body could be used for customs purposes, to the detriment of the right of access to information. The Court noted that the disclosure of general information to applicants is not sufficient for them to fulfil their role as "watchdogs" of a democratic society. The way in which public "watchdogs" carry out their activities can have a significant impact on the proper functioning of a democratic society.

The Court noted that a prohibition to provide information intended to achieve customs purposes and official information with limited accessibility could not be considered necessary in all cases. At the same time, some information held by the customs body cannot be included in the category of official information with limited accessibility and cannot be excluded from the sphere of public interest, in the abstract. Moreover, there may be information which, although it cannot be disclosed because it would thus achieve a legitimate aim, in a balancing act, must be disclosed because its confidentiality does not outweigh the need to ensure access to information. However, the conclusions depend on the factual and legal circumstances of each case, and these conclusions may be reached, on the one hand, by the responsible officials of the customs body, who are requested to provide access to such information and, on the other hand, by the judges in the event that they are notified of a refusal by customs officials to provide access to information.

The Court held that the communication of only general information by the customs body and the absolute prohibition on the disclosure of official information with limited accessibility, except in the cases provided for in Article 17 para. (2) of the Customs Code, constitutes an excessive burden for persons requesting the provision of information. Therefore, their right of access to information is guaranteed, in the abstract, in an insufficient manner.

In these circumstances, the Court noted the lack of a fair balance between competing principles, i.e., the right of access to information, guaranteed by Article 34 of the Constitution, and the legitimate aims provided for in Article 54 para. (2) of the Constitution. The Court considered that a fair balance could be ensured by the possibility of balancing the competing rights and interests by the customs body and the courts of law.

Therefore, the Court has ruled that the customs body and the courts of law must assess requests for information in light of the factual and legal circumstances of each individual case. This assessment is made by balancing the competing rights and interests and by ensuring a fair balance between these principles, starting from the criteria and reasoning mentioned in Judgments no. 29 of December 12, 2019 and confirmed in Judgment no. 24 of August 10, 2021.

29. LIQUIDATION OF SOME PUBLIC FUNCTIONS WITHIN THE GOVERNMENT

On November 9, 2021, the Constitutional Court delivered the Judgment no. 35 on the exception of unconstitutionality of several provisions of Law no. 63 of July 5, 2019 for amending several legislative acts and of the Government Decision no. 347 of July 18, 2019 for amending several Government decisions[29].

These normative acts abolished the public functions of secretary of State, head and deputy head of the territorial offices of the State Chancellery and created positions of public dignity of secretary of State, head and deputy head of the territorial premise of the State Chancellery.

As a preliminary matter, the Court observed that the secretary of State`s office, head and deputy head of the territorial premise of the State Chancellery are offices regulated by infraconstitutional acts and none is of constitutional rank. The offices in question ensure the achievement of the strategy and objectives provided in the Government's Activity Program.

The Court retained the application of Articles 43 para. (1) [*the right to work and labor protection*] and 54 para. (2) [*restriction on the exercise of certain rights or freedoms*] from the Constitution. Therefore, the Court analyzed whether the measure contested by the authors of the application is provided by law, whether it pursues one or more legitimate aims provided in the Constitution, if it achieves, once implemented, one of these purposes, if it is necessary and proportional to the situation that determined it and cannot affect the existence of any right or freedom.

a) On the compliance with the standard of the quality of law (if the interference is "prescribed by law")

The Court held that, based on the Government's Decision, the State Chancellery notified and dismissed the civil servant concerned from the liquidated public offices. Thus, the notice and dismissal from these offices can be challenged in the administrative court. Given this fact, the Court determined that the condition to guarantee against arbitrariness is met. Therefore, the Court held that the interference with the right to work is "provided by law", within the meaning of Article 54 para. (2) of the Constitution, being, at the same time, accessible and predictable.

b) On the legitimate aim

From the information note to the law the Court observed that the amendment of the law was determined by “unblocking the activity of the ministries and implementing the Activity Program of the Government inaugurated on June 8, 2019" and by “the need to carry out the government program”. The Court deduced that the aims of the legislative measure are to facilitate the implementation of the Government's Activity Program inaugurated on June 8, 2019, to unblock the activities of the ministries, to reorganize the public administration positions, to fight against corruption, to establish a safe and well-being climate. These objectives can be subsumed, *prima facie*, at least to the following legitimate aims provided by Article 54 para. (2) of the Constitution, *i.e.* national security, economic well-being, public order, crime prevention and the protection of the rights, freedoms and dignity of others. The Court noted that the contested measure did not, actually, pursue the aim of punishing

[29] Judgment no. 35 of 09.11.2021 on the exception of unconstitutionality of several provisions of Law no. 63 of July 5, 2019 for amending several legislative acts and of the Government Decision no. 347 of July 18, 2019 for amending several Government decisions

individuals, as claimed by the authors of the applications. In fact, as long as they have been preserved the right to occupy, in the future, public offices and they have been offered social guarantees at the dismissal from office, and the argument that dismissal is a punishment cannot be accepted. If the purpose of sanctioning had indeed been pursued, the law would have produced these effects (for example, the exclusion of any social guarantees upon dismissal, the prohibition to work in a public office, etc.). The sole effect of the law, *i.e.* the liquidation of public offices and the dismissal from office of the persons who hold them, represent nothing more than the implementation of the declared purposes of the law. In fact, the Court held that the reorganization of the public functions system, the fight against corruption, the establishment of a safe and well-being climate can also manifest in this way. Therefore, since the contested measure does not involve any legal consequence that could be related to the alleged sanctioning of different political options, the Court held that this is not the purpose of the law.

On other objectives stated in the information note, the Court mentioned that the contested measure is part of a wider context of actions regarding the consolidation of the legality and good functioning of the Government, considering the circumstances that took place in June 2019, reflected in its Judgment no. 16 of June 15, 2019, at §§ 4-10 and 20-24. Thus, after June 9, 2019, in the Republic of Moldova functioned a *de jure* government, which acted on the basis of the decisions of the Constitutional Court, and, in parallel, a *de facto* government, which acted on the basis of a decision of the Parliament and a presidential decree declared as unconstitutional. In this context, the Court held that a measure whose objective is the dismissal of several Government officials is not, at least at first sight, an arbitrary objective. Also, in the administrative hierarchy of the executive institution, the offices in question have a large weight. With substantial decision-making power, their good organization and integrity influence the implementation of the Government's agenda and the activity program. For this reason, the good functioning of the Government constitutes, in the concrete circumstances mentioned above, a legitimate goal that justifies interference with fundamental rights. Moreover, the good functioning of the Government it's not an isolated field, separated from other fields of public life, but is interspersed with them. Thus, a major deficiency at the level of the executive can cause repercussions in the chain at the level of the administration of public affairs. Therefore, being a very vast field and having connections with the other powers in the State, the Court noted that the goals aimed at achieving the Government's program, unblocking the activity of the ministries, reorganizing the system of public functions comply with the requirement of legitimacy. Therefore, the Court held that the implementation of the activity program of the Government voted on June 8, 2019 amounts to the legitimate aims within the meaning of Article 54 para. (2) of the Constitution (national security, economic welfare, public order, crime prevention and the protection of the rights, freedoms and dignity of others). Therefore, the liquidation of several public functions through the contested normative acts complies with the test of legitimate aims sought by restricting fundamental rights and freedoms.

c) On the rational connection between the measure provided for by the contested legal provisions and the legitimate aims

The Court held that the liquidation of public positions and the establishment of positions of public dignity represent, therefore, an element that contributes to the implementation of the activity program of the vested Government and to unblocking the activity of the ministries within the Government and, therefore, to the achievement of one of the wider legitimate aims mentioned above. The Court held that there is a rational connection between the contested measures and the legitimate aims allowed by the Constitution.

d) On the necessary means to achieve the aims pursued

The Court held that the contested measure is a general measure, *i.e.*, a provision applicable to all persons concerned, regardless of differences based on any criteria and without any exception. This measure has the indisputable advantage of ensuring the achievement of the pursued aim in a relatively short period of time, *i.e.*, the date of publication of the law in the Official Gazette and the notification and liquidation procedure. Moreover, unlike a general measure, a case-by-case control involves a dose of risk regarding the achievement of the objectives envisaged by the legislator through the intrusive measure, a risk that is avoided in case of general measures. Thus, considering the importance of the offices in question in the general gearing of the authority, the Court noted that an immediate general measure is preferable to one that involves time. Moreover, in the event that the resolution of the problem identified by the Parliament would be delayed, the Government inaugurated on June 8, 2019 would have been put in a situation of not being able to carry out its activity program and the proper functioning of other areas would have been threatened, which could have led to an institutional deadlock. The liquidated functions contributed directly to the realization and translation into life of the Government's activity program, a fact that confirms, *eo ipso*, both the urgency of the measure and the priority of general measures over individualized ones, considering in particular their increased efficiency in relation to individualized analyses, both in terms of time and costs.

In addition, the Court took into account the very sensitive nature of executive activity and the importance of carrying it out as efficiently as possible. These reasons require the Court to recognize a greater freedom of action for the legislator in this field, including a wide discretionary margin in the choice of measures capable of ensuring the achievement of the proposes. Another element considered by the Court at the stage the proportionality test of the measure takes into account that the liquidation of public functions did not seek to sanction individuals for committing concrete or presumed acts of which they would be guilty, but the reform of the institution of public management functions trained in the performance of executive activity.

Therefore, the Court found that with the contested measure the legislator did not go beyond what is necessary in order to achieve the objectives pursued. Therefore, the Court found that with the contested measure the legislator did not go beyond what is necessary in order to achieve the objectives pursued.

d) On the fair balance between competing principles

The Court observed that the contested measure restricted the exercise of the right to work of the authors of the exceptions. From the perspective of the Constitution, the right to work guaranteed by Article 43 represents a principle that can be balanced with competing constitutional principles. In this case, the competing principles are represented by the need to guarantee the economic well-being of the country, the establishment of public order and the need to protect the rights of other people. All competing principles are relative in nature. In other words, none of these principles has, generally, an absolute priority.

The Court held that the persons in question are engaged in special labor relations regulated by infraconstitutional acts. As a result, although they are appointed and dismissed from office by acts of the Government, they benefit from special labor rights and guarantees, arising from the general rules of labor legislation and taking into account the particularities of administrative contracts (see JCC no. 22 of 22 July 2016, §§ 62-63).

Under this aspect, the Court observed that the civil servants in question in case of release from office due to its liquidation benefit from sufficient social and procedures guarantees (payment of salary for the period of activity and unemployment allowance). At the same time, the Court noted that the release of civil servants due to the liquidation of the office does not prohibit them from occupying a public office or an office of public dignity.

Based on the above, the Court considered that the interference with the right to work of the civil servants in question does not have a greater weight than the legitimate aims pursued by the legislator. Therefore, this interference with the right to work of civil servants is not a disproportionate one and, therefore, there is no violation of Article 43 of the Constitution.

30. THE EXCLUSION OF THE ADVERTISEMENT AND TELESHOPPING FROM RETRANSMITTED FOREIGN PROGRAMS

On November 23, 2021, the Constitutional Court delivered the Judgment no. 36 on the constitutional review of Articles 66 para. (7) and 84 para. (13) of the Audiovisual Media Services Code[30].

The Court observed that, according to the provisions of Article 66 para. (7) from the Audiovisual Media Services Code, media service distributors were not allowed to introduce advertising or teleshopping in retransmitted audiovisual media services and had to exclude advertising and teleshopping from retransmitted foreign audiovisual media services.

In its case-law, the Court held that Article 32 of the Constitution guarantees the right to freedom of expression, which includes the freedom to distribute information and ideas in the case of media service distributors. Both the transmission and retransmission of programmes by air or cable implies the right to distribute information and ideas.

The Court stressed that Article 32 of the Constitution must be interpreted, according to Article 4 para. (1) of the Constitution, in line with the provisions of international treaties to which the Republic of Moldova is a party.

The Republic of Moldova ratified the European Convention on Transfrontier Television on 5 May 1989. According to Article 4 of this Convention, the parties will ensure freedom of expression and information in accordance with Article 10 ECHR. The Parties will guarantee freedom of reception and will not oppose the retransmission on their territory of programme services which comply with the provisions of this Convention.

The notion of programme service relates to all the items within a given service (that is individual programme items, advertising, tele-shopping, programme trailers, logo of the service, etc.) (para. 92 of the Explanatory Report to the European Convention on Transfrontier Television).

Taking in view the above-mentioned considerations, the Court held that the right to freedom of expression also includes the right to rebroadcast programs that include advertising or teleshopping.

Accordingly, the Court considered it necessary to determine whether the obligation to exclude advertising and teleshopping from retransmitted foreign programmes affects the freedom of expression guaranteed by Article 32 of the Constitution and is consistent with the European Convention on Transfrontier Television, as laid down in Article 4 of the Constitution.

The Court held that distributors of audio-visual media services retransmit foreign programmes (which include advertising and teleshopping) from providers (*i*) in States which have ratified the European Convention on Transfrontier Television and (*ii*) in States which have

[30] Judgment no. 36 of 23.11.2021 on the constitutional review of Articles 66 para. (7) and 84 para. (13) of the Audiovisual Media Services Code

not ratified that Convention. Providers from states that have ratified the Convention benefit from its guarantees.

At the same time, the Moldovan legislator is obliged to respect the provisions of the Convention. On the contrary, in the field of retransmission of foreign programmes (including advertising and teleshopping) from providers in States which have not ratified the European Convention on Transfrontier Television, the legislator has a wider margin of discretion and is not bound by the obligations assumed by the Convention.

The Court observed that the challenged provisions are rigid and establish a general measure for distributors of foreign audiovisual media services. Therefore, the legislator regulated an absolute ban and did not differentiate between media service distributors retransmitting programs from states that have ratified the European Convention on Transfrontier Television and from states that have not ratified this Convention. This general measure applies to predetermined situations, regardless of the circumstances of each case. Unlike elastic laws, which are "sensitive to circumstances" and which provide for the possibility of their application depending on the detailed factual context, rigid laws establish precise concepts, "insensitive to circumstances".

The legislator preferred a general measure to individual measures (such as, for example, the differentiation between advertising and teleshopping retransmitted from States party to the European Convention on Transfrontier Television and from States not party to that Convention). However, the legislature could have adopted individual legislative measures which would have achieved the legitimate aims pursued just as effectively and which would have been less restrictive of the exercise of the right to freedom of expression by distributors of audio-visual media services than the contested general measure.

