REPORT

ON THE EXERCISE
OF CONSTITUTIONAL
JURISDICTION IN 2014

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Responsible for the publication: *Rodica Secrieru, Secretary General of the Constitutional Court*
Main Coordinator: *Lilia Rusu, (Legal Directorate – Record Office)*
Selection Team: *Maria Strulea, Natalia Vîlcu-Bajurean (Research and Analysis Division)*
Editor: *Nina Pîrțac (Editorial Division)*

Editura Arc
str. G. Meniuc nr. 3, Chişinău, MD 2009;
tel.: (+373 22) 73-36-19, 73-53-29; fax (+373 22) 73-36-23
e-mail: info.edituraarc@gmail.com; www.edituraarc.md

Cover page: *Mihai Bacinschi*
Technical editing: *Mihai Dimitriu*

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REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2014

CHIȘINĂU 2015

Republic of Moldova
CONSTITUTIONAL COURT

JUDGEMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2014

Chisinau,
15 January 2015

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

Mr. Alexandru TĂNASE, President,
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Tudor PANȚÎRU, judges,

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

having examined in the plenary session the Report on the Exercise of Constitutional Jurisdiction in 2014,

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

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

DECIDES:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2014, according to the Annex.
2. This Judgment shall be published in the "Official Gazette of the Republic of Moldova".

President Alexandru TĂNASE

Chisinau,
15 January 2015, No. 1

Approved
by the Judgment of the Constitutional Court
No. 1 of 15 January 2015

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2014

TITLE I

THE CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

TITLE I

THE CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

A | CONSTITUTIONAL JURISDICTION

The position of the Constitutional Court as the sole authority of constitutional jurisdiction in the Republic of Moldova, autonomous and independent in relation to the legislative, executive and judiciary powers is enshrined in the Constitution, which concurrently establishes the principles and the main functional powers of the Court. This status of the Constitutional Court is dictated by its primary role of ensuring the observance of the rule of law values, namely to guarantee the supremacy of Constitution, to ensure realization of the principle of separation of state powers, as well as to ensure the accountability of the state before the citizen and of the citizen before the state. These major functions are carried out through the instruments guaranteed by the Constitution.

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

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

powers, rights and responsibilities thereof. Thus, based on the constitutional provisions, the Constitutional Court:

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

b) interprets the Constitution;

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

d) confirms the results of republican referenda;

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

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

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

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

In 2014 the Constitutional Court has carried out its jurisdictional activity related to the following aspects:

Control of constitutionality of normative acts (Art. 135 para. (1) let. a) of the Constitution)

The supremacy of the Constitution, ensured by control of constitutionality of regulatory acts, is exercised by the Constitutional Court, the sole entity entitled to rule on compliance with the legal norms of the Supreme Law. The largest and the most important power of the Constitutional Court is control, upon referral, of constitutionality of laws, decrees of the President of the Republic of Moldova and other regulatory acts of the Parliament and the Government and of the international treaties, which the Republic of Moldova is a party to. In exercising this power the Court rules on the constitutionality of other challenged regulatory acts, subject to constitutionality control in terms of compli-

ance with the constitutional provisions, including observance of the rights and freedoms guaranteed by the Constitution.

In the Republic of Moldova only the procedure of "abstract control" of constitutionality is regulated, under which the constitutional jurisdiction does not rule on the merits of a challenge, but only on compliance of the normative acts issued by the Parliament, the Government and the President of the Republic of Moldova with the constitutional provisions.

An aspect that is worth mentioning is related to the fact that in its Judgment no. 9 of 14 February 2014 the Constitutional Court has outlined a conclusion that the control of constitutionality of laws refers to the laws adopted by the Parliament both before and following their publication in the Official Gazette of the Republic of Moldova, at the referral of the President of the Republic of Moldova, as well as of other subjects vested with this right. In this way the Court ensures control of constitutionality *a priori* and *a posteriori* of the laws adopted by the Parliament.

Control of constitutionality of international treaties (Art. 135 para. (1) let. a) of the Constitution)

The prerogative of the authority of constitutional jurisdiction in carrying out the control of constitutionality of international treaties is exercised, according to the findings of the Constitutional Court outlined in its jurisprudence[1], within the period between the expression of the consent by the Republic of Moldova to be bound by the treaty on the international level and the moment of implementing the treaty by accomplishing the procedures required by the law.

Thus, in the situation when the Constitutional Court declares unconstitutional an international treaty to which the Republic of Moldova became a party, national public authorities shall not accomplish the legal procedures in order to implement the treaty. In this order of mind the provisions of art. 22 para. (2) of the Law on international treaties of the Republic of Moldova no. 595-XIV of 24 September 1999 should be applied, according to which the international treaties to which the Republic of Moldova is a party and that are recognized by the Constitutional Court as incompatible with the Constitution of the Republic of Moldova are not subject to implementation and shall not be applied.

[1] Decision of the Constitutional Court no. 17 of 07.11.2013 on the denial of the complaint no. 35a/2013 on the control of constitutionality of certain acts referring to the Agreement between the Government of the Republic of Moldova and the Government of Romania on the cooperation in the field of military

Interpretation of the Constitution (Art. 135 para. (1) let. b) of the Constitution)

The official interpretation of the Constitution is the exclusive prerogative of the Constitutional Court.

Interpretation of constitutional provisions has an official and binding character for all subjects of legal relations. A judgment on the interpretation of certain constitutional provisions has the authority of law and is binding for all constitutional bodies of the Republic of Moldova given the assessments which it is based on. It should be applied directly, without any conditions referring to the form. The interpretation of constitutional provisions is meant to ensure unity and correct understanding of the contents and genuine meaning of the given provisions, to solve legal and political disputes that arise in relation to the perception and assessment thereof contained in the Fundamental Law. Official interpretation of constitutional norms is imperative.

Delivery of opinions on the initiatives to revise the Constitution (Art. 135 para. (1) let. c) of the Constitution)

The Constitutional Court is entitled to deliver opinions on the initiatives to revise the Constitution, upon referral by the subjects vested with this right by the law. The opinion of the Court is one of the mandatory elements of the entire process of Constitutional revision regulated in Title IV (Art. 141-143) of the Supreme Law.

Confirmation of results of the republican referendum, of parliamentary and presidential elections in the Republic of Moldova, validation of terms of Members of Parliament (MPs) and of the President of the Republic of Moldova (Art. 135 para. (1) let. e) of the Constitution)

The Constitutional Court confirms the results of republican referenda, confirms the results of parliamentary elections and validates the term of MPs, confirms the results of elections of the President of the Republic of Moldova based on the materials submitted by the Central Election Commission and confirms the list of alternate candidates to the position of MPs.

Settlement of exceptions of unconstitutionality (Art. 135 para. (1) let. g) of the Constitution)

The Constitutional Court settles exceptions of unconstitutionality of normative acts upon referral by the courts. Thus, according to procedural rules, if it is found during the trial proceedings that the legal provision which is to be applied or has already been ap-

plied is inconsistent with the Constitution of the Republic of Moldova, the court submits a referral to the court of constitutional jurisdiction through the Supreme Court of Justice.

The exception of unconstitutionality can be raised directly by the court within a proceeding or even by the parties to the proceeding.

This activity of the Constitutional Court is an important means to protect the human rights of individuals who by law are not part of the category of subjects entitled to submit complaints to the Constitutional Court, but whose rights may be violated by the application or by the consequences of the application of challenged legal provisions.

It should be noted that the role of the Supreme Court, where the exception of unconstitutionality has been initiated by a lower-level court, is to forward the raised exception to the Constitutional Court, without any other interference.

At the same time, in order to exercise its competence, the Court, by virtue of its status of autonomous and independent authority, establishes the limits of competence in exercising the functional powers, which include, *inter alia*, election of the President of the Constitutional Court, approval of the Regulation of the Secretariat of the Constitutional Court, structure and members of its staff, disciplinary liability of judges of the Constitutional Court, etc.

B | JUDGES OF THE CONSTITUTIONAL COURT

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

In 2014 during the period January-October the Constitutional Court exercised its activity in its full composition. On 30 October the term of Judge Petru RAILEAN appointed into this position by the Government Decision no. 1160 of 15 October 2008, has expired and the Court continued its activity being composed of 5 judges only. According to art. 20 of the Law on the Constitutional Court the President of the Court requested the Government to initiate procedures of appointing a new judge of the instance of constitutional jurisdiction. Until the approval of this Report there has not yet been appointed a judge by the Government.

Concurrently, by the decision of the Plenum of the Constitutional Court no. AG-7 of 6 October 2014, Mr. Alexandru TĂNASE has been repeatedly elected in the position of President of the Constitutional Court.

Currently the Plenum of the Constitutional Court is composed of *(in order of accession to office):*

1. Alexandru TANASE, President
2. Petru RAILEAN (position expired on 30.10.2014)
3. Igor DOLEA
4. Tudor PANTURU
5. Aurel BAIESU
6. Victor POPA, judges

Assistant-Judges

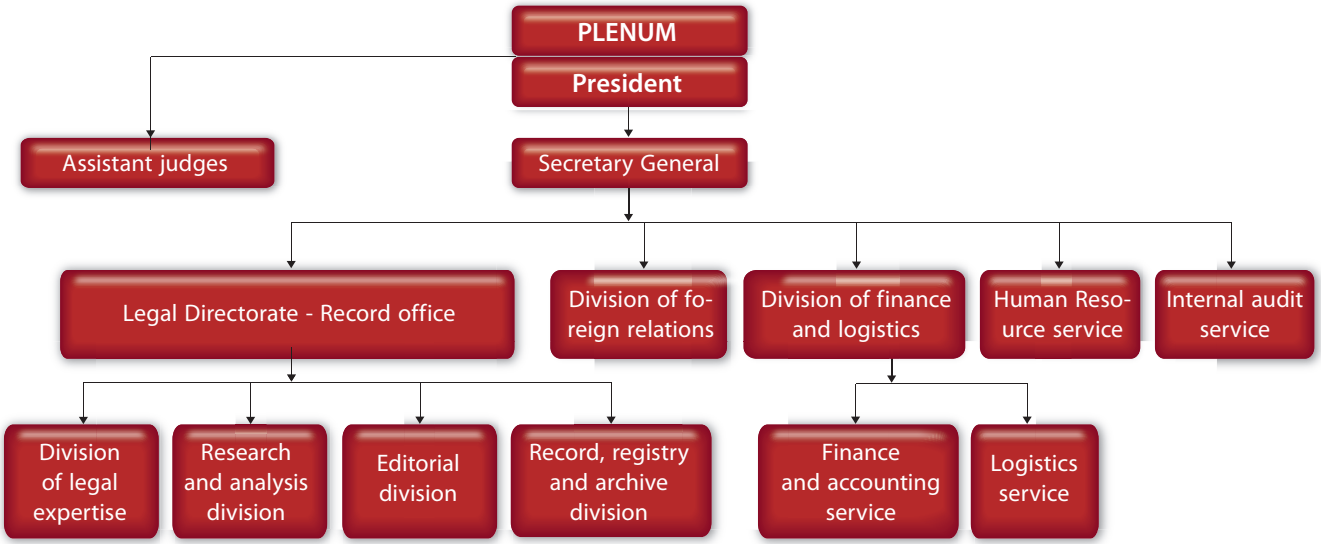
According to the organizational chart, the judges of the Constitutional Court are assisted by assistant-judges fulfilling the following basic functional powers while carrying out their activity:

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

The assistant-judge is assimilated with the judge of the Court of Appeal and has the same status as judges of other courts.

C | ORGANIZATION OF THE CONSTITUTIONAL COURT

In 2014 the Constitutional Court has carried out its activity based on the organizational chart approved on 5 June 2012 as follows:



The organization of Court activity, main rights and duties of the administration and of the Court's employees as well as other functional aspects are provided in the Regulation on the internal organization of the Constitutional Court approved by the Court Decision no. AG-4 of 3 June 2014.[2]

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

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

- preparation, organization and coordination of work within the competence of the Secretariat;

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

- ensuring control related to the fulfilment of deadlines set for the examination of complaints;
- preparation of the draft plan of examination of complaints and presentation of the approved plan to the judges, assistant-judges, subunits of the Secretariat and ensuring control over its implementation;
- supervision of the process of communication of Constitutional Court acts to public authorities according to the law;
- preparation of recommendations and consulting the President of the Court on matters pertaining to the exercise of constitutional jurisdiction and overall management of the Constitutional Court;
- organization of agenda, working meetings and sessions of the President of the Court;
- performance of any other tasks assigned by the President or by the Plenum of the Constitutional Court.

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

D | COURT PROCEDURE

1. COMPLAINTS FILED TO THE COURT

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

- the President of the Republic of Moldova;
- the Government;
- the Minister of Justice;

- the Supreme Court;
- the Prosecutor General;
- the Member of Parliament;
- a parliamentary faction;
- the Ombudsman;
- People's Assembly of Gagauzia (Gagauz-Yeri).

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

2. EXAMINATION OF COMPLAINTS

The complaints submitted to the Constitutional Court are examined according to the provisions of the Law on the Constitutional Court no. 317-XIII of 13 December 1994 and the Code of Constitutional Jurisdiction no. 502-XIII of 16 June 1995. In order to detail the legal provisions cited above, the Court has adopted the *Rules to examine the complaints submitted to the Constitutional Court,* Court Decision no. AG-3 of 3 June 2014 (Official Gazette of the Republic of Moldova no.185-199 of 18.07.2014), that regulate the procedure to prepare admissibility of the complaint, as well as examination of the admissibility, preparation of the case for the examination within public hearings of the Court, examination of the case within the public hearing of the case, deliberation.

2.1. Procedure to prepare admissibility of the complaint

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

The Legal Expertise Division reviews the complaint within a 15 days term, as a rule, starting with the date of assignment, if the resolution fails to provide for another term. While performing prior examination of complaints concerning the control of constitutionality of laws, exceptions of unconstitutionality and interpretation of the Constitution, Legal Expertise Division prepares the Analytical Sheet of the complaint, a document for internal use containing the following structural elements:

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

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

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

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

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

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

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

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

The complaint accompanied by the Analytical Sheet is presented to the President of the Court to designate a judge-rapporteur. The complaint is dismissed if in the Analytical

Sheet it has been stated that the complaint was lodged by the subject that is not entitled or the complaint is submitted repeatedly and the 9 months term following the date when the subject has withdrawn previously submitted complaint has not yet expired.

2.2. Examination of the admissibility of the complaint

The time limit for the examination of the admissibility of the complaint constitutes 60 days from the date of their registration; however, if it is necessary for further examination, the President may extend this term. The complaints submitted on the same or on a similar subject may be joined by a decision of the President of the Court and assigned to a single judge-rapporteur. If this can substantially extend the deadline for the examination of admissibility, the complaints will not be joined.

The hearing on the admissibility of the complaint, which is deliberative if the majority of judges of the Court are present, takes part with the participation of the assistant judge, of the Secretary General and of the referent to the judge assisting the judge-rapporteur. At the hearing the judge-rapporteur presents the opinion referring to the complaint and based on this opinion the Plenum adopts one of the following solutions: a) declares the complaint admissible; b) declares the complaint inadmissible; c) joins the admissibility with the examination of the merits of the complaint; d) decides to restitute the complaint. When adopting decisions on the inadmissibility of the complaints the judges may have dissenting opinions.

The complaint *shall be declared inadmissible* if:

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

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

c) the challenged rules were amended or repealed;

d) there exists already a judgment of the Court related to the problem invoked by the complaint.

The complaint *shall be restituted by a letter* to the author if:

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

b) there has not been demonstrated the causal link between the challenged provisions and constitutional norm at stake;

c) the complaint fails to meet the conditions of form;

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

The decision on the inadmissibility of the complaint shall be published in the Official Gazette of the Republic of Moldova and notified to the author of the complaint. If the complaint has been declared inadmissible this fact precludes any repeated submission of a new complaint on the same subject and grounds. If the complaint has been restituted by the Court there is still a possibility to file a new complaint on the same object and based on the same grounds, in case the subject entitled to submit complaints removes all the deficiencies pointed out by the Court.

2.3. Preparation of the case for examination within the public hearing of the Court

The complaints declared admissible are prepared for examination within public hearings. While preparing the case the judge-rapporteur requests from relevant authorities (President of the Republic of Moldova, Parliament, Government, etc.) to present their points of view referring to the complaint. Failure to present such an opinion in due time does not prevent the Court to examine the complaint.

With at least 10 days before the date of the public hearing, the author (s) of the complaint and the rest of participants in the hearing are informed about the place, the date and the time of the hearing. In cases of urgency the participants at the hearing can be informed within a more limited period.

Besides the author (s) of the complaint the Court invites to participate at the hearing: a) the representative of the Parliament and, where appropriate, of the President of the Republic of Moldova and of the Government, in case of the control of constitutionality of a law; b) the representative of the Parliament, in case of the control of constitutionality of a decision of the Parliament; c) the representative of the President of the Republic of Moldova, in case of the control of constitutionality of a decree of the President; d) the representative of the Government in case of the control of constitutionality of a government decision; e) the representative of the Parliament and representatives of other institutions

concerned, as decided by the President of the Court, in case of interpretation of a constitutional provision; f) the party (or the representative thereof) invoking the exception of unconstitutionality within judicial proceedings; g) third parties intervening.

The complaint may be withdrawn by the subject having submitted it at any stage of the proceedings.

2.4. Examination of the case in a public session of the Court

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

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

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

Following the concluding speeches of the parties the chairman of the hearing announces withdrawal of judges into the sitting room for deliberations. The participants are informed about the place, date and time when the dispositive part of the judgment shall be pronounced.

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

a) the complaint has been withdrawn;

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

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

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

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

f) there is a tie vote when adopting the judgment,

the Constitutional Court rules on the cease of examination.

2.5. Deliberations

The judges of the Court deliberate in the sitting room and deliberation is secret. Following the conclusion of deliberations, the chairman of the hearing asks the judges to vote on the proposals of the judge-rapporteur and of the other judges. The judge of the Court is not entitled to abstain from voting and the chairman of the hearing votes the last.

If during deliberations it is registered a tie vote, the chairing judge may decide to resume the examination of the case to consider new arguments or circumstances that are essential for the case. The case may be examined repeatedly in case of other situations when the judges note the need for further examination. In this case the chairman of the sitting announces discontinuation of the hearing or postpones the examination of the case.

The dispositive part of the judgment is pronounced by the chairing judge. On the day of pronouncing of the dispositive part of the judgment a press release and usually the dispositive part of the judgment is placed on the Court's website.

3. ACTS OF THE COURT

Following the examination of the complaints, the Court adopts judgments, decisions and issues opinions. Judgments and opinions are adopted in the name of the Republic of Moldova and are pronounced by the Plenum of the Constitutional Court in case of examination of the complaint on its merits. Decisions are delivered in case of failure to settle the complaint on its merits. The judgments of the Constitutional Court are binding for the future.

The acts of the Constitutional Court are official documents and enforceable throughout the country, for all the public authorities and all natural and legal persons. Regulatory documents or parts thereof declared unconstitutional become void and shall not be applied since the adoption of the corresponding judgment by the Constitutional Court. The acts of the Constitutional Court are not subject to appeal; they are conclusive and enter into force upon adoption, having to be published in the Official Gazette of the Republic of Moldova.

TITLE II

JURISDICTIONAL ACTIVITY

TITLE II

JURISDICTIONAL ACTIVITY

A | COURT'S ASSESSMENT

1. THE STATE REPUBLIC OF MOLDOVA

1.1. Sovereignty of the Republic of Moldova and the Association Agreement with the European Union

1.1.1. Orientation of the Republic of Moldova towards the European area of democratic values

The Declaration of Independence is the act by which the Republic of Moldova proclaimed itself as a sovereign, independent and a democratic state, free to decide its present and future, without any interference from abroad, in accordance with the holy ideals and aspirations of the nation within the historic and ethnic space of its evolution as nation (*JCC no. 24 of 09.10.2014*[3]*, §56*).

The Court noted that through the founding document of the state, the Republic of Moldova has asserted its desire to establish political, economic, cultural, as well as other

[3] Judgment No. 24 of 09.10.2014 on the constitutionality of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, and of the Law No.112 of 2 July 2014 on its ratification

types of relations in the fields of mutual interest with European countries, with all the countries of the world, being prepared to proceed on establishing diplomatic relations with them, according to the norms of international law and to the practice existing worldwide on this matter *(JCC no. 24 of 09.10.2014, §58).*

Declaration of Independence marked the breakdown with the totalitarian Soviet area of values as well as the reorientation of the newly independent state towards the European area of democratic values. Moldova's aspirations to establish relations in all areas of common interest with European countries and orientation towards European area of democratic values were enshrined in the constitutive act of the state *(JCC no. 24 of 09.10.2014, §62).*

The Court noted that the relations between the Republic of Moldova and the European Union were formally launched on 28 November 1994 upon signing of the Partnership and Cooperation Agreement (PCA), which entered into force on 1 July 1998. PCA represented a commitment concluded between the Republic of Moldova and the European Union to affirm democratic values. By this agreement the parties consented to promote political dialogues aimed at strengthening their proximity, to support political and economic transformations in the country, to contribute to greater convergence of positions on international issues of mutual interest *(JCC no. 24 of 09.10 .2014, §64).*

According to Article 50 of the PCA, the Republic of Moldova committed to take the necessary measures in order to gradually approximate the compatibility of its legislation with the legislation of the European Union, and has initiated in this direction a new component of cooperation, namely harmonization of the national legislation with Acquis Communautaire *(JCC no. 24 of 09.10.2014, §65).*

The Court noted that signing on 22 February 2005 of the Action Plan Republic of Moldova - European Union opened new opportunities in order to overcome political and institutional aspects of the PCA. EU has recognized Moldova's European aspirations and for the first time offered the prospective of gradual integration into the European Economic Area *(JCC no. 24 of 09.10.2014, §67).*

The general result following the implementation of the EU-Moldova Action Plan was a more dynamic evolution of Moldovan-EU relations in such areas as political dialogue, democratic reforms, settlement of Transnistrian conflict, development of trade and eco-

nomic reforms, justice and home affairs, boosting of interpersonal contacts etc. *(JCC no. 24 of 09.10.2014, §68).*

The Court also noted that on 24 March 2005 the Parliament of the Republic of Moldova adopted the Declaration on political partnership to achieve the objectives of European integration. According to this Declaration further development of Moldova can be ensured only by "consistent and irreversible promotion of the strategic direction towards European integration" *(JCC no. 24 of 09.10.2014, §69).*

Promotion of the European vector was firmly outlined in the Activity Program of the Government for the years 2005-2009 "Modernization of the Country – Welfare of People" where European integration was designated as the first task of the executive among the key priorities, and the document provided that: "The Government will continue to enhance effective relationships with the European Union in the area of politics, security, economics and culture, to promote cross-border cooperation and to assume responsibility for the prevention and resolution of conflicts" *(JCC no. 24 of 09.10.2014, §71).*

Among the major achievements of the Republic of Moldova in the period of the Partnership and Cooperation Agreement such performances can be listed as development of a structured and ongoing political dialogue with EU, EU involvement in promoting internal reforms in the Republic of Moldova and the beginning of the process of harmonization of national legislation with Community legislation in the fields of human rights, judicial and administrative systems, economics, trade, social reform, education etc. *(JCC no. 24 of 09.10.2014, §72).*

On 12 January 2010 the Republic of Moldova and the European Union initiated negotiations on the Association Agreement intended to replace the PCA. Concurrently the European authorities conducted negotiations with the Government on the Action Plan on Visa Regime Liberalization. By the judgment no.122 of 4 March 2011 the Government approved the National Program for the Implementation of the Action Plan Moldova - EU on Visa Regime Liberalization *(JCC no. 24 of 09.10.2014, §75).*

On 15 September 2011 the European Parliament adopted its Resolution on the negotiations over the Association Agreement between the Republic of Moldova and the European Union. The text of the Resolution contains a number of important references for future relations between Moldova and the European Union. In particular, the Resolu-

tion refers to visa liberalization, the FTA negotiation, sectorial cooperation *(JCC no. 24 of 09.10.2014, §76).*

As a result the Republic of Moldova managed to register important progresses in deepening its partnership with the EU that culminated by signing on 28 June 2014 of the Association Agreement with the European Union. These developments represented the most important achievement in the process of political and economic modernization of the Republic of Moldova, an affirmation of our country as a democratic state and made the country to be an example within the Eastern Partnership *(JCC no. 24 of 09.10.2014, §77).*

1.1.2. The principle of sovereignty and the principle of respect for international law

Sovereignty is the expression of the exclusive and inalienable right of the State to establish and achieve independently its internal and external policy, to carry out its functions, to make practical arrangements to organize national social life and external relations based on the respect for the sovereignty of other states, for the principles and norms of international law accepted by its consent *(HCC no. 24 of 09.10.2014[4], §85).*