The Court also noted that under the second sentence of Article 4 of the European Convention on Transfrontier Television, the Parties shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention. A Party will not be entitled to rely on the specific provisions of its domestic broadcasting legislation or regulations in areas covered by the Convention (advertising and tele-shopping, sponsorship, responsibility of the broadcaster in maintaining programme standards, etc.) to restrict reception or to prevent the retransmission, on its territory, of a programme service transmitted from another Party which complies with the provisions of the Convention (para. 121 of the Explanatory Report to the Convention).

Although, by Law no. 1555 of December 19, 2002, the Republic of Moldova reserved the right to impose restrictions on the retransmission on its territory of programmes advertising alcoholic beverages, when imposing the contested obligation, the legislator did not differentiate the content of advertising or teleshopping.

The Court also noted that where a particular audience in a single Party is targeted specifically and with some frequency by advertising or teleshopping programmes in a programme service transmitted from another Party, the advertising or teleshopping programmes concerned shall not circumvent the rules governing television advertising or teleshopping in the Party in which the audience is targeted. The criteria mentioned in this article ("specifically", "with some frequency", "single Party"; "circumvention") are cumulative. In the absence of one criterion, the State Party will not be able to prohibit programmes which include advertising or teleshopping from States Parties which broadcast such programmes (paragraphs 267 and 271 of the Explanatory Report to the Convention).

Therefore, if the conditions laid down in Article 16 of the European Convention on Transfrontier Television, detailed in paras. 267-272 of the Explanatory Report of this Convention, are cumulatively met, the Parliament may prohibit the retransmission of advertising and teleshopping which target the precise public of the Republic of Moldova and

which are retransmitted regularly. However, when adopting Article 66 para. (7) of the Audio-visual Media Services Code, the legislator did not take into account the conditions in question.

Therefore, given that the legislature has imposed an absolute obligation, without taking into account individual measures less intrusive in the freedom of expression of distributors of audio-visual media services and without differentiating programmes (including advertising and teleshopping) from the Member States of the European Convention on Transfrontier Television and from the States that are not party to this treaty, the Court concluded that the impugned provisions were incompatible with Articles 4 and 32 of the Constitution.

31. THE ASSESSMENT OF THE PROFESSIONAL INTEGRITY TEST`S RESULT BY THE COURT WITHOUT THE PARTICIPATION OF THE TESTED PERSON AND THE IMPOSSIBILITY OF CHALLENGING THE JUDICIAL DECISION ON THE ASSESSMENT OF THE TEST RESULT

On December 7, 2021, the Constitutional Court delivered the Judgment no. 37 on the constitutional review of several provisions of Article 343^8 of the Civil Procedure Code.[31]

Analyzing the provisions of Article 343^8 of the Civil Procedure Code, the Court observed that the court of common law examines the material obtained during the professional integrity test of the public agent. In the process of verifying the compliance with the conditions for authorization, the judge (i) confirms or modifies the proposal of the institution which carries out the evaluation of institutional integrity regarding the assessment of the conduct of the tested public agent and (ii) ascertains the results of the professional integrity test. It follows that the tested public agent does not participate in the examination of the request for the assessment of the result of the professional integrity test, although the court of law decides on the tester's proposal on the assessment of the conduct of the tested public agent.

The Court also observed that the legislature established a right of appeal against the ruling only for the institution which carries out the assessment of institutional integrity. The tested public agent does not have the right to contest this decision (Article 343^8 para. (4) of the Code).

The Court thus analyzed the judicial procedure assessing the result of the professional integrity test in the light of Articles 20 and 26, which guarantee the right of access to a court and the right of defense, in conjunction with Article 54 of the Constitution, which imposes the condition of proportionality in the restriction of fundamental rights.

a) If the interference is "prescribed by law"

The Court found that the legislator clearly defined the notions of „professional integrity test", „professional integrity testing" and „tester" in Article 4 of the Law on the Assessment of Institutional Integrity and held that the provisions of Articles 343^8 of the Civil Procedure Code and 17 paras. (2) – (4) of the Law on the Assessment of Institutional Integrity met the requirements of the quality of the law.

b) On legitimate aim

The Court underlined that the general purposes of the assessment of institutional integrity declared by the legislator were to ensure the professional integrity of public agents and to prevent and combat corruption within public entities, which must carry out its activity in the

[31] Judgment no. 37 of 07.12.2021 on the constitutional review of several provisions of Article 343^8 of the Civil Procedure Code (the assessment of the professional integrity test`s result)

public interest, ensuring the climate of institutional integrity (Articles 2 let b) and 5 para. (1) of the Law).

The Court observed that the professional integrity test plan is a confidential document (Article 15 para. (1) of the Law). Professional integrity testers carry out their activity confidentially (Article 16 para. (1) of the Law). When examining the materials of the professional integrity testing, the judge must verify the tester's compliance with the decision to initiate the testing and the conclusion authorizing the testing, review the audio/video recordings containing information regarding the identity of the testers and the testing measures applied and conclude by concluding the result of the professional integrity testing.

The Court held that the restriction of the exercise of the public agent's rights to participate in the assessment of the test result and to challenge the ordinary court's ruling at this stage aims to ensure the confidentiality of the institutional integrity assessment, the identity of the tester, to ensure the life/health of the tester and his or her family members from retaliation by the tested agent. The confidentiality of testers and test measures also ensures the confidentiality of the special testing measures and to ensure that the usefulness of future operations would not be affected. Also, the procedure provided for by the contested provisions aims to ensure the proper conduct of the integrity assessment. These aims could be subsumed under the following general legitimate aims set out in Article 54 para. (2) of the Constitution: preventing the disclosure of confidential information, protecting the rights of other persons (*i.e.* testers) and ensuring public order.

c) On the rational connection between the measure provided by the contested legal provisions and the legitimate aims pursued

The Court held that the non-participation of the tested public agent in the assessment of the result of the professional integrity test by a court of law and the impossibility of challenging the court's ruling contribute to ensuring the above-mentioned legitimate aims.

d) On the alternative less intrusive measures, which have a rational connection with the legitimate aim pursued

The Court noted that the legislature did not consider the possibility of implementing individual measures that are less intrusive on the right to a fair trial and the right of defense of the tested public agent.

The Court considered that in order to achieve the legitimate aims, the legislator could provide the right of the evaluating institution to request the judge to authorize the professional integrity testing in the framework of the institutional integrity evaluation. After obtaining this authorization, the institution was to directly test the public agents within the evaluated institution and carry out the other two evaluation stages. After completing all the evaluation stages, the evaluation institution was obliged to draw up a report on the results of the evaluation of institutional integrity, which would include, *inter alia*, the assessment of the results of the professional integrity testing of each public agent tested from the evaluated public entity. This assessment could be carried out directly by the testing institution and consisted in testing the behavior of each tested public agent as positive, negative or inconclusive. Also, the legislator could establish that the report drawn up by the evaluating institution is to be sent to the evaluated entity, with the attachment of the processed audio/video recordings.

If it appears from the report on the results of the institutional integrity testing that there are public agents tested negative, the evaluated institution had the right and the obligation to initiate disciplinary proceedings against them and to apply appropriate sanctions.

The Court held that the tested public agent has the right to challenge in administrative proceedings: (*i*) the professional integrity test and (*ii*) the disciplinary sanction imposed as a result of a negative test (Article 22 para. (1) of the Law). From a combined analysis of the legislation, the Court noted that challenging the sanction becomes irrelevant as long as the result of the test has been confirmed by a court ruling. The administrative court will be bound by the res judicata of the ruling on the assessment of the result of the professional integrity test, despite the fact that it is based exclusively on the materials of the assessing institution, without the participation in the judicial proceedings of the public agent tested negatively who was not able to express his opinion on the examined materials and who was not able to challenge it.

The Court held that the ruling delivered under Articles 3438 of the Civil Procedure Code and 17 paras. (2)- (4) of the Law on the Assessment of Institutional Integrity gives the result of the professional integrity test the force of *res judicata* and affects irreparably the right of the public agent tested to free access to justice and his or her right of defense. Thus, the procedure governed by these provisions is an impediment to the conduct of a plenipotentiary judicial review by an administrative court under Article 22 of the Law on the Assessment of Institutional Integrity. The possible right of the tested public agent to challenge the professional integrity test carried out under Article 22 of the Law on the Assessment of Institutional Integrity remains unfeasible and illusory as long as the results of the test are confirmed by a court ruling.

The Court held that the legislator could provide for the right of the tested public agent to challenge the result of the professional integrity test, established by the evaluating institution, in administrative proceedings, after the institutional integrity assessment has been carried out, granting him/her full prerogatives to present evidence in his/her defense. At the same time, the legislator could establish that in the event the tested public agent challenges the result of his or her test, the public entity will not carry out the procedure for disciplinary sanctioning of the tested public agent until a final and irrevocable decision on the result of the professional integrity test has been delivered. Also, in order to respect the limitation period for disciplinary liability, the legislator could provide that, in case of a challenge of the result of the integrity test, the limitation period for disciplinary liability shall be suspended.

The Court concluded that the provisions of Articles 343^{8} of the Code of Civil Procedure and 17 paras (2), (3) and (4) of the Law on the assessment of institutional integrity infringes Articles 20 and 26 in conjunction with Article 54 of the Constitution. In order to make it possible to implement its own decision, the Court held that the text "and the assessment of the result of the professional integrity test" in Article 343^{6} of the Code of Civil Procedure must also be declared unconstitutional.

At the same time, until the amendment of the legislation in the field of institutional integrity evaluation, the institution that evaluates institutional integrity will appreciate its result, after carrying out the professional integrity test. After communicating the test result, the tested public agent will have the opportunity to: 1) to contest the result of the professional integrity test in court on the basis if administrative procedure; 2) to participate in the court examination of the result of the integrity testing, ensuring the confidentiality of the testers, means and methods of testing; 3) to have access to the testing materials, ensuring the confidentiality of the testers, testing means and methods; and 4) to use the remedies regulated by the Administrative Code. Challenging the result of the professional integrity test suspends the time-limit period for disciplinary action.

At the same time, in order to give effect to the present Judgment in the case in which the exception of unconstitutionality was raised, The Court held that, in order to benefit from an effective remedy, the author of the application will have the right to challenge the conclusion on the assessment of the result of the professional integrity testing according to the Code of

Civil Procedure. The term of appeal will be calculated from the date of adoption of the present judgement.

The Court issued an Address to Parliament with a view to amending the legislation in the field of institutional integrity assessment in accordance with the reasoning of this Judgment.

32. THE POWER OF THE SUPERIOR COUNCIL OF MAGISTRACY TO APPOINT JUDGES UNTIL THEY REACH THE AGE LIMIT

On December 7, 2021, the Constitutional Court delivered the Judgment no. 38 on the interpretation of Articles 1 paras. (3), 20 and 116 paras. (1) and (2) of the Constitution and constitutional review of Article 11 para. (1) of the Law on the Status of Judges[32].

The Court` analysis concerned the following:

I. THE INTERPRETATION OF ARTICLES 1 PARAS. (3), 20 AND 116 PARAS. (1) AND (2) OF THE CONSTITUTION

(*i*) General principles on the independence of judges and regarding the status of the Superior Council of Magistrates

The Court reiterated that judicial independence is neither an end in itself nor a personal privilege, but aims to ensure the judge the possibility to exercise his/her role as protector of the rights and freedoms of citizens. The Court emphasized that the protection granted to the judge constitutes an asset of the whole society. In a State governed by the rule of law, the principle of judicial independence is accompanied by several guarantees, vital for institutional and individual judicial independence and without which the effective and impartial functioning of the courts would be impossible. In its Decision no. 23 of June 27, 2017, the Court held that the Superior Council of Magistracy has the role of guaranteeing the independence of the judicial authority. At the same time, in the Advisory Opinion no. 1 of September 22, 2020, the Court stated that the Superior Council of Magistrates has the primary role in the procedures regarding appointment, promotion, transfer, resignation or release from the position of judge, and any deviation from this rule contravenes Article 123 para. (1) of the Constitution.

The Court emphasized that the texts "under the conditions of the law", "according to the law" and "by organic law" in the content of articles 116 paragraphs (1) and (2) and 123 para. (2) must be interpreted in accordance with the principle of the rule of law, which is inherent in all articles of the Constitution. In the Report on the Rule of Law, the Venice Commission established that laws must apply equally to all, except where there are objective differences that justify differentiation [CDL-AD(2011)003rev, § 65]. At the same time, the Commission emphasized that the observance of the principle of the preeminence of law is not limited only to the implementation of the explicit and formal provisions of the law and the Constitution, but also implies constitutional behavior and practices that facilitate compliance with formal norms by all constitutional bodies and mutual respect between them (Opinion no. 685/2012 of 17 December 2012, CDL-AD(2012)026, § 72).

The principle of the preeminence of law is guaranteed in particular by Article 1 para. (3) of the Constitution. At the same time, Article 20 of the Constitution, which guarantees the right of free access to justice, establishes that the right of free access to justice must be realized in

[32] Judgment no. 38 of 07.12.2021 on the interpretation of Articles 1.3, 20 and 116.1 and 116.2 of the Constitution and constitutional review of Article 11.1 of the Law on the Status of Judges (appointment of judges until reaching the age limit)

accordance with the law, in order to guarantee compliance with the rigors of a court established by law. Any deviation from this standard is a violation of Article 20 of the Constitution.

(*ii*) The authorities competent to appoint the judges, in accordance with the provisions of Article 116 para. (2) of the Constitution

In its case-law, the Court stated that the decisive influence of an independent judicial council on decisions regarding the appointment and career of judges is an appropriate method for guaranteeing the independence of the judiciary. The Court also mentioned that the role of the President of the Republic in the process of appointing judges is not an unusual fact. The reduction to a single date of the possibility of the President of the Republic to reject a candidacy is an expression of the correct balance between the Superior Council of Magistrates and the President and assumes the decisive influence of the Council (Opinion no. 1 of 22 September 2020, § 43).

In a case concerning the independence of judges in France, the European Court stated that the mere appointment of judges by a member of the executive does not in itself create a dependency, if, once appointed, these judges are not subject to pressure or instructions in the exercise of their judicial function (*Thiam v. France*, 18 October 2018, §§ 80-82).

The Court held that the establishment in the Constitution of the procedure for the appointment of judges represents a guarantee of the independence of judges and the impartial exercise of their duties. However, according to Article 116 para. (2) of the Constitution, the exercise of this power is subject to legislative regulation, which must reconcile and ensure the protection of the principles of judicial independence, the rule of law and the status of the Council as a body empowered with judicial administration. The Court emphasized that, although it is up to the legislature to make the initial assessment, the final assessment remains subject to the control of the Constitutional Court.