The Court found that sovereignty as an attribute of the state in its relations with other countries, is closely connected to independence *(JCC no. 24 of 09.10.2014, §86).*

The Court highlighted that internationally there can be no absolute sovereignty due to the fact that the national state is an element in the international system. Constitutional sovereignty of the Republic of Moldova does not provide for the functioning of the state in a vacuum, this is manifested rather externally by setting up collaborations with other states and international entities. Such relations are mainly set up based on international treaties *(JCC no. 24 of 09.10.2014, §90).*

The Court held that the understanding of sovereignty as an absolute and unrestricted power would amount to the isolation of the state on the international level. Delegation of certain powers to international institutions governed by the power of the law, does not en-

[4] Judgment No. 24 of 09.10.2014 on the constitutionality of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, and of the Law No.112 of 2 July 2014 on its ratification

gage any resignation of the elements that are traditionally constitutive for the state. *(JCC no. 24 of 09.10.2014, §91).*

The transfer of certain state powers arising from the free will of the sovereign state and allowing continuous exercise of such competences with the participation of sovereign states, in a manner agreed in advance and subject to control, does not appear as a weakening of the conceptual sovereignty of the state, but can *a contrario* lead to its strengthening given integrated common actions *(JCC no. 24 of 09.10.2014, §92).*

The Court held that the right of State to enter into international obligations is an element of state sovereignty *(JCC no. 24 of 09.10.2014, §94).*

The Court emphasized that delegation of certain powers to international institutions by entering into particular treaties does not entail resignation of sovereignty. These treaties represent agreements under which the holder of sovereignty delegates certain powers to another authority *(JCC no. 24 of 09.10.2014, §95).*

In the international relations between the states and international organizations, the latter are institutions where the states unite their sovereignty and resources to solve common problems and to find mutually acceptable common solutions, thus acting on behalf of their own national interests *(JCC no. 24 of 09.10.2014, §96).*

Thus the countries of the European Union have decided that some competences could be better carried out by joint efforts under the tutelage of European institutions. In this way the Member states have strengthened their sovereignty, sharing both the costs and the benefits of such collaboration *(JCC no. 24 of 09.10.2014, §97).*

The Court found that generally international treaties should be regarded as a means of coordination of the will manifested by various countries, which stems from the exercise of their sovereignty *(JCC no. 24 of 09.10.2014, §99).*

The Court noted that the characteristics of a state, namely, its nature as sovereign and independent, unitary and indivisible country are essential to define the Republic of Moldova in the framework of constitutional democracy *(JCC no. 24 of 09.10.2014, §102).*

The Court held that the ratification by the Parliament by the Law no. 112 of 2 July 2014 of the Association Agreement ascertains the sovereign decision of the people from the Republic of Moldova to line up with the European values *(JCC no. 24 of 09.10.2014, §106).*

The Court held that the Association Agreement does not entail accession of the Republic of Moldova to the European Union, it only represents basis for further cooperation between the Republic of Moldova and the European Union. Moreover, a country's accession to the European Union is not an abnegation of the national identity and of the constitutional principles and is not a violation of the sovereignty and national identity of the member states *(JCC no. 24 of 09.10.2014, §114).*

Following an examination of the provisions of the Association Agreement, the Court found that it promotes political association and economic integration between the Republic of Moldova and the European Union based on such shared values as respect and advancement of the the principles of sovereignty and territorial integrity, inviolability of borders and independence of Moldova, democracy, respect for human rights and freedoms *(JCC no. 24 of 09.10.2014, §121).*

Similarly, the Court underlined that the orientation of the Republic of Moldova towards European area of democratic values cannot be separated from international commitments stemming from membership within international organizations *(JCC no. 24 of 09.10.2014, §123).*

Compliance with international obligations assumed by self-will represents a legal tradition and a constitutional principle and is an inseparable part of the rule of law *(JCC no. 24 of 09.10.2014, §126).*

1.2. Modification of constitutional provisions

1.2.1. Modification of the Constitution by referendum

Constitution is the fundamental law governing the legal and political organization of the state. The stability of a Constitution over time represents its essence, it should be written in a way to serve as reference for political and legal existence of a community for the longest possible period of time *(Opinion No. 1 of 22.09.2014[5], § 13).*

To this end, the fundamental laws contain various technical means to protect constitutional stability of the Constitution by ensuring a certain degree of rigidity. This is a ba-

[5] Opinion no. 1 of 22.09.2014 on the initiative to revise Art. 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum

sic characteristic of all written constitutions (unlike ordinary laws) providing for the legal norms that allow its revision. In almost all the countries Constitutional revision it is more difficult than a mere amendment of the common legislation and usually requires either a qualified parliamentary majority, multiple decisions, a special calendar and particular timing or a combination of these factors [see the Report on constitutional amendments (CDL-AD (2010) 001 of 19 January 2010) The European Commission for Democracy through Law, hereinafter - the Venice Commission] *(Opinion No. 1 of 22.09.2014, §14).*

Constitutional rigidity is an important corollary of the supremacy of the Basic Law. The rigidity of the Constitution is a guarantee for its stability that ensures to a large extent, the stability of the entire legal system of the state, while reliability and predictability of human behaviors are necessary to ensure legal certainty (and not only) of the members of the community *(Opinion No. 1 of 22.09.2014, §18).*

The Court held that the procedure to revise the fundamental law is directly provided only in Title VI of the Constitution. Article 141 clearly stipulates who are entitled to initiate a revision. Art. 142 provides the limits of revision. Art. 143 of the Constitution provides the rules on the adoption of a constitutional law *(Opinion No. 1 of 22.09.2014, §24).*

Thus, the Supreme Law contains clear provisions only with regard to constitutional revision by the Parliament. A different procedure of constitutional amendment other than upon a vote by the Parliament is not expressly provided in the Constitution *(Opinion No. 1 of 22.09.2014, §25).*

The possibility to amend the Constitution by a referendum was regulated solely through the case-law of the Court (Opinion no. 3 of 6 July 2010 on the initiative to revise Article 78 of the Constitution of the Republic of Moldova by a constitutional referendum) by a combined interpretation of the provisions of Articles 2 and 75 of the Constitution *(Opinion No. 1 of 22.09.2014, §27).*

The referendum has been enshrined in the Constitution as a means though which people can exercise direct national sovereignty and can express their will on matters of general interest or which are of particular importance for the state: "National sovereignty resides with the people of the Republic of Moldova, who shall exercise it directly and through its representative bodies in the ways provided for by Constitution." (Art. 2 para. (1) of the Constitution). According to Art. 75 of the Constitution, problems of utmost importance confronting the Moldovan society and State shall be resolved by referendum. The deci-

sions adopted according to the results of the republican referendum shall have supreme legal power (Art. 75 para. (2) of the Constitution) *(Opinion No. 1 of 22.09.2014, §28).*

The Court held that the possibility to conduct a constitutional referendum with a view to amend the Constitution was provided only by way of jurisprudence, though functional and combined interpretation of constitutional norms. However, the wording of the Constitution does not directly provide the possibility of conducting decision-making constitutional referendums other than those organized in order to validate the constitutional laws adopted by the Parliament on the revision of legal provisions regarding the sovereignty, independence and unity of the state, as well as those regarding permanent neutrality of the state, according to Art. 142 para. (1) of the Constitution *(Opinion No. 1 of 22.09.2014, §39).*

Therefore, in the absence of express constitutional provisions, the rules inherent to such an exercise shall be also deduced from the wording of the Constitution *(Opinion No. 1 of 22.09.2014, §40).*

The Court thus held that in the absence of express constitutional rules, the legal provisions governing the revision of the Constitution by way of a referendum shall be deducted from the rules applicable for the constitutional revision by the Parliament *(Opinion No. 1 of 22.09.2014, §41).*

1.2.2. The initiative to modify constitutional provisions on the election of the head of the state

The fact of preserving the character of the state based on the rule of law and democracy commits the Constitutional Court as the supreme guarantor of the Constitution to take measures to prevent the consequences of unexpected modification of constitutional provisions and to ensure the principles of legal stability (implying clarity, predictability and accessibility), loyal consultation of citizens entitled to vote, freedom of elections and interpretation in good faith to the letter and spirit of the Constitution - principles that represent the structural elements of the general principle of legal certainty, unanimously accepted within the framework of constitutional democracy *(Opinion No. 1 of 22.09.2014[6], §37)* .

[6] Opinion no. 1 of 22.09.2014 on the initiative to revise Art. 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum

The Court considered that a draft law on the revision of the Constitution referring to the manner of electing and dismissing of the President should envisage key issues: an obvious choice of the system of government; clarification of the powers of the President and, as a consequence, of the Prime Minister and the Parliament; insertion among the founding principles of the constitutional system of the Republic of Moldova the principle of mutual respect and loyal cooperation between the state powers provided in the Constitution *(Opinion No. 1 of 22.09.2014, §55).*

Given the wording of the draft constitutional law, actually it has been stated the attempt to repeal the constitutional reform of 2000 and a return to the institutional architecture that failed to avoid conflicts and stalemates between authorities. Due to the fact that the President is elected by direct universal vote his authority from the very first moment of his term is much higher than the authority of the Prime Minister (who is vested by the vote of the Parliament). In fact this is the origin of constitutional complications that led, in 1994-2000, to the perpetuation of conflicts between the authorities *(Opinion No. 1 of 22.09.2014, §56).*

The Court also found that, as opposed to the text which has been previously submitted to the Constitutional Court and upon which it issued its Opinion no. 3 of 6 July 2010, the current draft constitutional law implies the recurrence of the suspension from office of the President *(Opinion No. 1 of 22.09.2014, §57).*

Suspension from office for "serious acts of violation of the Constitution" is in itself open to criticism due to the fact that it is a source of confusions and ambiguities, both regarding the content of such "violations" of the Constitution and in terms of procedure and authority entitled to state such circumstances, let alone the effects of such findings *(Opinion No. 1 of 22.09.2014, §58).*

Concurrently, the Court noted that these changes [suspension from office of the President of the country for "serious acts of violation of the Constitution"] creates the double premise for constitutional stalemates and tension between the vote cast at the referendum and the modern idea of representation. The ultimate effect undeniably is extreme fragilization of constitutional democracy. In addition, it may be mentioned that the regulation proposed for Article 89 of the Constitution fails to meet any similar provisions

of the constitutional texts of EU Member States, except Romania, where this institution created a number of constitutional blockages *(Opinion No. 1 in 22.09.2014§59).*

The proposed wording of Article 89 of the Constitution merges the legal liability with the political one. Legal, i.e. criminal, and/or political liability of the elected President and therefore the related accountability procedures must be clear and should be provided by legal norms of the highest rank, i.e. by constitutional provisions *(Opinion No. 1 of 22.09.2014, §62).*

Given this point of view, removing the institution of suspension from office of the elected President is shaped as constitutional Europeanization, and returning to such a regulation can become a source of new imbalances *(Opinion No. 1 of 22.09.2014, §63).*

1.2.3. Time limits for the modification of the Constitution by referendum

According to Article 143 of the Constitution, which governs the modification of the Constitution by way of parliamentary amendments and applies *mutatis mutandis* for the modifications of the Constitution by way of the referendum, a law on the modification of the Constitution may be subjected for approval following a period of at least 6 months from the initiation of this modification *(Opinion No. 1 of 22.09.2014[7], §66).*

The Court held that the term of minimum 6 months aims to protect the Constitution by providing enough time for discussion and reflection so that the decision makers could elaborate a free and well-informed opinion *(Opinion No. 1 of 22.09.2014, §67).*

The Constitutional Court held, by way of systematic interpretation of the Constitution, that this limitation envisages not only parliamentary procedures, but rather the procedures to revise the Constitution, regardless of the means used. Therefore, the same period of time should be respected also in case of a referendum on constitutional revision. When the Parliament of the Republic of Moldova initiates the procedure to revise the Constitution by referendum it is necessary to comply with the time-limit of six months lasting from the moment of initiation until the date of referendum *(Opinion No. 1 of 22.09.2014, §69).*

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[7] Opinion no. 1 of 22.09.2014 on the initiative to revise Art. 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum

The Court therefore found that the date 30 November 2014 *(2 months),* proposed for the constitutional referendum, fails to comply with the time-limit of six months lasting from the moment of initiation until the date of referendum and thus the extrinsic constitutional condition to initiate the revision has not been observed *(Opinion No. 1 of 22.09.2014, §70).*

1.2.4. The procedural validity of texts submitted to referendum

Given the fact that free formation of a the point of view is essential for a referendum to express the real and genuine will of the people and to be the prerequisite for genuine democratic manifestation of sovereignty in accordance with the principles stated in Article 2 of the Basic Law; the Court has to find a balance between the need to protect the right of the citizen to decide by his participation in the referendum, as his/her fundamental right, and insuring the opportunity to outline the free will of the voters and honesty of the poll *(Opinion No. 1 of 22.09.2014[8], §80).*

In this respect, the Court must ensure compliance with the principles of loyal consultation of citizens entitled to vote, principles involving creation of all necessary conditions for the voters to acknowledge the problems submitted to referendum, the legal consequences of their choice and the effects that the result of the referendum may produce related to the general interests of the community *(Opinion No. 1 of 22.09.2014, §81).*

The principle of legality is a component of the rule of law enshrined in Art. 1 para. (3) of the Constitution. As a consequence, the Court held that compliance with the law is mandatory and violation of this constitutional duty implicitly results in the violation of the rule of law *(Opinion No. 1 of 22.09.2014, §84).*

In this context, the initiative submitted to the Court for its opinion contains a number of shortcomings in terms of the wording *(Opinion No. 1 of 22.09.2014, §89).*

According to the draft decision of the Parliament on the conduction of a republican constitutional referendum: "It is submitted to referendum the draft law on the modification of the Constitution (see attached), expressed by the question: «Do you agree with

[8] Opinion no. 1 of 22.09.2014 on the initiative to revise Art. 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum

the modification of the Constitution that would entail election and dismissal of the President of the Republic of Moldova by the people?»" *(Opinion No. 1 of 22.09.2014, §90).*

Given this circumstances the initiative to conduct a republican referendum combines a general question and a legislative text and thus fails to respect the procedural unity of the text submitted to referendum *(Opinion No. 1 of 22.09.2014, §91).*

It has been noted that a single question related to two problems: election (1) and dismissal (2) of the President of the Republic of Moldova. Thus, by the formulation offered within a single question, the citizen is deprived of the opportunity to provide different answers for the two issues raised *(Opinion No. 1 of 22.09.2014, § 92).*

At the same time, there is a divergence between the wording of the question and the legislative text proposed for approval. Unlike the wording of the question, which refers to (1) election and (2) dismissal, the legislative text modifies five articles of the Constitution and contains additional regulations on (3) the suspension from office *(Opinion No. 1 of 22.09.2014, §93).*

Therefore the wording of the texts submitted to the constitutional referendum fails to insure free formation of the will of the electorate as they do not provide a clear understanding of the revised text of the Constitution by those called upon to participate in the referendum as well as of the consequences of their vote *(Opinion No. 1 of 22.09.2014, §95).*

1.2.5. Cumulating the referendum with parliamentary elections

The Court held that the date proposed for the referendum coincides with the date approved for parliamentary elections - 30 November 2014 *(Opinion No. 1 of 22.09.2014[9], §97).*

Cumulating various electoral exercises as a principle is not prohibited. Organization and simultaneous conduction of multiple elections is not unprecedented in democratic states *(Opinion No. 1 of 22.09.2014, §101).*

However the Court found that such a cumulation is likely to cause difficulties in exercising the voting rights, difficulties that may result, eventually, in the limitation of this right. "Cumulating" parliamentary elections and the referendum is likely to cause a state

[9] Opinion no. 1 of 22.09.2014 on the initiative to revise Art. 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum

of confusion among the the voters. The complexity of voting procedures can lead to the exclusion from the scrutiny of voters who, through no fault of their own, will not be able to vote within the time period dedicated for the exercise of the voting rights until the closure of polls *(Opinion No. 1 of 22.09.2014, § 104).*

These are practical reasons on which another rule provided by the Code of Good Practice in Electoral Matters (CDLAD (2002) 023, adopted by the Venice Commission on 18-19 October 2002) is based, namely that the voting procedure should be as simple as possible to let the voters freely express their will and thus to ensure effectiveness of the right to vote and to free elections *(Opinion No. 1 of 22.09.2014, §105).*

The Court acknowledged that the rationale for the cumulation of parliamentary elections with the referendum may be determined by the need to reduce the costs implied due to the current economic situation, involving their coverage by same budget - the state budget. The importance and necessity of measures to reduce budgetary expenditures in the context of economic crisis, which is an incontestable fact, cannot be based on arguments referring to the restriction of certain rights and freedoms or to the support for measures that may negatively influence the fundamental principles of the rule of law *(Opinion No. 1 of 22.09.2014, §106).*

Given the exclusion by the provisions of the Election Code of the possibility to concurrently conduct two republican referendums, the Court held that this prohibition was dictated by the need to avoid confusion when carrying two democratic exercises of different nature. However, given [...] the necessity to respect the 6 months' time-limit for the revision of the Constitution, the Court held that the Parliament is responsible and obliged to exclude any ambiguities in the Election Code regarding the possibility of cumulating elections with the referendum *(Opinion No. 1 of 22.09.2014, §107).*

2. PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

2.1. Ensuring the principle of equal remuneration of civil service

2.1.1. Remuneration of the courts' staff

The Court noted that judicial independence cannot be assured without structural and institutional independence, which allows the employment of qualified legal staffing and internal organization of the courts (*JCC no. 25 of 11.06.2014*[10]*, §43*).

The balance between state powers is ensured also by the degree of proportionality of material support of the administrative staff, which ultimately contributes to the achievement of the tasks by the representatives of these three powers (*JCC no. 25 of 11.06.2014, §44*).

With due consideration of these judgments, by the Decision no.24 of 10 September 2013, the Court declared as unconstitutional the compartments "Secretariat of the Constitutional Court", "Superior Council of Magistracy, Supreme Court of Justice, General Prosecutor's Office", "Courts of Appeal" and "Courts, including military, territorial and specialized prosecutor's offices" in Annex no. 2 to the Law no.48 of 22 March 2012 on the civil service pay system (*JCC no. 25 of 06.11.2014, §45*).

By this Decision, the Court found that the remuneration of the officers from the judicial system is lower than the remuneration of identical positions within the legislative and executive authorities (*JCC no. 25 of 06.11.2014, §46*).

Upon examining the amended provisions, the Court held that while adopting them, the rationales of the constitutional court presented in the Decision no.24 of 10 September 2013 were not taken into consideration. Thus, the Law no.146 of 17 July 2014 offered solutions similar to those covered by the previous law which was declared unconstitutional, kept the discrepancy between the level of wages of the officers from the judicial system against some officers of the legislative and the executive, thus ignoring the considerations and enacting the dispositive part of the Judgment of the Constitutional Court no.24 of 10 September 2013 (*JCC no. 25 of 06.11.2014, §51*).

[10] Judgment no.25 of 06.11.2014 on the control of constitutionality of certain provisions of Law no.146 of 17 July 2014 on the amendment and competition of certain legislative acts (remuneration of public servants within courts and of judges)

In this context, the Court reiterated that similar civil service positions within the authorities placed at the same level of the institutional hierarchy of state powers shall be offered a balanced salary. Thus, in case of equivalent positions, the officers from the judicial system shall have a salary at least equal to that of the civil servants within the legislative and executive authorities, positioned on the same level in the institutional hierarchy (*JCC no. 25 of 06.11.2014, §57*).

Thus, given that, according to article 140 of the Constitution, the Court Judgment shall enter into force upon its adoption, the Court held that the relevant public authorities shall recalculate the salary according to new legal regulations [...] as of the date of adoption of the Judgment of the Constitutional Court no.24 of 10 September 2013 (*JCC no. 25 of 06.11.2014, §64*).

[...] The Court held that the maintenance of reduced salaries of civil servants from the aforementioned institutions as related to the officers from the Parliament and the executive authorities affect the principles provided in Articles 6 and 16 of the Constitution. At the same time, failure to recalculate such salaries as of the date of the Judgment no.24 of 10 September 2013 constitutes a violation of Article 140 of the Constitution and challenges the biased attitude of the Executive and of the Parliament towards the Constitutional Court (*JCC no. 25 of 06.11.2014, §73*).

2.1.2. Financial incentives to customs officers

The Court stated constantly in its previous jurisprudence that any difference in treatment does not automatically imply a violation of Article 16 of the Constitution. For a violation of Article 16 of the Constitution to be registered, people in similar or comparable situations should undergo a differential and discriminatory treatment (*JCC no. 30 of 12.11.2014*[11] *§28*).

Concurrently, a distinction is discriminatory if it is not based on a justification that is objective and reasonable, when it does not pursue a legitimate aim or there is no any

[11] Judgment no.30 of 11.12.2014 on the control of constitutionality of article 9 para.(6) of the Law no.48 of 22 March, 2012 on the pay system of civil servants (financial stimulation of customs officers)

reasonable relationship of proportionality between the means used and the aim pursued (*JCC no. 30 of 11.12.2014, §29*).

The Court found that all civil servants are vested with an overall responsibility - to exercise, under the law, the duties established by the public authority in order to achieve their competences. Moreover, positions cannot be regarded as identical as each position has its specific peculiarities and conditions to be complied with when are exercised (*JCC no. 30 of 11.12.2014, §32*).

In this regard, the Court noted that, according to the Law no.48 of 22 March 2012, the salaries of civil servants are differentiated by position, professional degrees and levels (*JCC no. 30 of 11.12.2014, §34*).

The Court held that, in terms of legal provisions, the comparison of positions and of the system of remuneration thereof shall be made taking into account the complexity of the competences required, namely the intellectual input necessary to carry out such competences, degree of commitment and responsibility in exercising the prerogatives of public power, as well as the level of institutions within the hierarchy of state authorities (*JCC no. 30 of 12.11.2014, §37*).

The Court noted that, complimentary to the basic salary guaranteed by the constitutional rules, the system of remuneration of civil service includes additional increments, bonuses and other supplements to the salary (*JCC no. 30 of 11.12.2014, §38*).

Furthermore, additionally to the general increments that may be granted to all categories of civil servants, the legislature established the possibility of financial incentives to the staff of mobile teams of the Customs Service, who have contributed to the collection of revenues to the state budget by detecting the violations following the customs controls made, amounting to 10% of the amounts received (art. 9 para.(6) of Law no.48 of 22 March 2012) (*JCC no. 30 of 12.11.2014, §39*).

In this regard, the Court accepted the Government's view, according to which the customs officers within mobile teams exercise activities other than those exercised by most civil servants involving a degree of risk, they have a special status and are not in a similar or comparable situation with other civil servants (*JCC no. 30 of 12.11.2014, §41*).

The Court also noted that all civil servants, including customs officers, shall behave honestly and act in good faith in performing their duties (*JCC no. 30 of 11.12.2014, §42*).

The Court held that the rule submitted for a control of constitutionality, governs exclusively the *increments* to the basic salary for customs officers within the mobile teams, namely up to 10% of revenues to the state budget resulted from the violations detected following the customs control carried out. Payments are made from budgetary sources of the Customs Service (*JCC no. 30 of 12.11.2014, §49*).

The Court noted that EUBAM recommendations of 16 November 2012 regarding the national concept on mobile units of the Customs Service of the Republic of Moldova, stipulate the implementation of a transparent system of financial rewards for revenues, depending on their significance (*JCC no. 30 of 12.11.2014, §50*).

Considering the above, the Court held that according to Art. 43 of the Constitution, the state shall provide all the employees with a minimum guaranteed wage, thus the salary is a fundamental protected right. Supplements to the salary are not fundamental rights, but additional salary rights (*JCC no. 30 of 11.12.2014, §51*).

In this regard, the Court noted that the legislative is empowered to grant civil servants with increments, incentives, bonuses to the basic salary. The legislative is entitled, however, to differentiate the increments according to the categories of stuff receiving them, to change them in different periods of time, to suspend or even cancel them (*JCC no. 30 of 11.12.2014, §52*).

2.2. Free access to justice

2.2.1. Judicial control of acts related to national security

The Court noted that the administrative court as a legal entity aims to counter the abuse and excess of power by public authorities, to defend human rights within the law, to regulate the activities of public authorities, to ensure the rule of law (*JCC no. 5 of 11.02.2014*[12]*, § 53*).

The Court also noted that art. 4 of the Law on Administrative Court provides the list of acts exempted from judicial control, and letter e) of the concerned article exempts the administrative acts concerning: national security of the Republic of Moldova, applica-

[12] Judgment no.5 of 11.02.2014 on the control of constitutionality of article 4 letter e) of Law no.793-XIV of 10 February 2000 on the administrative court

tion of curfew, emergency measures taken by public authorities to fight natural calamities, fires, epidemics, epizooties, and other similar phenomena (*JCC no. 5 of 11.02.2014, § 54*).