The Court stated that its task was to confirm the existence of minimum requirements which the relevant laws must comply with. The list of criteria, according to which independence must be assessed, includes, inter alia, the manner of appointment of the judges, their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (*Fruni v. Slovakia*, 21 June 2011, § 141; *Ramos Nunes de Carvalho e Sá v. Portugal*, 6 November 2018, § 144). Among other things, when examining the appointment of judges and determining whether the standard of the "tribunal established by law" has been complied with, the Court must verify whether the procedure for instituting a court is provided by law and is applied for the appointment in judicial office.

(*iii*) The legal framework on the appointment of judges in office

The internal regulatory framework regarding the appointment of judges until reaching the age limit is constituted, in particular, by the provisions of Article 116 of the Constitution, from those of the Law on the status of judges and from those of the Law on the selection, performance evaluation and career of judges. The Court mentioned that the mentioned infra-constitutional laws develop the constitutional provisions, concretizing the evaluation criteria, as well as the procedure before the Superior Council of Magistrates for the appointment to the position of judge.

The Court noted that the laws in question set up a specialized college for assessing the performance of judges. In essence, this body ensures the self-administration of the judiciary, consisting of a qualified majority of judges, who are elected by methods that ensure their widest representation. According to the relevant normative framework, the judges' evaluation board

verifies the meeting by the judges of the conditions for the position held or for the position they claim during their career.

Seen in the abstract and outside any context, these provisions appear to ensure the independence of judges and to exclude any appearance capable of affecting the public's confidence in the independence of the judiciary. Thus, as long as the appointment of judges until reaching the age limit involves strict rules, the standard of independence is respected.

(*iv*) The discretionary margin of the Superior Council of Magistrates in the procedure for appointing judges until reaching the age limit

The Court noted that the Constitution does not expressly provide for a competence of the Council to appoint judges at its discretion until they reach the age limit. However, such a competence can be deduced on the basis of the principle of judicial self-administration, as well as on the basis of the text "appointed by the President of the Republic of Moldova, upon proposal by the Superior Council of Magistracy" in Article 116 para. (2) of the Constitution.

The Court found that this competence presupposes that the Council is the final authority which must decide definitively on the appointment of judges until reaching the age limit. Therefore, given that such a discretion may affect the neutrality of the procedure for appointing judges, the Court had to determine whether it was justified and accompanied by appropriate safeguards, which preclude arbitrariness.

(*v*) The weighting of the principles of judicial independence and the rule of law with the principle of judicial self-administration

The Court observed that the text "under the conditions of the law" in Article 116 para. (2) of the Constitution substantially limits the power of the Council to appoint judges until reaching the age limit. Firstly, the competence in question is subject to legislative regulation, and secondly, this limitation also imposes an obligation on the Council to comply with the conditions established in the law. Therefore, a first condition imposed on the Council in the exercise of the power to appoint judges until reaching the age limit is represented by the principle of the rule of law. At the same time, the Court also retained implicit limitations, deduced from the scope of Articles 20 and 116 para. (1) of the Constitution, which impose strict requirements that a court must comply with, by reference to the standard of a "tribunal established by law".

On the other hand, regarding the principle of judicial self-administration, the Court found that it does not only aim to recognize, in a formal manner, an autonomy of the Council, but it is, in essence, a means of guaranteeing the protection of the independence of the judiciary, through its self-administration. Taking into account the significant impact of the recognition of a discretionary margin of the Superior Council of the Magistrates on the public perception of the judicial power, it is essential that its justification is based on real and justified reasons.

The Court held that the objective of protecting the judiciary could, in principle, be a legitimate reason to grant the Council a margin of discretion designed to mitigate this risk. However, the hypothetical risks that would result from the recognition of a margin of discretion of the Council would make the judiciary subject to influences. The Court emphasized that a judiciary subject to influences contradicts the value of the rule of law.

The Court held that, in such a case, it is plausible to impair independence by subordinating judges appointed for the initial five-year period to the Council. The fact that judges are initially appointed for a five-year term, and then are to be confirmed until they reach the age limit, makes it plausible to fear that they will guide their actions to win the Council's indulgence, sometimes

to the detriment of justice. Thus, factors such as the threat of dismissal or the desire to be confirmed until the age limit is reached may lead to a "deferential" attitude towards the Council. Although the Council is the authority that decides on the appointment of judges until they reach the age limit, the competence in question must be exercised in such a way that the independence of judges is not compromised. A high degree of influence over the career of judges can compromise the structure of the entire judicial system.

The Court noted that the existence of this discretion is unreasonable when it is subject to an overall assessment in order to determine the impact on the independence of judges. The risk of hijacking the protection and the susceptibility to external influences that would result from these circumstances would be able to undermine public confidence in the courts. The Court found that the power of the Council to decide on the appointment of judges until reaching the age limit at its discretion does not find a real justification so as to ensure a fair balance between the principle of self-government and confidence in the judiciary. In fact, when all these elements are analyzed, the image that emerges is not that of increased protection of judges. What stands out is a structure that could protect, but also exercise control, and therefore influence.

As a result, the Court emphasized that Article 116 para. (2) of the Constitution must be interpreted as meaning that, after the expiry of the five-year term, judges shall be appointed until they reach the age limit without an additional assessment by the Superior Council of Magistracy.

II. On the constitutional review of Article 11 para. (1) of the Law on the status of the judge

According to the second sentence of article 11 para. (1) of the Law on the status of the judge, selected candidates who meet the conditions specified in Article 6 are appointed to the position of initial judge for a term of five years. After the expiry of the five-year term, judges are appointed until reaching the age limit of 65 years.

Although the provision does not establish the criteria on the basis of which the appointment of judges is decided until the age limit is reached, The Court held that they are found in the Law on the selection, performance evaluation and career of judges. In his analysis of the procedure for appointing judges until the age limit is reached, The Court established that, although the appointment of judges is conditionate by the evaluation and obtaining a positive qualification before a specialized Board of the Superior Council of Magistrates, this power is assigned to a body within the Council, thus complying with the requirements imposed by article 123 para. (1) of the Constitution. On the other hand, the Court held that the criteria applied in order to evaluate a candidate are provided by law.

Therefore, the Court held that Article 11 para. (1) of the Law on the status of the judge can be applied in accordance with the conclusions of the Court held in the interpretation of articles 1 para. (3), 20 and 116 paragraphs (1) and (2) of the Constitution.

33. THE UNFORESEEABLE NATURE OF THE EXPRESSION "PUBLIC INTERESTS" IN THE CONTEXT OF THE CRIME OF ABUSE OF SERVICE IN THE PRIVATE SECTOR

On December 21, 2021, the Constitutional Court delivered the Judgment no. 39 on the exception of unconstitutionality of the expression "public interests" from Article 335 para. (1) of the Criminal Code[33].

Article 335 para. (1) of the Criminal Code establishes liability for the intentional use by a person who manages a commercial, public or other non-governmental organization or who works for such an organization, of the service situation, of the organization's assets in material interest, in other personal interests or in the interest of third parties, directly or indirectly, if this has caused considerable damage to public interests or the rights and interests protected by law of natural or legal persons.

The author of the exception of unconstitutionality sustained that the expression "public interests" in the mentioned article is unpredictable.

The Court examined this exception of unconstitutionality on the basis of Articles 1 para. (3) and 22 of the Constitution, which guarantees the principle of the legality of incrimination and criminal punishment, and of Article 23 of the Constitution, which establishes the requirements regarding the quality of the law.

The Court recalled that it had previously declared unconstitutional the text "public interests or" in Articles 327 para. (1) [*abuse of power or abuse of office*], 328 para. (1) [*excess of power or excess of office*], 329 para. (1) [*negligence in office*], 361 para. (2) let. d) [making, possessing, selling or using official documents, prints, stamps or fake seals] from the Criminal Code, because it was established contrary to the Articles 1 para. (3), 22, 23 para. (2) from the Constitution (see JCC no. 22 of 27 June 2017, JCC no. 33 of 7 December 2017 and JCC no. 24 of 17 October 2019).

The Court reiterated that the criminal law does not have clear and predictable criteria for the concrete assessment of the impact of a person's actions regarding an abstract value such as the "public interest" (JCC no. 33 of 7 December 2017, § 108).

Considering the abstract nature of the contested expression, the Court found that the text of "public interest" from Article 335 para. (1) of the Criminal Code is susceptible to an unforeseeable unfavorable interpretation in the case of the perpetrator. Unforeseeable unfavorable interpretation represents a violation of the principle of the legality of the crime and the legality of the punishment. In the absence of fixed benchmarks established in the criminal law, the qualification of the prejudicial consequences of the crime of abuse of office in the private sector for the "public interest" can be done at the discretion of those who apply the criminal law, the litigant being in a state of legal uncertainty. The Court also found that the text "public interests or" from Article 335 para. (1) of the Criminal Code complicates the description of the crime of abuse of office in the private sector, being a source of legal uncertainty. The notion of "public interest" has an abstract nature and does not ensure the identification of the person to whom the damages were caused, i.e., the victim of the crime (JCC no. 24 of 17 October 2019, § 141).

Thus, the Court held that both the solution and the considerations in Judgements no. 22 of June 27, 2017, no. 33 of December 7, 2017 and no. 24 of October 17, 2019 are applicable, *mutatis mutandis*, in this case as well.

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[33] Judgment no. 39 of 21.12.2021 on the exception of unconstitutionality of the expression "public interests" from Article 335 para. (1) of the Criminal Code (the unforeseeable nature of the expression "public interests").

Therefore, the Court concluded that the text "public interests or" in Article 335 para. (1) of the Criminal Code does not meet the quality standard of the criminal law, being contrary to Articles 1 para. (3) and 22, in conjunction with Article 23 para. (2) from the Constitution.

At the same time, the Court mentioned that declaring as unconstitutional the text "public interests or" in Article 335 para. (1) of the Criminal Code does not restrict the scope of this article. In this regard, the Court notes that the legal expression that is maintained [caused damage in considerable proportions to the rights and interests protected by law of natural or legal persons] protects all potential victims of the crime provided for in Article 335 para. (1) of the Criminal Code, considering that legal entities can be of public or private law (see Article 173 of the Civil Code). Thus, it reasonably follows that the possible material damages caused to public interests can be found in the category of damages caused to the rights and interests protected by law of the legal entity under public law, including the State, territorial-administrative units and other legal entities under public law (see, *mutatis mutandis*, JCC nr. 24 of 17 October 2019, § 143).

The Court declared unconstitutional the text "public interests or" from Article 335 para. (1) of the Criminal Code, adopted by Law no. 985 of April 18, 2002.

B. Advisory opinions

In 2021, the Court delivered the following advisory opinions:

- Advisory opinion no. 1 of 15.04.2021 for ascertaining the circumstances that justify the dissolution of the Parliament;
- Advisory opinion no. 2 of 26.10.2021 on the draft law for amending Article 70 of the Constitution (immunity of the MP).

C. Validation of MP mandates

In the plenary sessions of the Court, no circumstances were established that would prevent the validation of the mandates of Member of Parliament assigned to the following alternate candidates:

- Mr. Grigorii Uzun, on the list of the Political Party “Party of Socialists of the Republic of Moldova” (JCC 5/2021);
- Mr. Viorel Barda, on the list of the Political Party "Action and Solidarity Party" (JCC 26/2021);
- Mrs. Ana Calinici, Mrs. Evghenia Cojocari, Mr. Boris Popa, Mrs. Ana Oglinda and Mr. Dorel Iurcu, on the list of the Political Party "Action and Solidarity Party" (JCC 28/2021);
- Mr. Vitali Gavrouc, on the list of the Political Party "Action and Solidarity Party" (JCC 32/2021);
- Mr. Adrian Lebedinschi, on the list of the Electoral Bloc of Communists and Socialists (JCC 34/2021).

At the same time, by Judgment no. 20 of July 23, 2021, the Court confirmed the results of the new parliamentary elections of the XI legislature from July 11, 2021 and validated the mandates of the elected MPs to the Parliament of the Republic of Moldova in the snap elections of July 11, 2021, and confirmed the lists of substitute candidates for the position of MP in the Parliament of the Republic of Moldova, according to the annex to the same decision.

D. Requests

In 2021, the Court issued the following requests to the Parliament:

- **Request no. PCC-01/2a/124 of March 4, 2021**

On March 4, 2021, the Constitutional Court delivered the Judgment no. 7 on the constitutional review of several provisions of the Law on the Government, in the part related to the powers of the Government whose mandate has ended.

By the mentioned Judgment, the Court clarified its case-law on the competences of the Government whose mandate has ended, as they are established by Article 103 para. (2) of the Constitution. The Court established thus that in each case the Government whose mandate has ended considers it necessary to adopt a precise measure, it must consider the following test: a) if the measure is necessary; b) if the measure will have repercussions on the powers of the next Government with full powers and c) if the next Government with full powers can cancel the measure adopted by the Government whose mandate has ended.

The Court held that the test mentioned above must be applied: a) by the Parliament when regulating the powers of the Government whose mandate has ended; b) by a Government whose mandate has ended in each case it considers it necessary to adopt a precise measure; c) by the courts in each case where they are called to verify the legality of the measures adopted by a Government whose mandate has ended; d) by the Constitutional Court in each case in which it is referred to verify the constitutionality of the measures adopted by a Government whose mandate has ended or of the legal provisions that regulate these measures, if their verification is within its competence, as established in Article 135 para. (1) lit. a) from the Constitution.

In this context, the Court asked the Parliament to regulate the powers of the Government whose mandate has ended, established by Article 15 para. (2) from the Law on the Government, and make changes in the related legislation in accordance with the reasoning of the Constitutional Court`s Judgment no. 7 of March 4, 2021.

- **Request no. PCC-01/151g-186 of April 6, 2021**

By Judgment no. 12 of April 6, 2021, the Constitutional Court declared as unconstitutional Article 81 of the Criminal Procedure Code, in the part related to the omission to include the husband as a potential successor of the injured party or the civil party.

The Court also declared unconstitutional the text "if several close relatives request this status, the decision to choose the successor rests with the prosecutor or the court" in Article 81 para. (2) of the Criminal Procedure Code.

In order to avoid a legislative vacuum, the Court established a provisional solution, taking into account the reasoning of the judgment delivered. In particular, until Parliament amends Article 81 of the Criminal Procedure Code, the husband will be able to be recognized as a successor in the criminal process of the injured party or civil party.