The Court held that the issuance of administrative acts related to the national security of the Republic of Moldova is determined by exceptional circumstances that could endanger state security and public order, these being issued with the aim to discover, prevent and remove the domestic or external threats that may cause damage to the social, economic and political legality, equilibrium and stability of the state that are necessary for the existence and development of the national state - a sovereign, unitary, independent and indivisible state, to the maintenance of legal order as well as of the climate for the unhampered exercise of the fundamental rights, freedoms and duties of the citizens, in accordance with the democratic principles and rules provided by the Constitution (*JCC no. 5 of 11.02.2014, § 55*).

The Court emphasized that the legality of administrative acts issued in exceptional circumstances has certain peculiarities, operating the so-called "crisis legality". Thus, the Court accepts that, in case of exceptional circumstances which threaten the very existence of the state, public authorities can take the necessary measures to cope with such circumstances, even if doing so violates the law, due to the fact that safety of the public interest is the supreme law (*salus rei publicae suprema lex*) (*JCC no. 5 of 11.02.2014, § 65*).

The Court held that the acts issued in exceptional circumstances are considered legal when these are aimed at protecting the public interest, and the means used are suitable for this purpose, even if the issue of such acts do not comply entirely with certain legal regulations that usually discipline the public administration activity (*JCC no. 5 of 11.02.2014, § 66*).

However, the Court noted that the acts issued in exceptional circumstances have to meet minimum requirements of legality (principle of legality), which protect the public interest (*JCC no. 5 of 11.02.2014, § 67*).

The Court held that the legality of such acts has to be assessed by the court in terms of their purpose, to wit the protection of the public interest, sanctioning the abuse of power by the public authorities (*JCC no. 5 of 11.02.2014, § 68*).

The Court accepted that during the control by the court of the legality of such acts, the legislator may establish certain special procedural rules (*JCC no. 5 of 11.02.2014, § 69*).

The Court also held that the court should determine whether certain conditions have been cumulatively met, namely: existence of exceptional situation; existence of exceptional situation on the date the acts was issued; competence of the authority to issue the act; obvious impossibility of public administration to issue the act under normal conditions; purpose of issuing the act is the protection of a public interest (*JCC no. 5 of 11.02.2014, § 70*).

The Court held that, although derogatory rules may be established in the particular context concerning the national security measures, however, the legal framework shall provide protection against arbitrary interferences of the public power on the rights and fundamental freedoms. Otherwise, if in the light of legal provisions, the discretion of public authorities was devoid of any control, the law could essentially violate the preeminence of law (*JCC no. 5 of 11.02.2014, § 73*).

2.2.2. Enforcement of court judgments

The Court noted that Article 20 para.(1) of the Constitution directly indicates on the existence of a positive obligation of the State to ensure the right to an effective remedy (*JCC no.4 of 06.02.2014*[13]*, § 45*).

According to the case-law of the European Court, access to justice means not only effective legal opportunity to address to a body that has full jurisdiction to solve an appeal and to obtain satisfaction, *but also the right to request the enforcement of the judgment obtained* (*JCC no.4 of 06.02.2014, § 46*).

Under Article 120 of the Constitution, observance of sentences and of other final rulings issued by the courts of law shall be binding. The binding nature of the judgments is expressed by the duty to enforce them (*JCC no.4 of 06.02.2014, § 47*).

The Court held that enforcement of a judgment is an integral part of a civil trial, in the meaning of Art. 6 para.1 (*Hornsby against Greece, March 1997, §40*). The state has the

[13] Judgment no.4 of 06.02.2014 on the control of constitutionality of articles 139 para.(3)-(4), 140 para. (1), (3)-(10) of the Enforcement Code of the Republic of Moldova no.443-XV of December 24 2004 and of certain provisions of article 28 para.(1) letter e) of the Law on real estate cadaster no.1543-XIII of 25 February 1998

positive obligation to organize a system for the enforcement of final and irrevocable judgments (*JCC no.4 of 06.02.2014, § 48*).

The Court found that enforcement of a judgment occurs only when the debtor refuses to comply voluntarily with the judgment. That is, failure to voluntarily execute an enforceable act leads to compulsory enforcement (*JCC no.4 of 06.02.2014, § 58*).

The Court held that due to the facts that enforcement of judgments is an integral part of the judicial process, establishment of the rules of conduct within the execution process is the exclusive prerogative of the legislature, which can set, in certain circumstances, special rules of procedure (*JCC no.4 of 06.02.2014, § 61*).

The enforcement procedure has to contribute to the achievement of creditor's rights recognized by an enforceable document submitted for enforcement in the manner prescribed by law (*JCC no.4 of 06.02.2014, § 62*).

At the same time, the Court emphasized that the creditor's option to take over the property against a debt is part of the procedure on the sale of goods facilitating the enforcement, with the creditor's consent, without affecting the rights of the debtor, by avoiding the occurrence of certain circumstances that would make enforcement difficult or impossible (*JCC no.4 of 06.02.2014, § 65*).

In light of the above, the Court considered that it is the creditor and not the bailiff who has to decide upon the transmission of the property, being entitled to decide on the takeover of ownership over such property (*JCC no.4 of 06.02.2014, § 66*).

The Court also noted that the bailiff should not decide arbitrarily on the manner of actions when the tender fails to take place and it is necessary to organize a repeated tender, but he acts strictly in compliance with the procedure already established by the legislature (*JCC no.4 of 06.02.2014, § 67*).

The Court held that the debtor's property is the subject of enforcement. The income and assets of the debtor may be subjected to enforcement if they are traceable and only to the extent necessary to ensure the rights of creditors (*JCC no.4 of 06.02.2014, § 85*).

2.3. Non-retroactivity of the law

2.3.1. Limitation period for criminal liability

The Court noted that in criminal matters there shall be applied the law that was in force at the time of the offense and not the law in force after the consummation of crime, except for more favorable law, which has a retroactive effect (*JCC no.14 of 27.05.2014*[14], *§51*) .

Thus, according to article 22 of the Constitution in conjunction with article 10 of the Criminal Code, non-retroactivity of criminal law refers to any circumstance that worsens the situation of the person, not limiting only to the size and type of the punishment applied, thus including the limitation period for criminal liability (*JCC No.14 of 27.05.2014, §53*).

The Court held that, the need to regulate the limitation period for criminal liability has regard to the quintessence of this institution, due to the fact that criminal liability, as a means of achieving the rule of law by constraint, must intervene immediately after committing the crime. Justification of limitation period is closely related to reason of criminal punishment which, after a long period of time since the offense, becomes ineffective in relation to the purpose of criminal punishment (*JCC no.14 of 27.05.2014, §54*).

The Court noted that the possibility of retroactive application of the limitation period for criminal liability is different in each legal system and depends on how it is qualified, with a view to substantive or procedural law (*JCC no.14 of 27.05.2014, §56*).

Thus, in countries where limitation period is qualified within the substantive law, there are applied the legal provisions in force at the time of the offence, the retroactive application being possible only if it is more favorable (*JCC no.14 of 27.05.2014, §57*).

Concurrently, qualification within the procedural law determines the immediate application of the law to any procedure subject to modification, regardless of the time of the offense (*JCC no.14 of 05.27.2014, §58*).

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[14] Judgment no.14 of 27.05.2014 on the control of constitutionality of Art.II of Law no.56 of 4 April 2014 on the amendment of article 60 of the Criminal Code of the Republic of Moldova (limitation period for criminal liability)

The Court held that institution of the limitation period for criminal liability in the Republic of Moldova is inserted into the criminal law (substantive law) (*JCC no.14 of 27.05.2014, §63*).

The Court held that, according to article 60 para.(2) of the Criminal Code, the limitation period for criminal liability is applied depending on the offence committed, taking effect on the day of the offense until the date of the final court decision (*JCC no.14 of 27.05.2014, §65*).

At the same time, the Court pointed out that, according to the challenged law, notwithstanding the provisions of Article 60 of the Criminal Code of the Republic of Moldova, the limitation period for criminal liability does not apply to persons who had committed the offence of abuse of power or authority, excess of power or abuse of office or negligence during the events of 7 April 2009 or in connection with these events, for which, at the time of entry into force of this law, the limitation period for criminal liability has not expired yet (*JCC no.14 of 27.05.2014, §66*).

The Court noted that, by systemic interpretation of the criminal law of the Republic of Moldova, the institution of criminal liability limitation period is regulated in conjunction with the institution of criminal punishment. Worsening of the punishment leads directly to the modification of the limitation period (*JCC no.14 of 27.05.2014, §68*).

Thus, the Court held that the limitation period varies depending on the severity of the punishment (*JCC no.14 of 27.05.2014, §69*).

The Court thus noted that setting different the limitation periods for criminal liability for the same category of offenses (abuse of power or authority, excess of power or abuse of position, negligence) constitute a discriminatory treatment as compared to the persons who committed the same category of offenses in the same period of time (*JCC no.14 of 27.05.2014, §71*).

Accordingly, the Court held that the passiveness and lack of actions of law enforcement agencies with a view to investigate the facts of abuse of power or authority, excess of power or abuse of position and negligence committed during the events of 7 April 2009, cannot justify such legislative intervention by adopting derogatory criminal norms. Inefficiency and inaction of law enforcement agencies cannot result in retroactive application of the provisions which worsen the situation of the person (*JCC no.14 of 27.05.2014, §74*).

The Court recalled that the legislature is fully entitled to adopt criminal regulations, and may modify the limitation periods for criminal liability, either to decrease or extend the limitation period, or fully remove the limitation period from the criminal law. However, these modifications must be included in the Criminal Code as the only criminal law, according to art.1 of the Criminal Code of the Republic of Moldova, and not by derogatory laws. Similarly, any legislative modifications should not disregard the principles of law already stipulated by the legislature itself. The reasoning of the criminal law underlies basically the proportionality of punishment with prejudicial degree of the offences committed, irrespective of the circumstances of committing them (*JCC no.14 of 27.05.2014, §75*).

Taking into account the aforementioned, the Court held that the derogation from the provisions of Article 60 of the Criminal Code of the Republic of Moldova and the non-application of the limitation periods for criminal liability to the persons who have committed the offences of abuse of power or authority, excess of power or abuse of position or negligence during the events of 7 April 2009 or in connection with these events, for which, as of the date of entry into force of Law no.56 of 4 April 2014, the limitation periods for criminal liability did no expire, infringes the provisions of Articles 22 and Article 16 of the Constitution (*JCC no.14 of 27.05.2014, §77*).

2.4. Quality of criminal law

The Court emphasized that criminal law has the most severe impact as compared to other laws, it sets punishment for the most dangerous offenses, and therefore, its provisions should regulate very clear all the elements of the offense. This condition is essential not only to the provisions of the special part of the criminal law, but also for those contained in its general part (*JCC no.14 of 27.05.2014*[15], *§83*).

When considering a particular case, the general and abstract wording of the criminal law may affect the functionality of criminal law, its consistent and regular implementation, which would distort the principle of quality of law (*JCC no.14 of 27.05.2014, §84*).

[15] Judgment no.14 of 27.05.2014 on the control of constitutionality of Art.II of the Law no.56 of 4 April 2014 on the amendment of article 60 of the Criminal Code of the Republic of Moldova (limitation period for criminal liability)

The Court noted that the challenged provision provides the non-application of the limitation period for criminal liability for the offenses committed in a certain period of time, namely "during the events of 7 April 2009 or in connection with these events" (*JCC no.14 of 27.05.2014, §85*).

The Court noted that, in the context of criminal law, the term "event" used in the challenged provision is vague since it fails to refer to any offense, neither to the time nor to the scene of the offense, as an element of the crime (*JCC no.14 of 27.05 .2014, §87*).

Neither the phrase "in connection with these events" contributes to the clarity and predictability of the challenged provision, in terms of the time the prejudicial offense was committed (as an inherent sign of crime) (*JCC no.14 of 27.05.2014, §89*).

Given these reasons, the Court concluded that in terms of quality, the phrase "during the events of 7 April 2009 or in connection with these events" violates the principle of *lex certa* (*JCC no.14 of 27.05.2014, §91*).

2.5. Right to silence – component of the right of defense

The Court noted that the right to silence is a part of the right to defense, as an element of a fair trial (*JCC no.28 of 18.11.2014*[16]*, §33*).

However, according to the case-law of the European Court, "the right to silence is not absolute" (Weh vs. Austria, 8 July 2004) (*JCC no.28 of 18.11.2014, §37*).

The Court held that in order to ensure traffic safety and protection, the legislator has inserted in the Contravention Code the responsibility for committing illegal acts, relevant to road traffic (*JCC no.28 of 18.11.2014, §41*).

The Court noted that, according to the Law no.131 of 7 June 2007 on road safety, vehicle owners have the right to grant, as established, to other persons possessing driving license, the right to drive and use the vehicle (art. 23 para.(2) b)) (*JCC no.28 of 18.11.2014, §42*).

[16] Judgment no.28 of 18.11.2014 on the control of constitutionality of Art.234 of Contravention Code of the Republic of Moldova (administrative sanctions against the owner of the vehicle for nondisclosure of the identity of the person entrusted with driving the vehicle)

Concurrently, art. 23 para.(1) of the Law stipulates that the vehicle owner shall, at the request of the police and within the specified deadline, disclose the identity of the person, entrusted to drive the vehicle on public roads (*JCC no.28 of 18.11.2014, § 43*).

The Court noted that failure of the owner or trustee (user) of the vehicle to disclose, at the request of the police, the identity of the person entrusted to drive the vehicle, constitutes an offense (art.234 of the Contravention Code). Communication of knowingly false information regarding the identity of that person is also subject to contravention penalty (*JCC no.28 of 18.11.2014, §44*).

The Court found that road safety is of particular importance for society. Hence, road safety is a positive obligation of the state. As a road user, the vehicle is a source of increased danger to others, and the driver is obliged to comply with certain regulations imposed by the authorities, in order to avoid the risks associated with its use. The vehicle owner is responsible for the damage resulted from using the vehicle he possesses (*JCC no.28 of 18.11.2014, §45*).

The Court noted that the legislator in the process of regulation of property relations on vehicle and road safety, is entitled to set certain requirements regarding the vehicle owner, including the possible responsibility (*JCC no.28 of 18.11.2014, §46*).

The Court held that a person, when enjoying the right of non-disclose of personal data of his family members and close relatives, as the owner, cannot shirk the responsibility clearly defined by law (*JCC no.28 of 18.11 .2014, §47*).

Therefore, the major social importance of road safety may impose responsibilities towards citizens, such as to inform the police of the person entrusted with driving the vehicle, in order to protect the road users from accidents and negative consequences, and create legal conditions for bringing to justice those who violate traffic rules (*JCC no.28 of 18.11.2014, §52*).

The Court found that there is no less restrictive measure to ensure the road safety, so the establishment of such a liability is proportionate to the aim pursued, and the consolidation of such responsibilities is not excessive (*JCC no.28 of 18.11.2014, §53*).

The Court noted that imposition of administrative sanctions against a vehicle owner or his representative occurs in case they refuse to disclose the authorities the identity data

of the person entrusted with driving the vehicle, and only if the vehicle concerned committed an offense or violation (*JCC no.28 of 18.11.2014 , §54*).

The Court therefore held that the owner is guaranteed the right provided for in art. 377 of the Contravention Code, and namely the right not to testify against himself or close relatives, in respect of the substance of the possible offense or violation involving the vehicle (*JCC no. 28 of 18.11.2014, §55*).

At the same time, the Court emphasized that the mere obligation of the owner or trustee to disclose the identity data of the person driving the vehicle cannot lead to the incrimination of other subsequent offenses, law enforcement bodies being responsible of proving any violation of the law (*JCC no.28 of 18.11.2014, §56*).

In light of the above, the Court noted that administrative sanctions against the vehicle owner or his trustee in case any of them refuses to disclose the identity of the person he entrusted the vehicle to, is not a violation of Articles 21 and 26 para.(1) of the Constitution (*JCC no.28 of 18.11.2014, §58*).

2.6. Right to education

2.6.1. University autonomy

The Court reiterated that, within the meaning of article 35 para.(6) of the Constitution, university autonomy is a constitutional concept, having the value of a principle, and established by a legislator as a component of the right to education. The principle is a guarantee of freedom in the organization of higher education (*JCC no.19 of 03.06.2014*[17], *§43*).

Thus, university autonomy represent the independence of higher education institutions in relation to the state and other stakeholders in addressing issues related to internal management, financial administration, setting of educational policies, services and other internal activities (*JCC no.19 of 03.06.2014, § 45*).

In spite of broad autonomy enjoyed by higher education institutions, the state can get involved yet in their organization and activities, obliging them to respect and imple-

[17] Judgment no.19 of 03.06.2014 on the control of constitutionality of the provisions of the Law on education no.547-XIII of 21 July 1995

ment fully the principles of education (humanization, accessibility, adaptability, creativity, diversity, democracy, openness and flexibility) and set up educational standards, thus achieving the cooperation between the state and higher education institutions (*JCC no.19 of 03.06.2014, §46*).

The Court held that, university autonomy enshrined in art.35 para.(6) of the Constitution implies both educational and institutional autonomy. Educational autonomy is expressed through functional or academic university autonomy, whereas institutional autonomy includes organizational, administrative and financial autonomy. These two forms of autonomy are inseparable, or without academic freedom (in teaching) no institutional autonomy can be guaranteed (*JCC no.19 of 03.06.2014, §51*).

[...]University autonomy entitles the university community to define its own role, institutional strategy, structure, activities, own organization and functioning, identify and improve its own academic and administrative structure; administration of material and human resources (*JCC no.19 of 03.06.2014, §57*).

In terms of organizational autonomy, the universities have the right to determine their own organizational structure and elect their own administrative bodies (*JCC no.19 of 03.06.2014, §58*).

The structure and power of higher education institutions are determined by the University Charter. University Charter is the basic document, which defines the main tasks of the university community, the principles of organization and functioning of the university, rights and duties of the members of the university community (*JCC no.19 of 03.06.2014, §59*).

The Court held that under Article 48 para.(4) of the Law on education, rectors of state higher education institutions are elected by the institutions' senates on a competitive basis. The rectors of all state higher education institutions are approved by the Government (*JCC no.19 of 03.06.2014, §72*).

The Court found that rectors of education institutions, which by their status or at the request of the executive authority or other, provide advance training and field retraining to persons with higher education, may be appointed by the authorities having instituted them. The legislator has the right to regulate the activity of these institutions, as well as to determine, depending on the interests and changing needs of the society, different types

of educational, scientific and research institutions. The legislator may define different structural management models of these institutions (*JCC no.19 of 03.06.2014, §78*).

The Court also stressed that appointment of rectors of higher education institutions offering the three-cycle education (I, II, III) by the external subjects having no relevance to the university environment, as well as setting of training standards for undergraduate, postgraduate, doctoral candidates with relative uniformity regarding the respective professional field, violate the constitutional principle of university autonomy (*JCC no.19 of 03.06.2014, §79*).

2.7. The right to work and to labor protection

2.7.1. Trade union consent for dismissal

According to article 87 para.(2) of the Labour Code, the dismissal of the person elected in the trade union body and non-dismissed from the main workplace is admitted upon respecting the general manner of dismissal and only with the preliminary agreement of the trade union body which the respective person is member of; and according para.(3) heads of the primary trade union organization (trade union organizers) non-dismissed from the main workplace cannot be dismissed without preliminary agreement of the higher trade union body (*JCC no.12 of 20.05.2014*[18], *§ 7*).

Also, para.(4) provides that, if the employer does not receive the response within this period, the consent (notification of the consultative opinion) of the respective body is entailed (*JCC no.12 of 20.05.2014, § 9*).

The right to work, choice of a profession and workplace enables each person to carry out the profession or occupation chosen, under certain conditions laid down by the law, and does not imply the state's obligation to guarantee access for all people to all professions (*JCC no.12 of 20.05.2014, § 47*).

However, given the specific nature of the right to work, but also the position of subjects of labor relations, both national and international rules provide a series of guarantees

[18] Judgment no.12 of 20.05.2014 on the control of constitutionality of certain provisions of paragraph (4) of article 87 of the Labour Code no.154-XV of 28 March 2003

designed to ensure a balance between employers and employees and adequate protection of the dignity, security and stability of the employee (*JCC no.12 of 20.05.2014, § 51*).

The minimum guarantees must be determined by the subjects of labor relations themselves through individual (or collective) labour agreements, concluded following free negotiations, according to Article 43 of the Constitution (*JCC no.12 of 20.05.2014, § 52*).

Based on the content of the said constitutional provision, the Court found that the citizens' right to work, including the employed people, is guaranteed and protected by law (*JCC no.12 of 20.05.2014, § 53*).

To protect their interests under the provisions of Article 42 of the Constitution, employees have the right to associate, to set up and join trade unions (*JCC no.12 of 20.05.2014, § 54*).

The Court held that there is a relationship between the right to work and the right to form trade unions that provides harmony of labour relations (*JCC no.12 of 20.05.2014, § 60*).

The Court held that according to the challenged provisions, the intervention of trade union bodies is required in connection with the termination of an individual employment agreement with an employee - a member of a trade union, in case of his/her dismissal (*JCC no.12 of 20.05.2014, § 73*).

The Court noted that, according to the classification, individual employment agreements take the form of mutually binding contracts under which each party undertakes certain commitments; thus according to them the employee shall execute the work and observe the labour discipline, on the one part, and the employer shall provide remuneration of labour and ensure labor conditions, on the other part (*JCC no.12 of 20.05.2014, § 74*).

Thus, the mutually binding nature of the employment agreements implies also the right of the parties to terminate this relationship (*JCC no.12 of 20.05.2014, § 75*).

The concept of termination of the individual employment agreement is based on the principle of legality and the grounds, conditions and procedure for termination of this agreement shall be regulated in detail by the law (*JCC no.12 of 20.05.2014, § 76*).

Under these circumstances, the Court held that the definition by the law of the criteria, namely those concerning termination of employment, cannot be regarded as a restriction or denial of the right to work (*JCC no.12 of 20.05.2014, § 81*).

The Court noted that the disputed legislative measure, provided in Article 87 para. (4) of the Labour Code, is not contrary to the constitutional norms. However, namely the information, data provision, consultations, negotiations with trade unions pursue the aim to verify the accuracy of the employer's actions and to find solutions in relation with the employees members of trade unions (*JCC no.12 of 20.05.2014, § 82*).

Furthermore, in order to protect the employee member of a trade union, the legislator has established a time limit of 10 working days, during which the trade union body has the right to express its opinion on the dismissal of the employee member of a trade union (*JCC no.12 of 20.05.2014, § 83*).

The Court emphasized that this rule provides yet another guarantee for employees members of the trade union in case of their dismissal, as well as the opportunity for the trade union body to express its consent or disagreement (*JCC no.12 of 20.05.2014, § 84*).

The Court held that regulation of labor relations, as well as of the rights and obligations of the participants to this relations, including the right of employees to join trade unions, is the prerogative of the legislator, in accordance with the relevant principles (*JCC no.12 of 20.05.2014, § 85*).

2.8. Right to petition

2.8.1. Non-examination by the Ombudsman of the complaints submitted by incapable persons

The Court held that, under Article 1 para.(3) of the Constitution, human dignity is a fundamental value (*JCC no.27 of 13.11.2014*[19]*, §42*).

[19] Judgment no.27 of 13.11.2014 on the control of constitutionality of article 21 para.(5) letter e) of the Law no.52 of 3 April 2014 on People's Advocate (Ombudsman) (non-examination by the Ombudsman of the complaints submitted by incapable persons)

In this regard, the Court noted that Article 52 para.(1) of the Constitution provides Moldovan citizens with the right to address petitions to any public authorities (*JCC no.27 of 13.11.2014, §45*).

The Court held that the right to file petition is not absolute, in the light of Article 54 para.(3) of the Constitution, limitations being admitted in exercising this right. However, limitations operated by the legislator should not affect the very essence of the right to petition (*JCC no. 27 of 13.11.2014, §48*).

In this context, the Court stated that, any restriction on the right of petition is incompatible with the provisions of Article 52 of the Supreme Law, unless it is provided by law, pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought (*JCC no.27 of 13.11.2014, §49*).

The Court held that Ombudsman is perceived as the guarantor of democratic development, the mediator between society and the state authority with the aim at ensuring the dialogue between them, as well as at overseeing the compliance with the universal values of human rights and freedoms (*JCC no.27 of 13.11.2014, §54*).

The Court noted that, in accordance with the provisions of Article 18 para.(1) of Law no.52 of 3 April 2014, the People's Advocate (Ombudsman) reviews the complaints of the individuals, irrespective of the citizenship, age, gender, political or religious beliefs, living permanently, being or having been temporarily on the territory of the country, whose rights and freedoms were allegedly violated (*JCC no. 27 of 13.11.2014, §55*).