- **Request no. PCC-01/168g-263 of May 20, 2021**

By Judgment no. 16 of May 20, 2021, the Constitutional Court declared unconstitutional Article 27 para. (5) from Law no. 270 of November 23, 2018 and point 8 of Annex no. 6 to Government Decision no. 1231 of December 12, 2018, in the part related to the omission to include in the category of budgetary employees who are paid the salary difference of budgetary employees who, on the date of entry into force of Law no. 270/2018 ensured the interim of a public management office and returned to the position exercised before the interim.

In order to avoid a legislative vacuum, the Court established a provisional solution, taking into account the reasoning in the judgment. In particular, until the amendment by the Parliament of Article 27 para. (5) from Law no. 270 of November 23, 2018, budgetary employees who have worked continuously in the same budgetary unit and who on the date of entry into force of Law no. 270/2018 ensured the interim of a public management office, upon returning to the position exercised before the interim, they will be paid the difference in salary.

- **Request no. PCC-01/208g/485 of August 12, 2021**

On August 12, 2021, the Constitutional Court issued Decision no. 25 on the exception of unconstitutionality of several provisions of Article 287 para. (1) of the Criminal Code.

By the mentioned Judgment, the Court declared as unconstitutional the text "gross" and the text "cynicism or" from Article 287 para. (1) of the Criminal Code of the Republic of Moldova, adopted by Law no. 985 of April 18, 2002.

The Court also mentioned that the solution on unconstitutionality of the text "cynicism or" from Article 287 para. (1) of the Criminal Code requires the grammatical adaptation of the word "by a" from the same article.

- **Request no. PCC-01/41g-692 of December 7, 2021**

By Judgment no. 37 of December 7, 2021, the Constitutional Court declared as unconstitutional Article 343^8, the text "and assessment of the result of the professional integrity test" from Article 343^6 of the Civil Procedure Code and paras. (2), (3) and (4) of Article 17 of Law no. 325 of December 23, 2013 on the evaluation of institutional integrity.

In order to avoid a legislative vacuum, the Court established a provisional solution, according to which the institution that evaluates institutional integrity will assess its result, after carrying out the professional integrity test. After communicating the test result, the tested public agent will have the opportunity to: 1) to challenge the result of the professional integrity test in court based on administrative procedure; 2) to participate at the hearing on the result of the integrity testing, ensuring the confidentiality of the testers, means and methods of testing; 3) to have access to the testing materials, ensuring the confidentiality of the testers, testing means and methods; 4) to use the remedies regulated by the Administrative Code. Challenging the result of the professional integrity test suspends the limitation period for disciplinary action. In this context, the Court requested the Parliament to amend the legislation in the field of institutional integrity assessment in accordance with the reasoning of the Constitutional Court's judgment.

E) Separate opinions

Judges have given separate opinions on several acts delivered by the Court:

- **Vladimir Țurcan**, to Judgment no. 4 of 21.01.2021 on the constitutional review of Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova; to Judgment no. 10 of 22.03.2021 on the constitutional review of Decree of the President of the Republic of Moldova no. 47-IX of 16 March 2021 on the appointment of the candidate for the position of Prime Minister; to Advisory Opinion no. 1 of 15.04.2021 for ascertaining the circumstances that justify the dissolution of the Parliament; to Judgment no. 15 of 28.04.2021 on the constitutional review of the Government Decision regarding the proposal to declare a state of emergency no. 43 of

March 30, 2021 and the Parliament's Decision on the declaration of the state of emergency no. 49 of March 31, 2021; to Decision no. 149 of 30.09.2021 id inadmissibility of the applications no. 198a/2021, no. 202a/2021 and no. 203a/2021 on the constitutional review of several provisions of Law no. 3 of 25.02.2016 regarding the Prosecutor's Office, of Law no. 102 of 24.08.2021 and of the Decree of the President of the Republic of Moldova no. 147-IX of 06.092021 on the termination *ex lege* of the mandate of a member of the Superior Council of Prosecutors of Mr. Dumitru Pulbere;

- **Liuba Șova**, to Judgment no. 7 of 04.03.2021 on the constitutional review of Articles 15 paras. (2) d) e) f) and (3), 23 paras. (3) and (6) and 26 paras. (6)-(9) of Law on the Government no. 136 of 7 July 2017;
- **Nicolae Roșca**, to Judgment no. 9 of 18.03.2021 on the constitutional review of Law no. 230 of December 16, 2020 for the abrogation of Law no. 235/2016 regarding the issuance of State bonds in order to execute by the Ministry of Finance the payment obligations derived from the State guarantees no. 807 of 17 November 2014 and no. 101 of 1 April 2015; to Judgment no. 25 of 12.08.2021 on the constitutional review of several provisions of Article 287 para (1) of the Criminal Code; to Judgment no. 36 of 23.11.2021 on the constitutional review of Articles 66 para. (7) and 84 para. (13) of the Audiovisual Media Services Code; la Judgment no. 38 of 07.12.2021 on interpretation of Articles 1 para. (3), 20 and 116 paras. (1) and (2) of the Constitution and the constitutional review of Article 11 para. (1) from Law no. 544 of July 20, 1995 regarding the status of the judge
- **Serghei Țurcan**, to Advisory Opinion no. 1 of 15.04.2021 for ascertaining the circumstances that justify the dissolution of the Parliament; la Decision no. 137 of 13.09.2021 for the confirmation of the Constitutional Court`s Decision no. 136 of September 6, 2021 on the request to suspend the action of some provisions of Law no. 3 of February 25, 2016 regarding the Prosecutor's Office, in the wording of Law no. 102 of 24.08.2021; to Decision no. 149 of 30.09.2021 id inadmissibility of the applications no. 198a/2021, no. 202a/2021 and no. 203a/2021 on the constitutional review of several provisions of Law no. 3 of 25.02.2016 regarding the Prosecutor's Office, of Law no. 102 of 24.08.2021 and of the Decree of the President of the Republic of Moldova no. 147-IX of 06.092021 on the termination *ex lege* of the mandate of a member of the Superior Council of Prosecutors of Mr. Dumitru Pulbere; to Judgment no. 38 of 07.12.2021 on interpretation of Articles 1 para. (3), 20 and 116 paras. (1) and (2) of the Constitution and the constitutional review of Article 11 para. (1) from Law no. 544 of July 20, 1995 regarding the status of the judge.

TITLE III. ENFORCEMENT OF THE CONSTITUTIONAL COURT`S ACTS

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

The acts of the Constitutional Court have an *erga omnes* effect, being binding and opposable to all subjects, regardless of the level of authority.

The finding of legislative inaction, i.e. of the loophole of the law or of another normative act contrary to the Constitution, inevitably generates legal consequences. The judgement of the Constitutional Court presupposes the obligation of the legislator to solve the problem of the existence of legal loopholes through an adequate regulation and the elimination of the defective provisions.

The lack of a legislative intervention of the Parliament in order to execute the acts of the Court of constitutional jurisdiction is equivalent to the non-exercise of its basic power, namely that of enactment, attributed by the Constitution. This situation is attested in the conditions in which some judgements of the Constitutional Court by which a legal provision or an act is declared unconstitutional may generate legislative vacuum, deficiencies and uncertainties in the application of the law.

In order to exclude these negative repercussions, Article 28^1 of the Law on the Constitutional Court stipulates that the Government, within a maximum of 3 months from the date of publication of the Constitutional Court`s judgement, presents to the Parliament the draft law on amending and supplementing or repealing the normative act or parts thereof declared unconstitutional. The draft law is to be examined by the Parliament as a matter of priority.

At the time of the adoption of this Report, the following acts remain unexecuted by the legislator: from 2011 – a request; from 2014 – 3 requests; from 2015 – 2 judgments and a request; from 2016 – a judgment and a request; from 2017 – a judgment and 4 requests; from 2018 – a judgment and 2 requests; from 2019 – 3 judgments and 2 requests; from 2020 – 4 judgments and 6 requests; din 2021 – 12 judgments and 3 requests.

At the same time, at the Court`s request to the legislature and the executive regarding the execution of the acts adopted by the Court, the Parliament informed the Court establishing a working group in order to expedite the process of execution of unexecuted acts. Thus, on 03.12.2021, the legislative initiative no. 390 on the modification of several normative acts was registered in Parliament, for the execution of decisions and requests adopted by the Constitutional Court in 2011-2021.

TITLE IV. EXTERNAL COOPERATION

On February 18, the President of the Constitutional Court, Ms. Domnica Manole, participated in the Post-Election Analysis Online Conference "Presidential elections in the Republic of Moldova 2020: analysis, conclusions, recommendations and next steps", organized by the Central Electoral Commission in collaboration with the Council of Europe. The event aimed to identify the shortcomings that characterized the November 2020 presidential election and generate proposals for improving electoral law and practice. Electoral officials, representatives of central and local public authorities, electoral contestants, electoral experts and national and international observers who monitored the presidential elections participated in this Conference.

On February 24-25, the President of the Constitutional Court participated online in the 18th Congress of the Conference of European Constitutional Courts, in which the Constitutional Court of the Republic of Moldova took over the Presidency of the Conference of European Constitutional Courts (CCCE) for a three-year term. The Constitutional Court of the Republic of Moldova has been a member of the CCCE since 2000. The conference brings together representatives of 41 constitutional courts or institutions with similar powers and provides a platform for member states to share their views on institutional and structural issues, good practices in the field of public law and constitutional jurisdiction. During the last Congress of the Conference in 2017, the Constitutional Court of the Republic of Moldova was elected to exercise the Presidency of the CCCE in the period 2020-2023. Due to the pandemic situation, the mandate was taken over on February 25, 2021.

On February 26, the President of the Constitutional Court welcomed His Excellency, Mr. Roelof S. Van Ees, Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands in Romania and in the Republic of Moldova, and His Excellency, Mr. Floris van Eijk, Head of the Office of the Dutch Embassy in Chisinau. During the meeting, topics were

addressed regarding the role of the Constitutional Court in society, institutional competences and priorities, the importance of the independence of judges, as well as the impact of respecting the principle of the rule of law in the Republic of Moldova. The President of the Court informed the Embassy representatives about the taking over by the Constitutional Court of the Republic of Moldova of the Presidency of the Conference of European Constitutional Courts (CCCE) for a three-year mandate. Using this opportunity, Mr. Ambassador congratulated Mrs. President on the occasion of the Constitutional Court holding the presidency of the CCCE, organization of which the Supreme Court of the Netherlands is also a member. Mrs. Domnica Manole reiterated the importance of developing bilateral relations with the Netherlands, expressing her openness to implement joint projects.

On March 26, the Constitutional Court of Romania and the Constitutional Court of the Republic of Moldova organized an online seminar within the joint program dedicated to the constitutional control exercised by the two high jurisdictions. The program was addressed to magistrate assistants of the Constitutional Court of Romania and judicial assistants of the Constitutional Court of the Republic of Moldova, being coordinated by Mr. Benke Károly, chief magistrate assistant of the Constitutional Court of Romania, and by Mr. Teodor Papuc, deputy chief secretary of the Constitutional Court of the Republic of Moldova. The seminar was well attended by magistrate assistants/judicial assistants, discussing on the legal issues that were the subject of the presentations. Webinars continued on May 21 and July 2, with the same format.

In April, in the context of the constitutional crisis in the Republic of Moldova triggered by the Parliament's attempt to revoke the mandate of Domnica Manole as a constitutional judge, the international community came with messages of support in favor of the Constitutional Court. It is about the President of the Venice Commission, Mr. Gianni Buquicchio, the President of the European Council, Mr. Charles Michel, The President of the European Commission, Mrs. Ursula von der Leyen, the High Representative of the EU for Foreign Affairs and Security Policy, Mr. Josep Borrell, the chief spokesperson for foreign affairs and security policy of the European Union, Mr. Peter Stano, and the Head of the Delegation of the European Union in the Republic of Moldova, Mr. Peter Michalko. Also, the Constitutional Court of Romania and several accredited diplomatic missions in the Republic of Moldova came with messages of support: Embassy of the United States of America, Embassy of Romania, Embassy of France, Embassy of Germany, Embassy of the United Kingdom, Embassy of the Kingdom of the Netherlands, Embassy of Sweden, Embassy of Austria, Embassy of Latvia and Embassy of Lithuania. In May, the French magazine *Lettre de l'Est* published an interview with the President of the Constitutional Court, Mrs. Domnica Manole, her interlocutor being Mrs. Natașa Daneliciuc-Colodrovschi, doctor of public law, research assistant at Aix Marseille Univ, University of Toulon, Univ Pau & Pays Adour, CNRS, DICE, ILF, Aix-en-Provence, France.

On May 20, 2021, the President of the Constitutional Court, Mrs. Domnica Manole, meet His Excellency, Mr. Daniel Ioniță, the Extraordinary and Plenipotentiary Ambassador of Romania to the Republic of Moldova. During the meeting, it was discussed about the role of the Constitutional Court in society, the powers and institutional priorities, as well as the bilateral cooperation of the Constitutional Court of the Republic of Moldova with the Constitutional Court of Romania.

On June 14, at the Constitutional Court of the Republic of Moldova was held a meeting with the delegation of the OSCE/ODIHR Mission to observe the parliamentary elections of July 11, 2021, led by the head of the Mission, Mr. Tamas Meszerics. The visit to the Constitutional Court is one of the official meetings planned in the activity carried out by the Mission in its mandate, the purpose and role of the Mission in the July 11 elections being presented. The discussions also focused on the mandate and the role of the Constitutional Court in the electoral process and the way the elections were conducted. It was addressed legal aspects regarding the

procedure for validating parliamentary elections and confirming their legality by the Constitutional Court, the way of considering electoral disputes and the execution of the requests issued by the Court in respect of previously adopted judgments.

On June 18, the President of the Constitutional Court, Ms. Domnica Manole, met with His Excellency, Mr. Roelof S. Van Ees, Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands to Romania and the Republic of Moldova, and with his Excellency, Mr. Floris van Eijk, Head of the Office of the Dutch Embassy in Chisinau. During the meeting, I was addressed tops regarding the powers and priorities of the Constitutional Court, as well as the imperative to respect the principle of the rule of law in the Republic of Moldova.

On June 24, the President of the Constitutional Court had a meeting with His Excellency, Mr. Ambassador Peter Michalko, the head of the European Union delegation in the Republic of Moldova. During the meeting, it was addressed issues related to international cooperation, given the assumption by the Court of the Presidency of the Conference of European Constitutional Courts, the preparation of a congress for the Conference, in which the representatives of the member courts will participate, and the challenges to the independence of the Constitutional Court of the Republic of Moldova.

On July 5-6, the President of the Constitutional Court participated in the work of the World Law Congress under the auspices of the World Jurists Association, organized in Madrid, Spain. The first day of the Congress was dedicated to the memory of Justice Ruth Bader Ginsburg of the Supreme Court of the United States of America (1933-2020), first rank legal personality. During the second day of the Congress, Mrs. Domnica Manole gave a presentation in a section on the independence of the judiciary in Europe, in which she addressed the challenges to the Constitutional Court of the Republic of Moldova. The section was moderated by Mr. Juan Jose Gonzales Rivas, President of the Constitutional Court of Spain, and also had as speakers the President of the Supreme Court of Slovenia, the President of the Constitutional Court of Andorra, the President of the Supreme Administrative Court of Finland and the President of the Constitutional Court of Latvia. During this Congress, it was established relations with Mr. Javier Cremades, President of the World Association of Jurists, with Mr. Richard Wagner, the President of the Supreme Court of Canada, with Mr. Jose Igreja Matos, the President of the European Association of Judges, etc.

On July 7, the President of the Constitutional Court paid a visit to the Constitutional Court of Spain to have a meeting with her counterpart, President Juan José González Rivas. During the visit, ideas were exchanged about the two courts, their competences were presented, the possible participation of the Constitutional Court of the Republic of Moldova in the annual quadrilateral meetings between the Constitutional Court of Spain was discussed, the Constitutional Court of Portugal, the Constitutional Court of Italy and the French Constitutional Council. On this occasion it was laid the foundations for signing of a memorandum of collaboration between the two courts.

On July 7, the Constitutional Court hosted an information session for the youth summer with the generic #YouthActorHumanRights (*Youth act for human rights*), activity carried out under the auspices of the United Nations Development Programme (UNDP) in Moldova in the context of promoting the increase of the level of understanding and involvement of youth in increasing access to justice. By interactive dialogue, the youth became familiar with the activity, structure and powers of the Constitutional Court, as well as the functions of the Constitutional Court in a democratic society for the defense of fundamental human rights.

On July 9, the President of the Constitutional Court, Mrs. Domnica Manole, had a meeting with the observer mission of the International Organization of La Francophonie for monitoring the snap parliamentary elections of July 11, 2021, led by Her Excellency Mrs. Eva Descarrega Garcia, Ambassador of the Principality of Andorra to the French Republic and to the

Principality of Monaco. The visit to the Constitutional Court was one of the official meetings planned in the activity carried out by the Mission in its mandate. During the meeting, the discussions focused on the mandate and the role of the Constitutional Court in the electoral process, as well as on the manner of conducting the elections. It was addressed aspects related to the procedure for validating the parliamentary elections and confirming their legality by the Constitutional Court, of the way of resolving electoral disputes and of the execution of the requests issued by the Court in the context of the validation of the previous parliamentary elections.

On July 29, the Court was visited by a group of young people on the occasion of the 27th anniversary of the Constitution. The visit was organized by the Chisinau Municipal Youth Center of the General Directorate of Education, Youth and Sports with the aim of familiarizing young people with the structure and activity process of the Court. During the informative session, the young people benefited from a presentation by a constitutional judge and the head of the Judicial Assistance Department regarding the significance of the Constitution and the role of the Court as guarantor of its supremacy.

On August 6, the President of the Constitutional Court had a meeting with His Excellency, Mr. Daniel Ioniță, Ambassador of Romania to the Republic of Moldova, who donated legal books from the Constitutional Court of Romania for the Constitutional Court of the Republic of Moldova. During the meeting, it was discussed the possible joint projects of the two Courts

On August 26, the Conference of European Constitutional Courts, represented by the Constitutional Court of the Republic of Moldova as its President, signed online a Memorandum of Understanding with the Association of Constitutional Courts and Equivalent Institutions in Asia, represented by the Constitutional Council of the Republic of Kazakhstan, as its President. According to the Memorandum, the two organizations will promote cooperation in several areas, such as creating conditions for mutual exchange of information, of experience and other materials of a legal nature in the field of constitutional justice between the members of the Parties, joint organization of conferences, seminars and/or other events regarding urgent constitutional justice issues of common interest, etc.

On August 27, the President of the Constitutional Court participated in the International Conference "The Age of the Internet: the rule of law, the person`s values, the independence of the State", organized online by the Constitutional Council of the Republic of Kazakhstan. In this regard, the President of the Court held a speech on the topic "The conflict between freedom of expression and the right to private life in the context of the Internet". This event was attended by well-known names in the field of law, such as the President of the Venice Commission, Mr. Gianni Buquicchio, the Secretary General of the World Conference of Constitutional Justice, Mr. Schnutz Dürr, and the presidents of several constitutional courts and equivalent institutions around the world.

On September 28, the President of the Constitutional Court, Mrs. Domnica Manole, had a meeting with the Director of the Rule of Law South-East Europe Program of the Konrad Adenauer Foundation, Mr. Pavel Usvatov, and the project coordinator within the Program, Mr. Stanislav Splavnic. The discussions focused on a possible collaboration between the organization and the Court, through the development of joint projects in order to strengthen the principle of the rule of law in the Republic of Moldova.

During October, in the context of the Constitutional Court`s of Latvia project "Strengthening the capacity of jurists of the Constitutional Court of the Republic of Moldova", lawyers from the Court of Moldova participated in web-seminars organized by lawyers of the Latvian Court and other Latvian experts, in order to strengthen the professional capacity of the former. The purpose of the project was to increase the professional knowledge of judges and judicial assistants of the Constitutional Court of Moldova, including in matters of application of

international human rights law and case-law establishing the justified nature of human rights limitations. The first part was dedicated to the judicial assistants of the Court of Moldova, and the second was organized for the judges of the Court.

On October 20, the judges of the Constitutional Court had a meeting with the President of the Venice Commission, Mr. Gianni Buquicchio, and the Deputy General Secretary of the Venice Commission, Ms. Simona Granata-Menghini. During the discussions, the close cooperation between the Constitutional Court and the Venice Commission was appreciated and the perspectives of future collaborations were discussed. At the same time, on October 20, the President of the Constitutional Court paid a visit to the Ministry of Justice of Spain, where she was guested by Mrs. Minister Pilar Llop. The courtesy visit was paid in the context of the signing of a memorandum of collaboration between the Constitutional Court of Moldova and the Constitutional Court of Spain, whose foundations were laid in July of the current year. During the visit, it was emphasized the need to strengthen the relations between the institutions of the two states and the imperative to ensure the rule of law in the Republic of Moldova.

On October 21, the President of the Constitutional Court paid a visit to the Ombudsman of of Spain, Mr. Francisco Fernandez Marugan. The Ombudsman Institution has been operating in Spain for over 40 years and enjoys high recognition in Spanish society. During the visit, topics such as the relationship of the Ombudsman with the Spanish Constitutional Court and the powers of the former in the protection of fundamental rights were addressed.

On October 22, the President of the Constitutional Court signed with the President of the Constitutional Court of Spain, Mr. Juan José González Rivas, a memorandum of cooperation between the two institutions. The memorandum consists in ensuring a cooperation framework in the field of constitutional law. It will allow, among other things, the mutual exchange of information and experience in the field of constitutional justice, the development of institutional capacity through mutual visits, professional exchange programs, internships, professional courses, seminars and joint research or mutual support in the organization of conferences, congresses, seminars and/or other activities regarding legal issues of mutual interest.

On October 28, the President of the Constitutional Court participated online in a post-election analysis conference organized by the Central Electoral Commission in partnership with the Council of Europe and the Center for Continuous Training in the Electoral Field. The theme of the conference was "The snap parliamentary elections in the Republic of Moldova: lessons learned, recommendations and steps to follow". The intervention of the President of the Court focused on the considerations expressed by the Constitutional Court in its Judgment no. 20 of July 23, 2021, on the confirmation of the results of the snap parliamentary elections of July 11, 2021, and the validation of the mandates of the elected MPs.

On December 2, the President of the Constitutional Court participated online in the World Law Congress held in Colombia, in a section entitled "Constitutional-jurisdictional control of states of emergency during the pandemic". The President's intervention focused on the Court's case-law regarding the legislative measures taken in relation to the epidemiological situation caused by COVID-19.

Between December 9-11, the Constitutional Court of the Republic of Moldova paid a working visit to the Constitutional Court of Romania, the delegation being led by Mrs. Domnica Manole, President, and composed of Mr. Vladimir Țurcan, Mr. Serghei Țurcan, Mr. Nicolae Roșca, judges, Mr. Teodor Papuc, deputy chief secretary, Mr. Dumitru Avornic, head of the Legal Assistance Department, and Mr. Marcel Lupu, judicial assistant. On December 10, at the headquarters of the Constitutional Court of Romania, the working meeting took place, attended by the President of the Court, Mr. Valer Dorneanu, Mrs. Judge Mona-Maria Pivniceru, Mr. Judge Daniel-Marius Morar, Mrs. Marieta Safta, delegated first assistant magistrate, Mrs. Claudia Margareta Krupenschi, director of the president's cabinet, delegated chief assistant

magistrate, Mrs. Mihaela Senia Costinescu and Mr. Benke Károly, delegated chief assistant magistrates. The representatives of the two constitutional courts held discussions on current issues and issues of common interest, such as the independence of justice, respect for fundamental rights and freedoms, ways to make the act of constitutional justice more efficient and transparent, the status of the constitutional judge. It was also presented, certain relevant decisions pronounced in the field of criminal procedure, constitutional relations between public authorities and relations between European Union law and domestic law.

At the same time, to celebrate together the important moments in their constitutional history, on the occasion of the 30th anniversary of the adoption of the Constitution of Romania and of the adoption of the Declaration of Independence of the Republic of Moldova, as a sign of consistent and friendly collaboration, the two constitutional courts launched a tribute volume entitled "*Constitutional heritage and democratic values*". The respective tribute volume is an expression of the firm commitment of the constitutional courts in Romania and the Republic of Moldova to act for the defense of democratic values and the development of their constitutional heritage.

Between 13-17 December 2021, a delegation of the Constitutional Court participated in a series of seminars with the lawyers of the Constitutional Court of Spain. The topics discussed were: the control of the constitutionality of laws in Spain, the individual protection of fundamental rights, the methods of legal interpretation, the case-law of the Spanish Constitutional Court regarding the situation in Catalonia and the execution of the judgments handed down by the Court. These seminars represented the first activity carried out between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Spain since the signing of the Memorandum of Understanding between the two institutions on October 22, 2021. On December 14, the President of the Constitutional Court of the Republic of Moldova, Mrs. Domnica Manole, accompanied by judges Vladimir Țurcan, Serghei Țurcan and Nicolae Roșca, had a meeting with the President of the Constitutional Court of Spain, Mr. Pedro José González-Trevijano Sánchez. The meeting took place in the context of the working visit of the delegation of the Constitutional Court of the Republic of Moldova to Madrid, carried out on the basis of the Memorandum of Understanding signed with the Constitutional Court of Spain. During the meeting, several issues regarding the activity of the Spanish Constitutional Court were addressed. I was also discussed about holding in 2022 the meeting of the Circle of Presidents of the Conference of European Constitutional Courts, an organization currently chaired by the Constitutional Court of the Republic of Moldova. The perspectives of future collaborations between the two institutions were also discussed.

TITLE V. THE WORKLOAD OF THE CONSTITUTIONAL COURT IN NUMBERS

In 2020, 293 applications were lodged with the Constitutional Court, 71 applications were taken over from 2020, and 86 applications were transferred for 2022 (see chart no. 1 of Annex no. 1).

In 2021 (*see chart no. 4*) most applications were lodged by the courts of law (245 applications), MPs and parliamentary factions (29 applications).

The Court delivered 39 judgments, among which 13 judgments on solving the pleas of unconstitutionality, 19 judgments on the constitutional review of some normative acts, 6 judgments on interpreting some provisions of the Constitution (see chart no. 3 of Annex no. 1).

By most of its judgments in 2021, the Court found the impugned normative provisions unconstitutional (see chart no. 5 of Annex no. 1).

Carrying out a dynamic comparative analysis of the Court's acts, it was found that in the number of applications lodged, as in previous years, exceptions of unconstitutionality prevail in the jurisdictional activity of the Court, representing 84% of all applications lodged in 2021.

Out of the total number of applications submitted to the Court in 2021, the authors mostly challenged provisions form the criminal field, being succeeded by the civil field, the administrative field, the field of social, economic and cultural rights and the field of political rights (see chart no. 10 of Annex no. 1).

The Court emphasizes that the workload of the Court is dynamically increasing. Thus, if in 2020, were registered 227 complaints, then in 2021 were registered 293 complaints. At the same time, the number of applications transferred for the next year is increasing (if for 2021 – 71 were transferred referrals, then for 2022 – 86 referrals were transferred).