Under Article 25 of Law no. 52 of 3 April 2014, based on the results of the complaint examination, the People's Advocate has the right to submit to the court a request to protect the interests of the petitioner whose fundamental rights and freedoms have been violated. Similarly, according to the aforementioned article, the People's Advocate has the right to intervene with the competent authorities with a claim to initiate a disciplinary or criminal procedure against the responsible official who did commit violations which did generate the violations of the human rights and freedoms; to intimate the public officials of all levels on the cases of negligence at work, violation of professional ethics, delay and bureaucracy (*JCC no.27 of 13.11.2014, §56*).

At the same time, the Court found that Article 21 para.(5) of the Law lists exhaustively the circumstances in which the complaint submitted to the Ombudsman would not be

accepted for review, including the situation where the complaint is submitted by a person found incapable by a court decision (e)) (*JCC no.27 of 13.11.2014, §57*).

Thus, following the analysis of Article 21 para.(5) letter e) of the Law, it results that the person declared as incapable by a court decision cannot benefit from one of most effective means of protection of his/her rights and freedoms, namely the right to complaint to the Ombudsman. With reference to this category of persons, in accordance with Article 19 para.(2), the complaint may be submitted only by the representative of the petitioner (*JCC no.27 of 13.11.2014, §58*).

The Court held that under Article 12, para.1 of the UN Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006 and ratified by the Republic of Moldova by the Law no.166 of 9 July 2010, persons with disabilities have the right to recognition everywhere as persons before the law (*JCC no.27 of 13.11.2014, §63*).

The objective of the said Convention is to promote, protect and ensure the full and equal enjoyment by all persons with disabilities the human rights and fundamental freedoms and to promote respect for their inherent dignity (*JCC no.27 of 13.11.2014, § 65*).

In order to ensure social inclusion of people with disabilities, there has been adopted Law no.60 of 30 March 2012 on the social inclusion of people with disabilities (*JCC no.27 of 13.11.2014, §66*).

According to Article 10 para.(2) of Law no.60 of 30 March 2012, compliance of the central and local authorities, institutions and companies, regardless of their type of ownership, public associations and officials of all levels with the provisions of the UN Convention on the Rights of Persons with Disabilities, is insured by the civil society and the ombudsman, as required by the law (*JCC no.27 of 13.11.2014, §67*).

The Court noted that the Law concerned, adopted for the implementation of the UN Convention, expressly points out that the observance of the rights of persons with disabilities (which also includes the category of persons with mental disabilities) shall be ensured by the Ombudsman as well (*JCC no.27 of 13.11.2014, §68*).

Contrary to these provisions, the Court held that Article 21 para.(5) letter e) of Law no.52 of 3 April 2014 restricts the right of persons found incapable by a court decision to address the Ombudsman for the protection of the violated rights (*JCC no.27 of 13.11.2014, §70*) .

The Court reiterated the Article 16 of the Constitution, according to which the respect and protection of human person is the foremost duty of the state. All citizens of the Republic of Moldova are equal before the law and public authorities (*JCC no.27 of 13.11.2014, §71*).

Also, the Court held that according to Article 54 para.(2) of the Constitution, the pursuit of the rights and freedoms may not be subdued to other restrictions unless for those provided for by the law, which are in compliance with the unanimously recognized norms of the international law and are requested in such cases as: the defense of national security, territorial integrity, economic welfare of the State, public order, with the view to prevent the mass revolt and felonies, protect other persons' rights, liberties and dignity, impede the disclosure of confidential information or guarantee the power and impartiality of justice (*JCC no.27 of 13.11.2014, §72*).

Correlating the contested provisions to the constitutional norm, the Court noted that none of the objectives set allow the restriction of the right to petition, and therefore concluded that the contested provisions establish differential treatment between incapable persons and those with full legal capacity, do not pursue a legitimate aim and have no objective and reasonable base (*JCC no.27 of 13.11.2014, §73*).

Meanwhile, in accordance with Article 54 para.(4) of the Constitution, the restriction may not affect the existence of right or freedom (*JCC no.27 of 13.11.2014, §74*).

The Court held that although people may be found incapable by a court decision, this circumstance might not result into the infringement of the dignity of persons enjoying absolute protection. In light of guaranteeing respect for human dignity, it is necessary to create all the conditions for everyone, as well as for disabled persons, for self-manifestation in the society by providing various opportunities for development and protection of human rights and freedoms (*JCC no.27 of 13.11.2014, §75*).

The Court said that the Ombudsman has a special legal character, being the only one that oversees the administration in its relation with the citizens. The Court cannot accept the legislator's interference imposing the non-examination by the People's Advocate of the complaints submitted by disabled persons, thus depriving them of an effective remedy for the protection of their rights (*JCC no.27 of 13.11.2014, §76*).

Or, disabled persons are particularly vulnerable, being exposed to risk and abuse, which implies the need to establish mechanisms for protection and prudent and discreet intervention of the state (*JCC no.27 of 13.11.2014, §77*).

To this end, the Court emphasized the need to increase, as much as possible, the autonomy of people with mental disorders in the actions and measures undertaken by them, according to the standards enshrined in relevant international instruments (*JCC no.27 of 13.11.2014, §85*) .

The Court held the restriction imposed on disabled persons to address the Ombudsman as a step back of the state in respecting the rights and freedoms of this category of persons, contrary to the importance given by international instruments on protection of persons suffering from mental disorders to improving, as much as possible, their autonomy in the actions and measures undertaken (*JCC no.27 of 13.11.2014, §88*).

2.9. Exercise of the right to vote

The Court noted that one of the essential elements of the rule of law in general and of the electoral system in particular is the right to vote. However, the right to vote is not a part of absolute rights (*JCC no.15 of 27.05.2014*[20]*, §55*).

In this regard, the Court draws attention to the permissibility of restriction of certain rights or freedoms as provided by Article 54 para.(2) of the Constitution, according to which the pursuit of the rights and freedoms may not be subdued to other restrictions unless for those provided for by the law, which are in compliance with the unanimously recognized norms of the international law and are requested in such cases as: the defense of national security, territorial integrity, economic welfare of the State, public order, with the view to prevent the mass revolt and felonies, protect other persons' rights, liberties and dignity, impede the disclosure of confidential information or guarantee the power and impartiality of justice. Also, under para.(4) of Article 54, the restriction enforced must be proportionate to the situation that caused it and may not affect the existence of right or freedom (*JCC no.15 of 27.05.2014, §56*).

[20] Judgment no.15 of 27.05.2014 on the control of constitutionality of the Law no.61 of 11 April 2014 on amending certain legislative acts.

The Court found that on 11 April 2014 the Parliament passed the organic Law no. 61 on amending certain legislative acts, which abrogated letters b) and c) of Article 53 para.(3) of the Election Code, which allowed voting with ex-soviet passports (*JCC no.15 of 27.05.2014, §59*).

The Court held that voting is carried out only on the basis of an identity card; a provisional identity card; passport for entry/exist of the country; seaman's book; service certificate of army conscripts or military service card issued by Civil Service Center for persons undergoing civil (alternative) service (*JCC no.15 of 27.05.2014, §61*).

The Court also reiterated that the right to vote, not being absolute, may be restricted, Parliament enjoying broad discretion in regulating it (*JCC no.15 of 27.05.2014, §62*).

As a sovereign state, the Republic of Moldova has established its own socio-political regime and socio-economic and legal system (*JCC no.15 of 27.05.2014, §75*).

The Court held that, by virtue of its sovereignty, the Republic of Moldova has the exclusive right to issue identity documents on its sovereign territory, adopting in this regard the Law no.273-XIII of 9 November 1994 on identity documents of the National Passport System (*JCC no.15 of 27.05.2014, §76*).

Pursuant to this law, the identity documents of the national passport system include all passports, identity cards, residence permits and travel documents (art.1 para.(1)). These documents are considered state property (art.1 para.(2)) (*JCC no.15 of 27.05.2014, § 78*).

The Court noted that, given that the Republic of Moldova is a sovereign and independent state, it is unacceptable that citizens of this state possess identity documents issued by an non-existent state (*JCC no.15 of 27.05.2014, § 80*).

Despite the fact that after the collapse of the USSR, a transition period was necessary to replace ex-Soviet passports, this period cannot be unlimited (*JCC no.15 of 27.05.2014, §81*).

However, the Court found that the prohibition of voting with ex-Soviet passports pursue a legitimate aim, such as strengthening of civic spirit, respect for the rule of law, proper functioning and maintenance of democracy (*JCC no.15 of 27.05.2014, §83*).

The Court noted that Law no.61 of 11 April 2014 aims to create uniformity and an adequate legal framework in terms of providing identity cards to all citizens of the Republic of Moldova (*JCC no.15 of 27.05.2014, §84*).

2.10. The right of free movement

The Court held that Article 27 of the Constitution guarantees, as a principle, the right of the citizen of the Republic of Moldovan to free movement within the country, and the right to settle his/her domicile or place of residence anywhere within the country, to travel abroad, to emigrate and return to the country (*JCC no.16 of 28.05.2014*[21], *§44*).

Under the provisions of Article 19 in conjunction with Article 27 of the Constitution, all citizens, foreign citizens, stateless persons, refugees and beneficiaries of humanitarian protection are guaranteed the right to free movement within the country and travel abroad (*JCC no.16 of 28.05.2014 §45*)

The Court held that the contested provisions provide the maximum period of validity of vignettes, 180 days in a 12-month period, in case of temporary admission on the territory of the Republic of Moldova of the means of transport registered abroad, but which are owned or used by individuals, residents or citizens of the Republic of Moldovan (*JCC no.16 of 05.28.2014, §49*).

Having considered the object of the complaint in relation to the said constitutional norm, the Court noted that the latter does not guarantee the right to free movement of goods and property (*JCC no.16 of 05.28.2014, §50*).

The Court held that the contested provisions govern tax and customs policy, in relation to the payment of vignette for the admission on the territory of the Republic of Moldova of the means of transport registered abroad (*JCC no.16 of 05.28.2014, §51*).

The Court also noted that according to Article 58 para. (1) of the Constitution, citizens shall contribute by taxes and duties to public expenditures. This basic obligation has a special character and is determined by the public nature of state power, established by Article 1 and 2 para. (1) of the Constitution (*JCC no.16 of 05.28.2014, §57*).

Collection of taxes and duties in accordance with tax legislation is an absolute prerequisite for the existence of the state, therefore the obligation to pay taxes and duties, as

[21] Judgment no.16 of 28.05.2014 on the control of constitutionality of the wording "for a period of 12 months" from Article 10 para.(3) of Law no.1569-XV of 20 December 2002 on import and export of goods to and out of the territory of the Republic of Moldova by natural persons, art. 3485 para. (1) and (2) letter e) of the Tax Code and art. 1841 para. (1) of Customs Code, as amended by Law no.324 of 23 December 2013 on amendment and completion of certain legislative acts.

provided for in art. 58 para. (1) of the Constitution, applies to all taxpayers (citizens of the Republic of Moldova, foreign citizens and stateless persons, legal entities), being for the state a way to claim its unconditional execution (*JCC no.16 of 05.28.2014, §58*).

The Court noted that the restriction of the right to use the means of transport registered abroad and charging of obligatory vignette for use of automotive roads of the Republic of Moldova are governed by the sole legislative authority of the state which, under art. 66 letter d) and art. 72 para.(1) of the Constitution, is empowered and has the exclusive competence to decide upon the regime of the property introduced by individuals in the country (*JCC no.16 of 28.05.2014, §60*).

The Court also noted that adopting these amendments, the legislator has harmonized the national legislation with the Convention on Temporary Admission, adopted on June 26, 1990 in Istanbul and ratified by the Republic of Moldova on 5 December 2008 (*JCC no.16 of 28.05. 2014 §61*).

In accordance with Article 9 para.(2) of Annex C to the Convention, means of transport for private use may remain in the territory of temporary admission for a period, continuous or not, of six months in every period of twelve months (*JCC no.16 of 28.05. 2014, §62*).

For reasons of public order, economic and fiscal security, the state, by virtue of its sovereignty and independence, may limit the period of stay on its territory of the means of transport registered abroad, in order to decrease the number of means of transport registered abroad on its territory and to increase the revenues to the national budget, by creating conditions for encouraging the individuals-residents, citizens of the Republic of Moldovan, to pay the customs import duty, to register the means of transport and include them into the State Register of Transport, as well as to pay other charges required by law, with the aim at implementing strict evidence of the means of transport on the territory of the Republic of Moldova, the persons holding these means of transport or possessing other registered rights, and their legal regime (*JCC no.16 of 28.05. 2014, §63*).