For these reasons, the Court reiterates the conclusion formulated in Judgment no. 1 of 11.01.2021, according to which "**given the complex nature of the applications, as well as the constantly increasing workload of the Court (*see chart no. 11 of Annex no. 1*), in order to streamline the constitutional review process, it is necessary to increase the number of specialized staff within the Secretariat of the Constitutional Court, *i.e.* increasing the number of judicial assistants. This objective can be made effective by strengthening the legal status of the judicial assistants in the Constitutional Court" by changing the salary class and salary coefficient.**

Annex no. 1

Chart no. 1

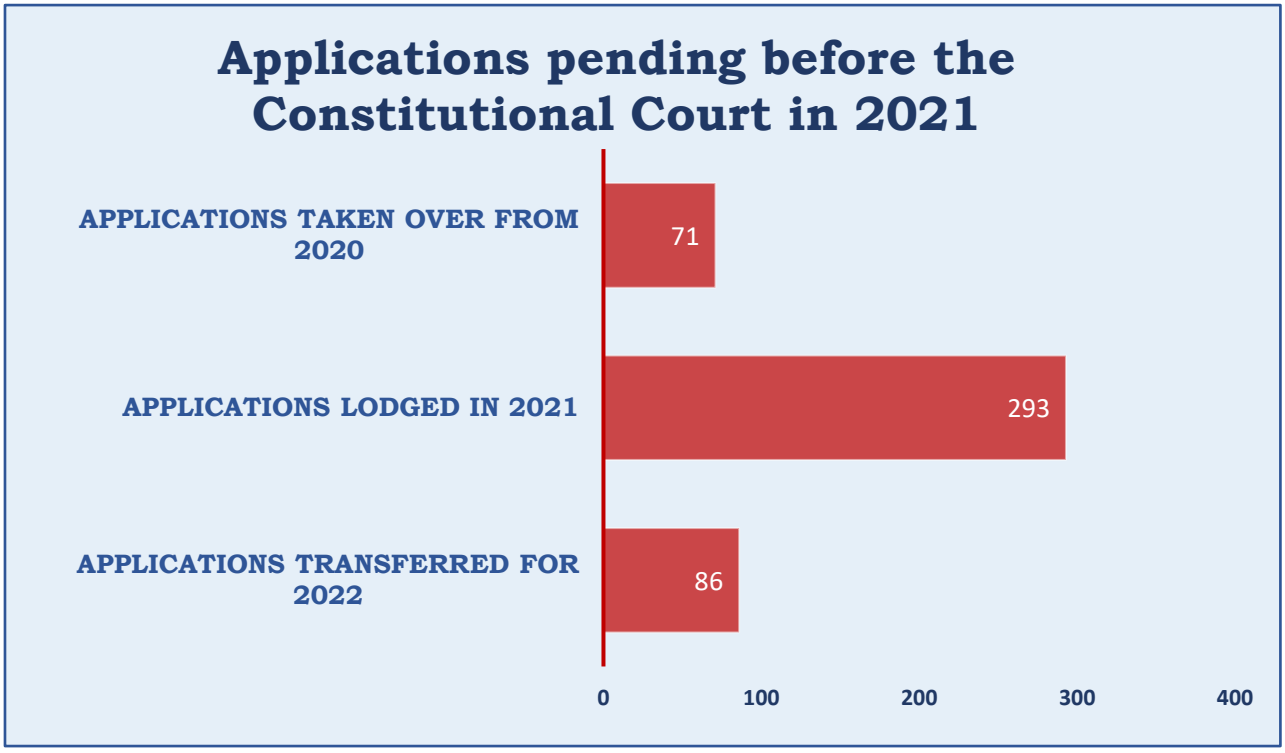


Chart no. 2

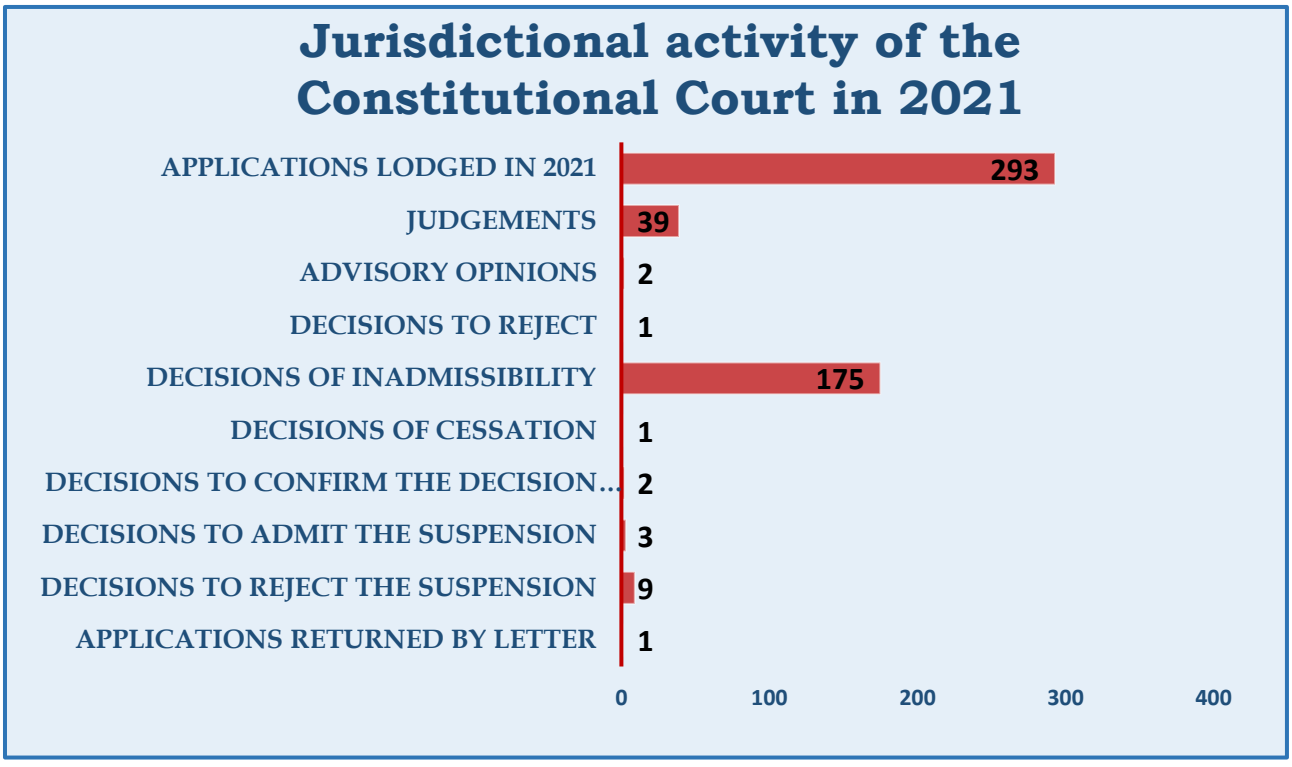
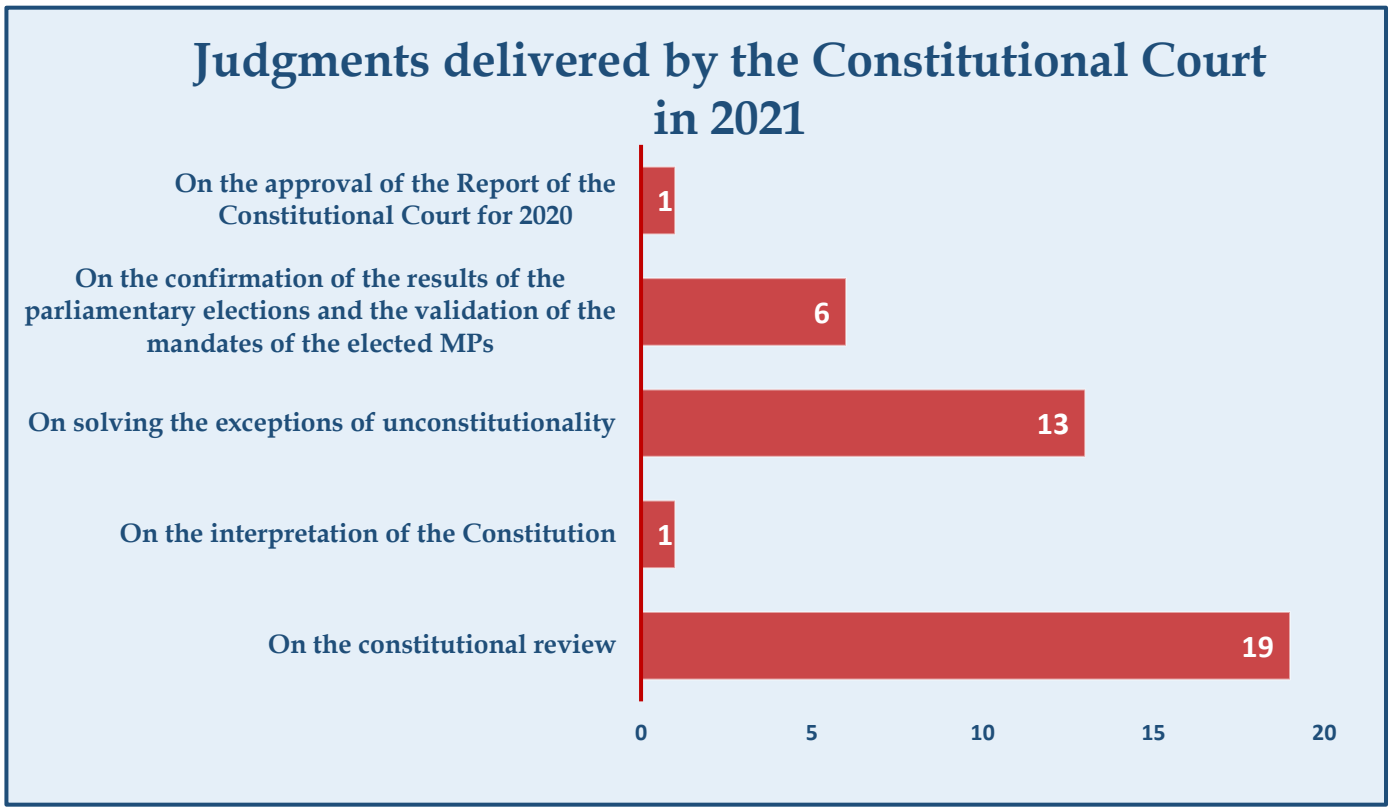
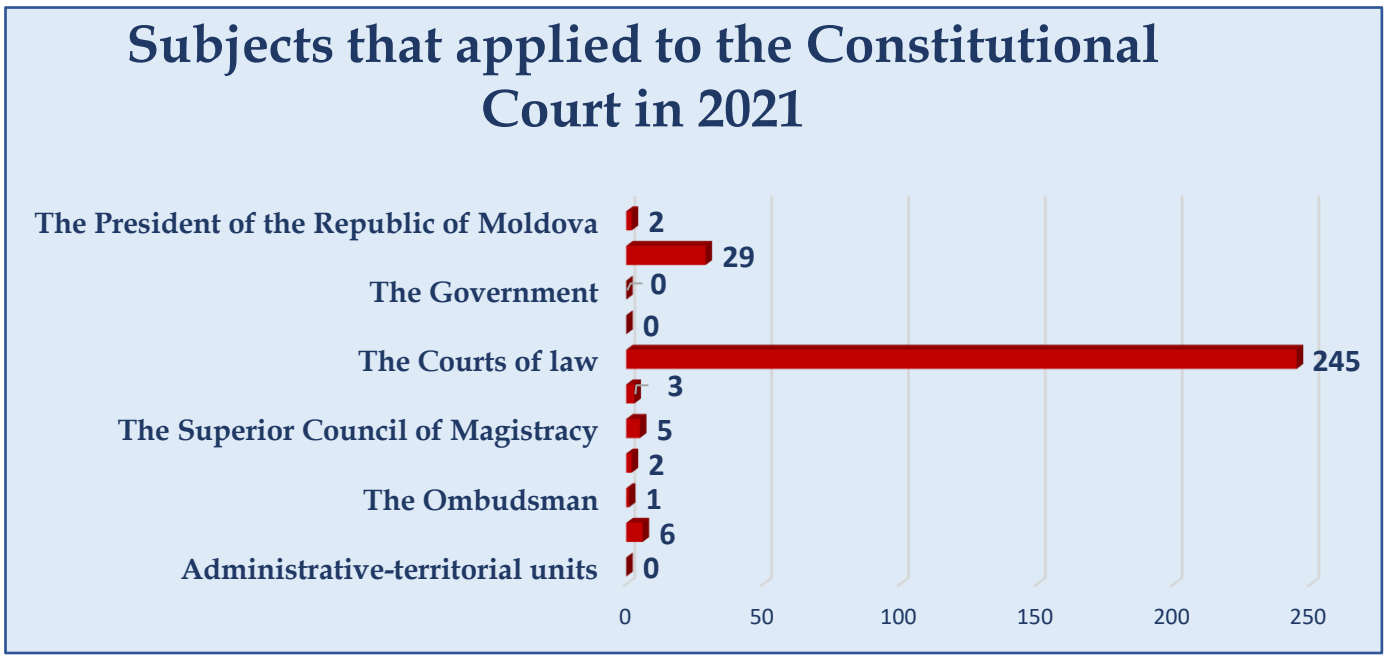


Chart no. 3



*JCC no. 38/2021 concerned both the interpretation of the Constitution and the control of constitutionality.

Chart. no.4



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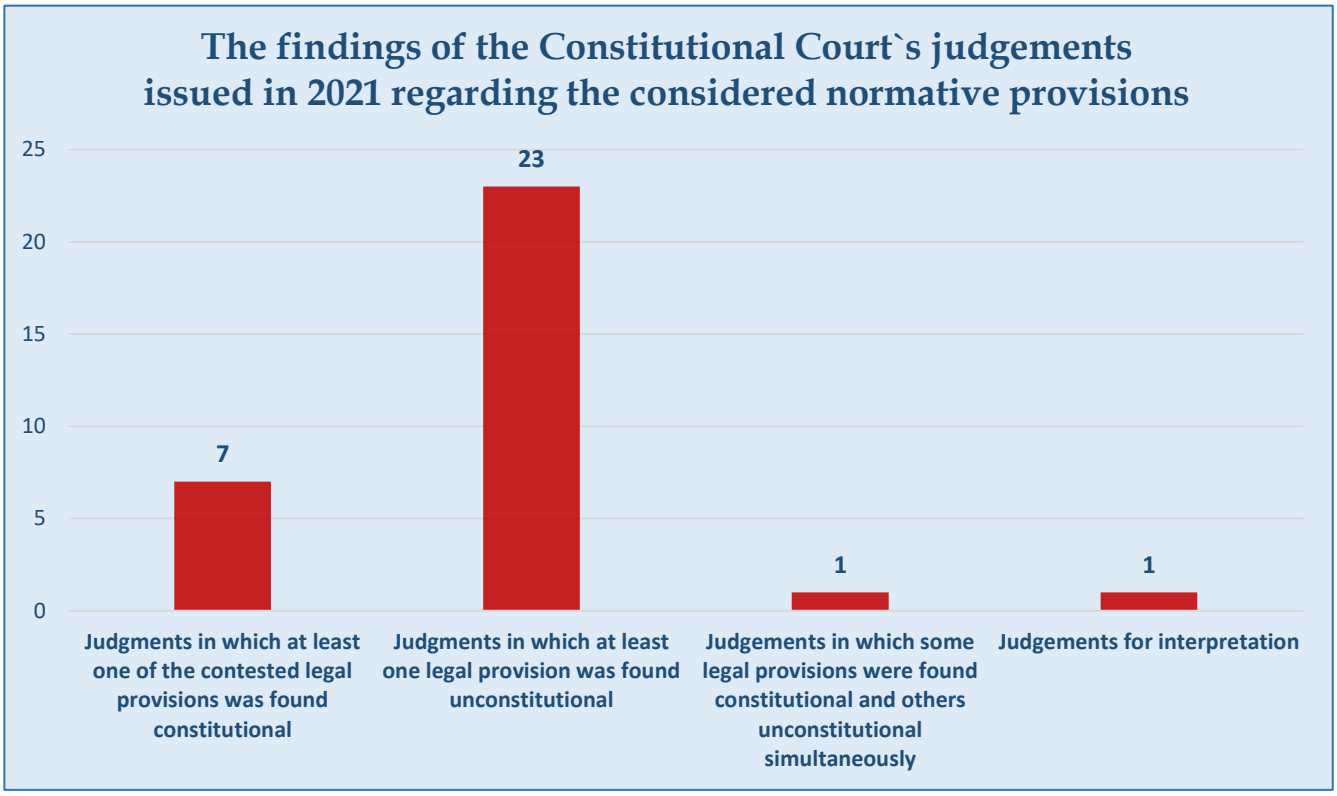

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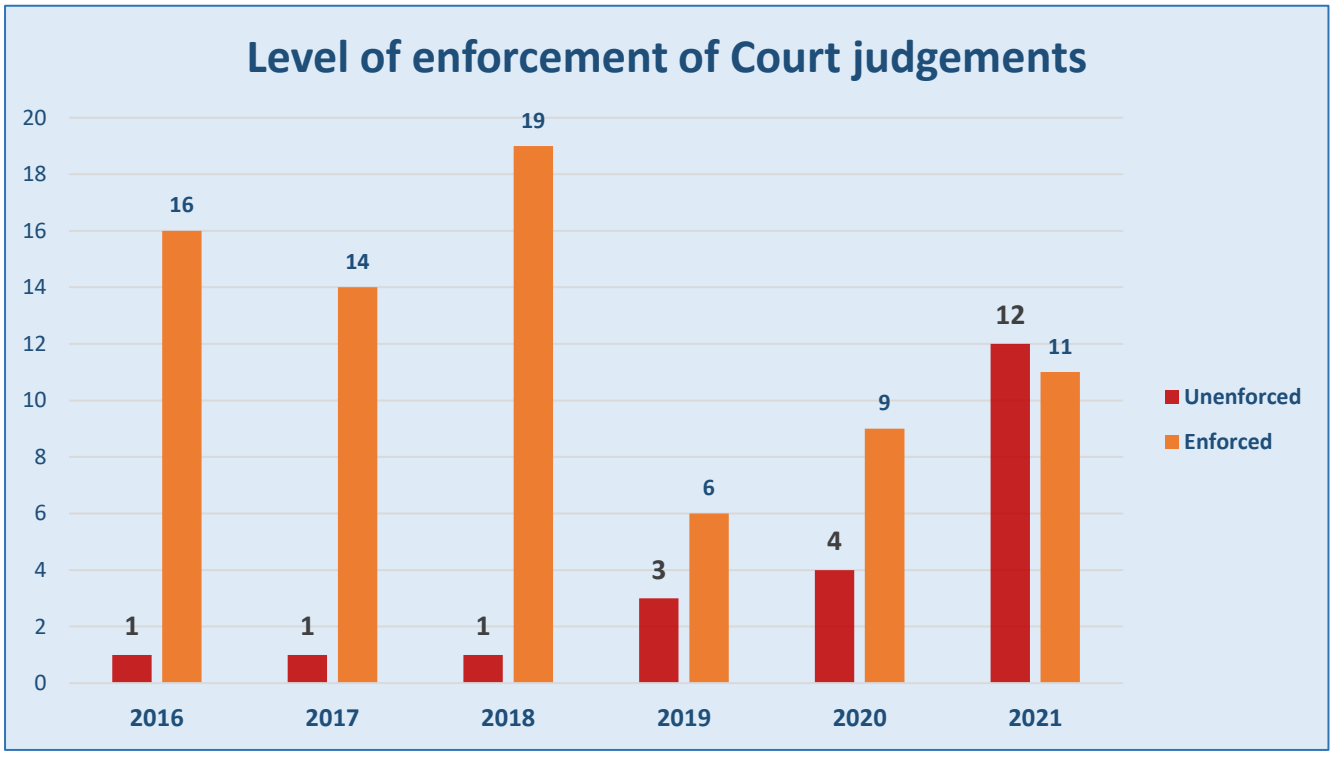
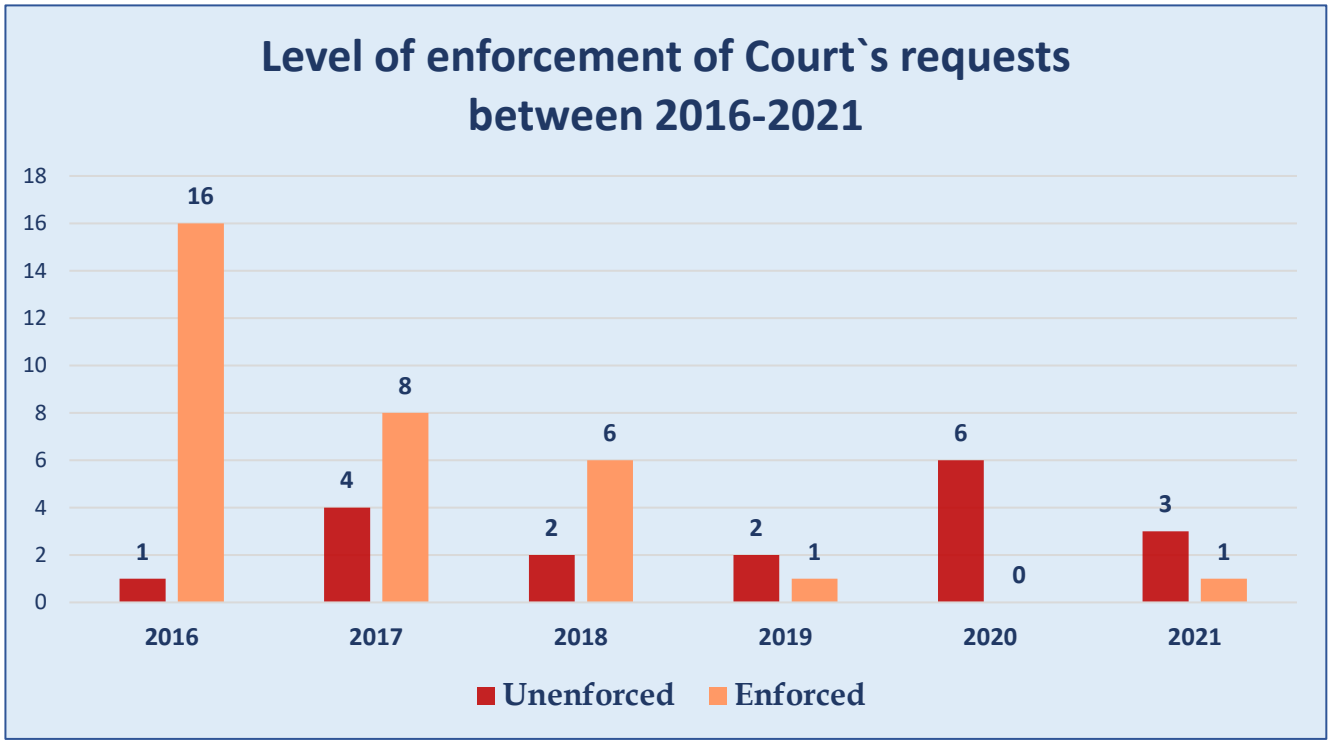


Chart no. 7



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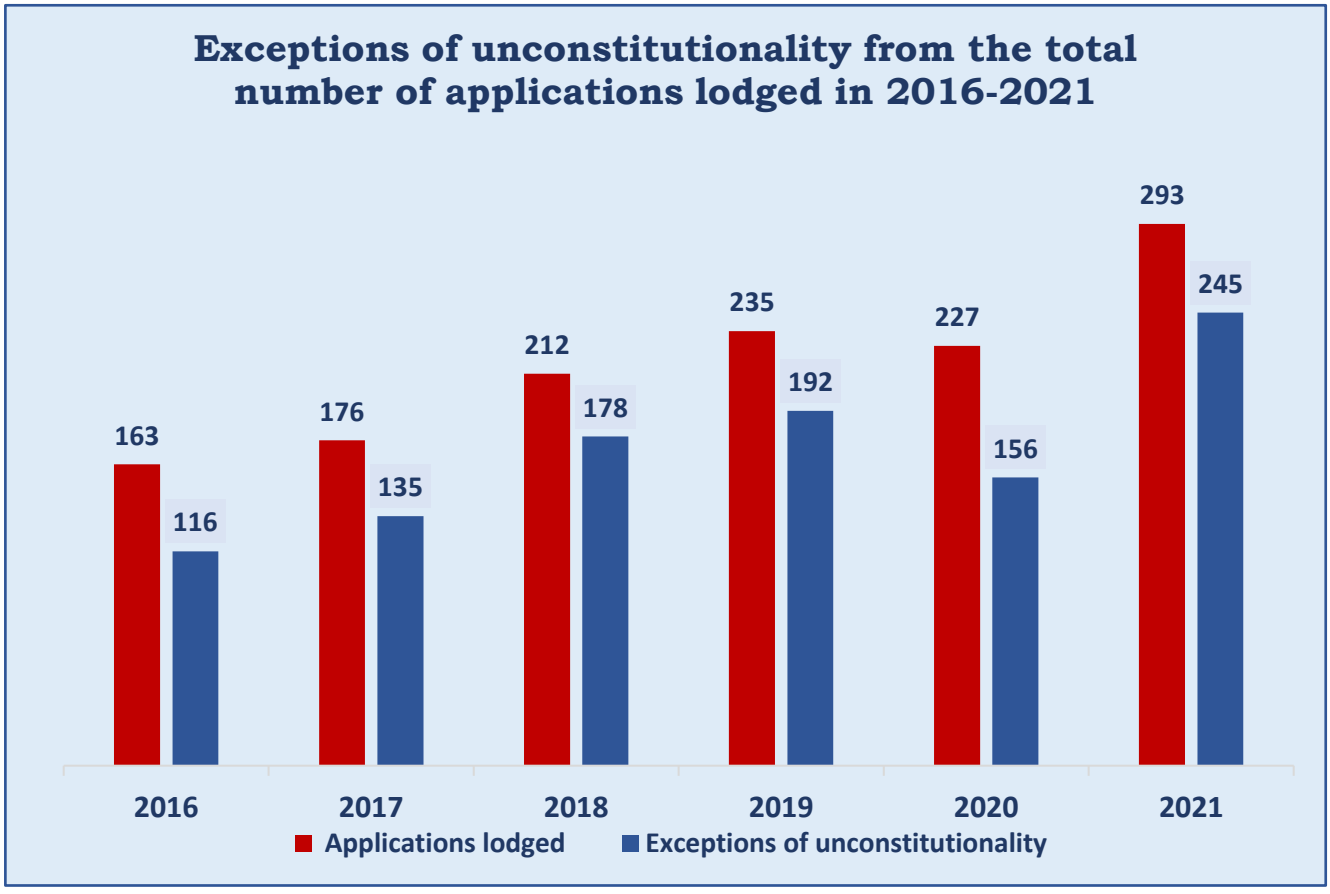


Chart no. 9

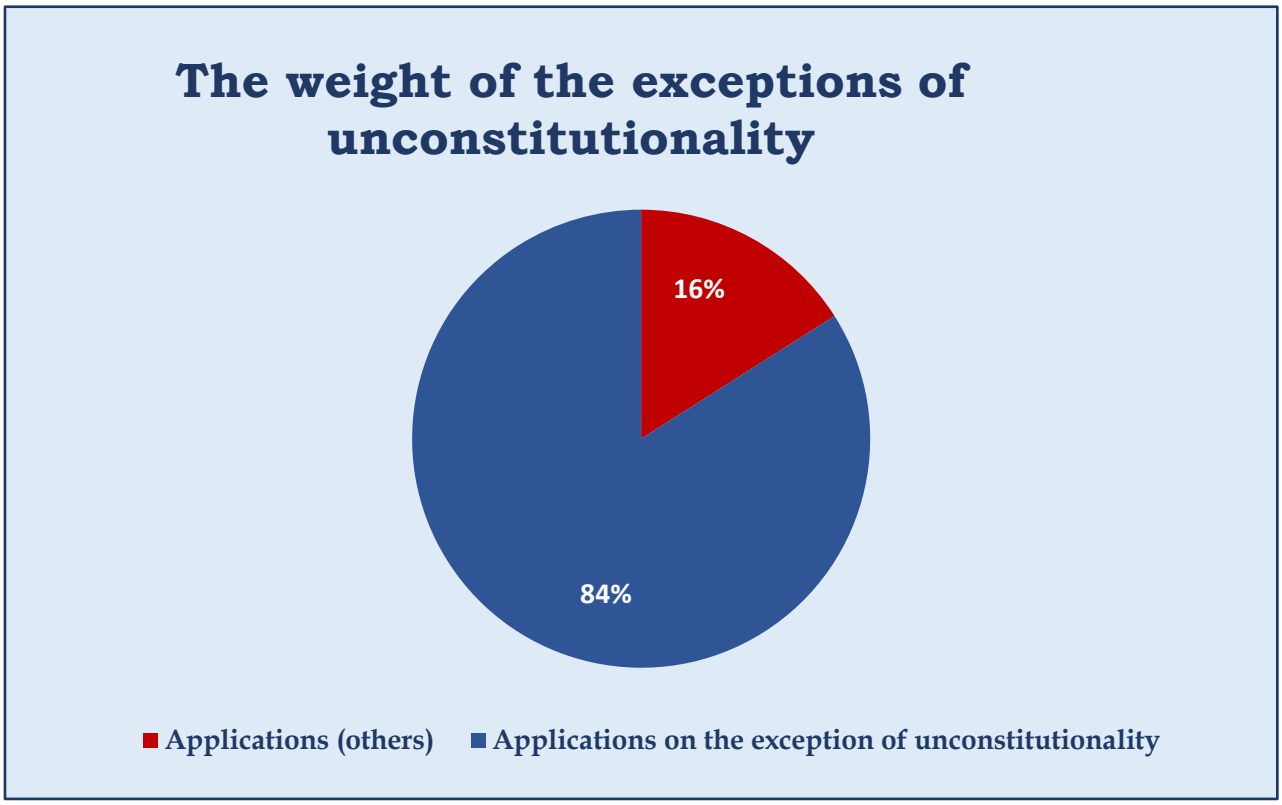


Chart no. 10

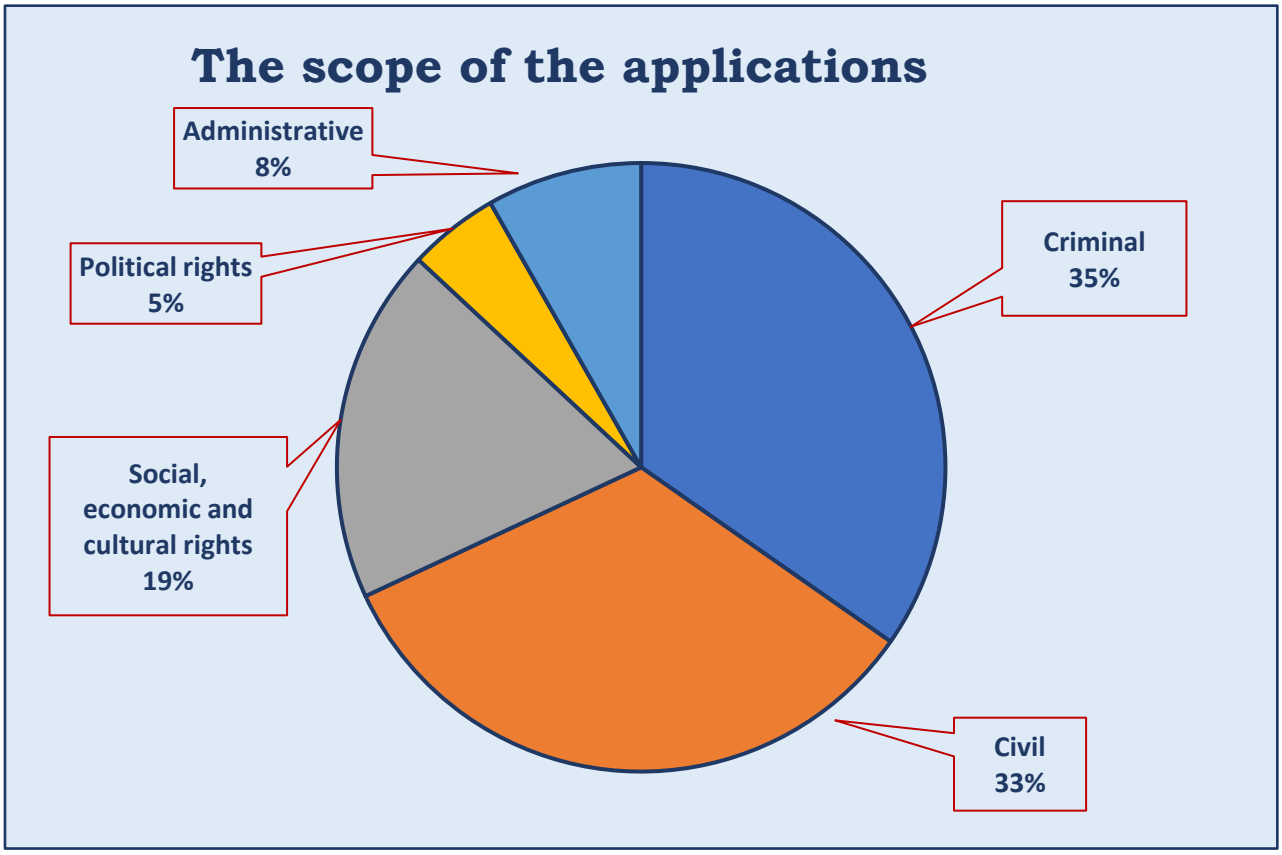
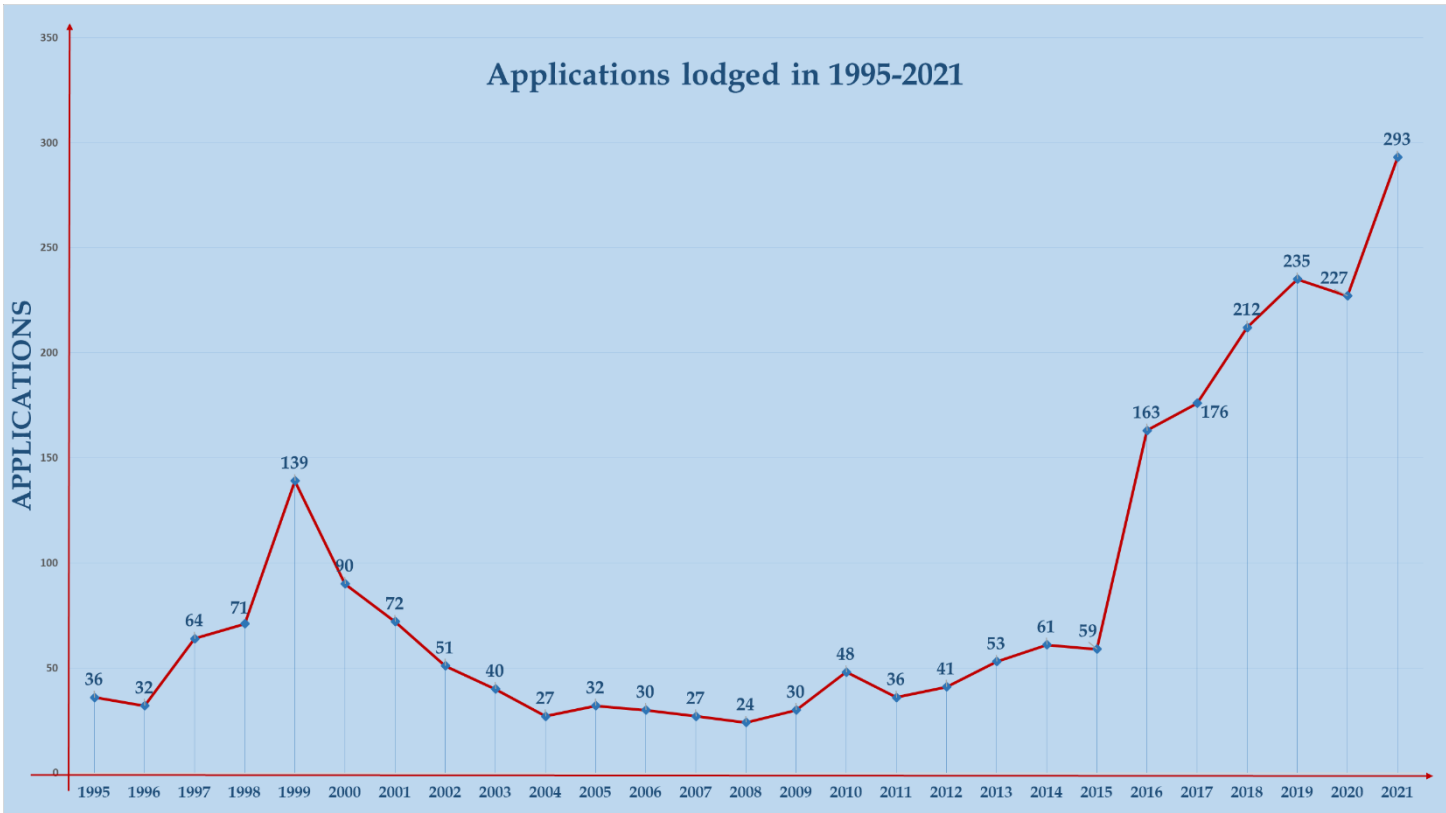


Chart no. 11



Annex no. 2

JUDGMENTS AND ADVISORY OPINIONS DELIVERED BY THE CONSTITUTIONAL COURT IN 2021

Nr. d/o	**Number and title of the act**
1.	Judgment no. 1 of 11.01.2021 on the approval of the Report on the exercise of constitutional jurisdiction in 2020
2.	Judgment no. 2 of 12.01.2021 on the constitutional review of Article 1 of Law no. 296 of November 23, 1994 for the interpretation of some provisions of Law no. 1225 of December 8, 1992 on the rehabilitation of victims of political repression
3.	Judgment no. 3 of 14.01.2021 on the exception of unconstitutionality of Articles 4 para. (2), 7 para. (2) let. c), 8 para. (1) and 11 para. (1) point 3) of Law no. 982 of 11 May 2000 on access to information)
4.	Judgment no. 4 of 21.01.2021 on the constitutional review of Law no. 234 of 16 December 2020 on the usage of languages spoken on the territory of the Republic of Moldova

5.	Judgment no. 5 of 11.02.2021 on the validation of a MP's mandate in the Parliament of the Republic of Moldova
6.	Judgment no. 6 of 23.02.2021 on the constitutional review of Decree of the President of the Republic of Moldova no. 32-IX of 11 February 2021 on the appointment of the candidate for the position of Prime Minister
7.	Judgment no. 7 of 04.03.2021 on the constitutional review of Articles 15 paras. (2) d) e) f) and (3), 23 paras. (3) and (6) and 26 paras. (6)-(9) of Law on the Government no. 136 of 7 July 2017
8.	Judgment no. 8 of 11.03.2021 on the constitutional review of Law no. 236 of 16 December 2020 on the amendment of certain laws and Law no. 240 of 16 December 2020 on the amendment of certain laws
9.	Judgment no. 9 of 18.03.2021 on the constitutional review of Law no. 230 of December 16, 2020 for the abrogation of Law no. 235/2016 regarding the issuance of State bonds in order to execute by the Ministry of Finance the payment obligations derived from the State guarantees no. 807 of 17 November 2014 and no. 101 of 1 April 2015
10.	Judgment no. 10 of 22.03.2021 on the constitutional review of Decree of the President of the Republic of Moldova no. 47-IX of 16 March 2021 on the appointment of the candidate for the position of Prime Minister
11.	Judgment no. 11 of 25.03.2021 on the constitutional review of Articles 72 and 73 of the Enforcement Code adopted by Law no. 443 of December 24, 2004
12.	Judgment no. 12 of 06.04.2021 on the constitutional review of Articles 77, 81 and 315 of the Code of Criminal Procedure
13.	Judgment no. 13 of 27.04.2021 on the constitutional review of the Parliament Decision no. 73 of April 23, 2021 regarding the cancellation by partial withdrawal of Parliament Decision no. 121 of August 16, 2019 regarding the appointment of a Constitutional Court judge and Parliament Decision no. 74 of April 23, 2021 regarding the appointment of a judge of the Constitutional Court
14.	Judgment no. 14 of 27.04.2021 on the constitutional review of Law no. 218 of December 3, 2020, for the modification of some normative acts
15.	Judgment no. 15 of 28.04.2021 on the constitutional review of the Government Decision regarding the proposal to declare a state of emergency no. 43 of March 30, 2021 and the Parliament's Decision on the declaration of the state of emergency no. 49 of March 31, 2021
16.	Judgment no. 16 of 20.05.2021 on the exception of unconstitutionality of some provisions in Article 27 para. (5) from Law no. 270 of November 23, 2018 on the unitary payroll system in the budget sector and of points 21 and 8 of Annex no. 6 to

	Government Decision no. 1231 of December 12, 2018 for the implementation of the provisions of Law no. 270/2018 on the unitary payroll system in the budget sector
17.	Judgment no. 17 of 10.06.2021 on the constitutionality review of Law no. 193 of December 20, 2019 for the amendment of some legislative acts and the Parliament's Decision regarding the appointment of some members of the Superior Council of Magistrates no. 53 of March 17, 2020
18.	Judgment no. 18 of 09.07.2021 on the constitutional review of Article 19 para. (1) let. e) of Law no. 317 of 13 December 1994 on the Constitutional Court
19.	Judgment no. 19 of 13.07.2021 on the constitutional review of Law no. 252 of December 16, 2020 regarding the amendment of the Insolvency Law no. 149/2012
20.	Judgment no. 20 of 23.07.2021 on the confirmation of the results of the snap parliamentary elections of July 11, 2021 and the validation of the mandates of the elected MPs
21.	Judgment no. 21 of 27.07.2021 on the constitutional review of the Parliament Decision no. 219 of December 3, 2020 for the amendment of the Parliament Decision no. 149 of November 29, 2019 on the numerical and nominal composition of the Permanent Bureau of the Parliament
22.	Judgment no. 22 of 29.07.2021 on the constitutional review of the of Law no. 217 of December 3, 2020 for the repeal and modification of some normative acts
23.	Judgment no. 23 of 05.08.2021 on the constitutional review of Article 422 of the Code of Criminal Procedure
24.	Judgment no. 24 of 10.08.2021 on the constitutional review of Article 129 point 19) of the Fiscal Code
25.	Judgment no. 25 of 12.08.2021 on the constitutional review of several provisions of Article 287 para (1) of the Criminal Code
26.	Judgment no. 26 of 14.09.2021 on the validation of a MP's mandate in the Parliament of the Republic of Moldova
27.	Judgment no. 27 of 14.09.2021 on the constitutional review of several provisions of Law no. 257 of December 16, 2020 regarding the amendment of several normative acts
28.	Judgment no. 28 of 21.09.2021 on the validation of a MP's mandate in the Parliament of the Republic of Moldova
29.	Judgment no. 29 of 21.09.2021 on the control constitutional review of Law no. 244 of December 16, 2020 for amending several normative acts
30.	Judgment no. 30 of 23.09.2021 on the exception of unconstitutionality of Article 33 para. (1) lit. c) from Law no. 156 of October 14, 1998 regarding the public pension system

31.	Judgment no. 31 of 23.09.2021 on the exception of unconstitutionality of Article 132[9] paras. (12) and (15) of the Criminal Procedure Code
32.	Judgment no. 32 of 19.10.2021 on the validation of a MP's mandate in the Parliament of the Republic of Moldova
33.	Judgment no. 33 of 26.10.2021 on the exception of unconstitutionality of Articles 17 paras. (1), (2) and (3) of the Customs Code
34.	Judgment no. 34 of 04.11.2021 on the validation of a MP's mandate in the Parliament of the Republic of Moldova
35.	Judgment no. 35 of 09.11.2021 on the exception of unconstitutionality of several provisions of Law no. 63 of July 5, 2019 for amending several legislative acts and of the Government Decision no. 347 of July 18, 2019 amending several Government decisions)
36.	Judgment no. 36 of 23.11.2021 on the constitutional review of Articles 66 para. (7) and 84 para. (13) of the Audiovisual Media Services Code
37.	Judgment no. 37 of 07.12.2021 on the constitutional review of several provisions of Article 3438 of the Civil Procedure Code (the assessment of the professional integrity test`s result)
38.	Judgment no. 38 of 07.12.2021 on interpretation of Articles 1 para. (3), 20 and 116 paras. (1) and (2) of the Constitution and the constitutional review of Article 11 para. (1) from Law no. 544 of July 20, 1995 regarding the status of the judge
39.	Judgment no. 39 of 21.12.2021 on the exception of unconstitutionality of several provisions of Article 335 para. (1) of the Criminal Code
40.	Advisory Opinion no. 1 of 15.04.2021 for ascertaining the circumstances that justify the dissolution of the Parliament
41.	Advisory Opinion no. 2 of 26.10.2021 on the draft law amending Article 70 of the Constitution (immunity of the MP)