The Court observed that the contested provisions do not provide for different conditions regarding the maximum period of temporary admission of means of transport on the territory of the Republic of Moldova, according to nationality or ethnicity of the person, or according to other criteria, listed in art.16 of the Constitution. These provisions

establish the same level of rights and obligations regarding the admission on the territory of the country of means of transport registered abroad, both for resident and non-resident individuals (*JCC no.16 of 28.05. 2014, §71*).

2.11. Intimate, family and private life – Protection of personal data

Article 28 of the Constitution guarantees the human right to intimate, family and private life, as part of the right to respect and protection of human personality, an obligation proclaimed in Article 1 of the Constitution (*JCC no.13 of 22.05.2014*[22], *§49*).

The Court noted that the Constitution obliges the State to respect and protect the intimate, family and private life against any infringement (*JCC no.13 of 22.05.2014*, §50).

The Court held that, in light of information development of the modern society, the right to privacy is diverse and complex, one of its specific component being the right to protection of personal data (*JCC no.13 of 22.05.2014*, § 54).

The Court noted that both, national and international legal framework provided for the need to ensure the protection of personal data in order to respect and protect intimate, family and private life of the person (*JCC no.13 of 22.05.2014*, §63) .

Court noted that, on the one hand, according to the requirements of national and international law, the state must provide effective safeguards to protect personal data and prevent interference in private life, on the other hand, according to the contested provisions, the state creates the preconditions for accessibility of the state identification number of the person exercising an independent professions, used as a fiscal code without his consent. Thus, in case of notaries, lawyers, bailiffs, etc., the identification number, used as a fiscal code, is made available to all persons whom they interact with while performing their duties (*JCC no.13 of 22.05.2014*, §79).

In such circumstances, the Court emphasized that in the absence of protection of personal information, the person is not safe and is not protected from interference with his private life (*JCC no.13 of 22.05.2014*, §80).

[22] Judgment no.13 of 22.05.2014 on the control of constitutionality of para.72 of Article IX of the Law no.324 of 23 December 2013 on amendment and completion of certain legislative acts.

Thus, the violation of the requirements imposed by the relevant international and national law in the field of processing of personal data, requiring the consent of the person, leads to an interference with the private life (*JCC no.13 of 22.05.2014*, §81).

The Court held that the right to informational self-determination guarantees everyone the freedom to decide on disclosure and use of personal data, to the extent to which, by general rule, the consent of the person is required during the registration and use of such data. The Court emphasized that due to the fact that the legislator has expanded the scope and possibilities of using confidential codes, could seriously affect the right to informational self-determination and human dignity (*JCC no.13 of 22.05.2014*, §84).

The Court noted that in the legal regulation the state has both, a negative obligation to avoid undue interference with the private life, home and correspondence of a person and a positive obligation to ensure true respect for the values it is meant to protect (*JCC no.13 of 22.05.2014, §89*).

In light of the above, the Court held that, considering the "sensitive" nature of the right to privacy and in order to prevent the restraining in exercising this right, the legislator should provide effective opportunities and solutions (*JCC no.13 of 22.05.2014*, §90).

3. PUBLIC AUTHORITIES

3.1. Organization and functioning of the Parliament

3.1.1. Election of Deputy Speakers of the Parliament

Article 64 para.(3) of the Constitution stipulates that "Deputy Speakers shall be elected upon the proposal of the Speaker of the Parliament following the consultations of the parliamentary factions" (*JCC no.3 of 04.02.2014*[23], *§ 42*).

According to art.10 of the Regulation of the Parliament, the Deputy Speakers of the Parliament are elected by an open ballot of the majority of the elected members of the Parliament, at the proposal of the Speaker, after consultations with the parliamentary factions. [...] (*JCC no.3 of 04.02.2014*, § 43).

[23] Judgment no.3 of 04.02.2014 on the control of constitutionality of Parliament Decisions no.126 and no.127 of 30 May 2013 on the election of certain Deputy Speakers of the Parliament.

The Court held that, according to the Rules of the Parliament, parliamentary factions are the main form of political organization of parliamentary parties in the Parliament created by combining the MPs who participated in the elections on the list of the same political party, political formation, political alliance or electoral alliance. These groups, factions, as according to the functions they perform as a part of the organizational structure of the Parliament, established on the basis of political affinity, represent the working bodies of the Parliament (*JCC no.3 of 04.02.2014*, § 44).

The Court noted that the need to consult the parliamentary factions of the Parliament cannot influence the decision of the Speaker of the Parliament concerning the candidature (MP) proposed for the position of Deputy Speaker, even if the parliamentary factions do not agree with the proposal of the Speaker (*JCC no.3 of 04.02.2014*, § 50).

For the realization of the constitutional right to nominate MPs, the Speakers of Parliament, despite the fact that he was elected by the parliamentary majority, must hold consultations with the parliamentary factions to secure both, the support of the parliamentary majority and the possible constructive cooperation of the minority in opposition (*JCC no.3 of 04.02.2014*, § 51).

In this context, the failure to consult the parliamentary factions, although it represents an irregularity, cannot void the Speaker to nominate Deputy Speakers of the Parliament while the MPs-members of the parliamentary factions may reject this proposal by a vote at the plenary session of in the Parliament (*JCC no.3 of 04.02.2014*, § 52).

Consultation is not the equivalent of approval. Refusal of factions to support certain candidatures cannot alter the decision of the Speaker of the Parliament to nominate them for the position of Deputy Speaker of the Parliament. Likewise, the failure to consult the parliamentary factions does not invalidate or cancel the sovereign right of the Parliament to decide on the candidatures nominated for election on the position of Deputy Speaker (*JCC no.3 of 04.02.2014*, § 53).

The Court held that the constitutional right of the Speaker of Parliament to nominate candidatures for the position of Deputy Speaker results also from the Regulation of the Parliament, which states that "Deputy Speakers of the Parliament carry out, as established by the Speaker, the duties of the Speaker, delegated by the latter, at his request or in his absence, including signing of the laws and decisions adopted by the Parliament". In other

words, the role and responsibilities of each Deputy Speaker of Parliament derive from the powers of the Speaker delegated in order to be assisted for a more effective performance of his duties. (*JCC no.3 of 04.02.2014*, § 54).

The Court concluded that the Parliament is free to take decisions upon the issues and procedures related to the internal organization and functioning of the Parliament, which are not regulated by the Constitution. This autonomy is manifested by the expression of the will of the parliamentary majority through voting (*JCC no.3 of 04.02.2014*, § 59).

3.1.2. Parliamentary autonomy

3.1.2.1. The manner of amending and supplementing the agenda of the plenary session of Parliament

The Court observed that the procedural rules regarding the form and substance, determined by the legislator and allowing the introduction, consideration and approval of any legislative initiatives by the Parliament, are included in the Rules of the Parliament (*JCC no.20 of 04.06.2014*[24]*, §72*).

The Court also found that, by Law no.294 of 12 December 2013, Parliament amended the content of Article 46 of the Rules of the Parliament, according to which the agenda may be amendment and supplemented only at the request and upon the decisions of the Standing Bureau, parliamentary faction, a Standing Committee, at the request of a group of five MPs or the author of the project included in the agenda. This requirement is described in a one-minute speech (*JCC no.20 of 04.06.2014*, §74).

The Court held that the procedure established by Article 46 of the Rules of the Parliament refers only to the amendment of the agenda after its approval by the Parliament (*JCC no.20 of 04.06.2014*, §78).

Also, the reason to reduce the time limit of the speech up to one minute comes from the fact that, under the new provisions, all the proposals on amendment of the agenda shall be made in writing, presenting the necessary arguments (*JCC no.20 of 04.06.2014*, §79).

[24] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

The Court held that these changes aim to improve the efficiency of the Parliament in the plenary sessions, do not contravene Articles 68 and 73 of the Constitution, and are expedient (*JCC no.20 of 04.06.2014*, §80).

3.1.2.2. The validity of legislative projects recorded but not included in the agenda of Parliament

The Court found that, by the Law no.294 of December 12, 2013, Article 47 of the Rules of the Parliament has been completed with paragraphs (13) - (15), according to which the draft legislative acts, included in the agenda of the plenary sessions of the Parliament, that at the end of legislature as a result of ordinary or anticipated elections, were left without review, as well as draft laws approved in the first reading or to be passed in the final reading, shall be transferred to the agenda of the Parliament of the next legislature. Also, draft legislative acts recorded but not included in the agenda of the Parliament become invalid after 2 years of their registration. Outdated draft legislative acts, as well as those remaining without an author, may be rejected by the Parliament upon a joint list under the relevant commission's reports (*JCC no.20 of 04.06.2014*[25], §81).

Based on the contents of previous case-law, the Court stressed that the nullity of the draft laws recorded but not included in the agenda of the Parliament does not contradict the Constitution. According to Article 63 para.(4) of the Supreme Law, the new legislative body is required to consider only draft laws that have not passed all the stages of the parliamentary legislative procedure but have been included in the agenda of Parliament, and it is not obliged to consider the draft laws not recorded in the agenda (*JCC no.20 of 04.06.2014*, §85).

In that respect, keeping in mind the idea reiterated earlier, the Court emphasized that, the two-year limitation period of validity of the draft laws recorded in the Parliament but not listed on the agenda, does not infringe the right of MPs to legislative initiative, as on expiry of that period, the MP may require the registration of the draft law if it has not lost its actuality (*JCC no.20 of 04.06.2014*, §86).

[25] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

However, the Parliament should treat with extreme diligence the establishment of such terms, as to short terms of validity of draft laws registered in the Parliament could affect the very substance of the right of legislative initiative, regulated by Article 73 of the Constitution (*JCC no.20 of 04.06.2014*, §87).

Also [...] The Court noted that draft laws that have lost their actuality and have been left without an author are rejected by the Parliament upon a joint list under the relevant commission's reports (*JCC no.20 of 04.06.2014*, §88).

Thus, the Court held that these types of draft laws are rejected by the willingness of MPs, under the relevant commissions' proposals, and not unilaterally by the latter (*JCC no.20 of 04.06.2014*, §89).

3.1.2.3. Debating and adoption of draft laws within emergency procedure

The Court found that, by Law no.294 of 12 December 2013, Article 60 of the Rules of the Parliament has been completed with paragraph (5), according to which, at the request of the chairman of the session or of the parliamentary factions, with the vote of the majority, certain draft laws may be discussed and adopted with the emergency procedure (*JCC no.20 of 04.06.2014*[26], §90).

The Court has mentioned that according to Article 74 para.(3) of the Constitution: "The draft laws submitted by the Government, as well as the legislative initiatives brought forward by the Parliament members accepted by the latter, shall be examined by the Parliament in the manner and following the priorities fixed by the Government, including within the emergency procedure. Other legislative initiatives shall be considered in the established manner." (*JCC no.20 of 04.06.2014*, §91).

In this regard, the Court reiterated that, according to the provisions of Article 74 para. (3) of the Constitution, the Government is entitled to determine the manner and priorities for consideration by the Parliament of the draft laws presented, as well as of those submitted by MPs and accepted by the Government (*JCC no.20 of 04.06.2014*, §94).

Thus, the Court held that due to its right to establish priorities for consideration of the draft laws submitted to the Parliament, the Government gets real opportunities to

[26] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

achieve effective implementation of internal and external state policy and execution of the program of activates approved by the MPs, under which the Government obtained the confidence vote of the Parliament (*JCC no.20 of 04.06.2014*, §96).

The Court also noted that, the right of the Government, as according to Article 74 para.(3) of the Constitution, does not imply the impossibility to introduce in the Regulation of the Parliament the provisions concerning the examination of draft laws on a priority basis or at the request of other subjects (*JCC no.20 of 04.06.2014*, §97).

The Court noted that, according to Article 73 of the Constitution, besides the Government, the right to legislative initiative belongs to the members of Parliament, the President of the Republic of Moldova, the People's Assembly of the autonomous territorial unit of Gagauzia (*JCC no.20 of 04.06.2014*, §99).

The Court also held that, if it has been decided to examine a draft law within the emergency procedure at the request of the chairman of the session or a parliamentary faction, only the terms may be reduced, and not excluded or ignored certain stages of the legislative procedure (conclusions of the stakeholders, organizing consultations if necessary, etc.). Thus, in case of application of the emergency procedure, the Parliament shall as well observe the stages of legislative process set out in the Rules of the Parliament and the Law no.780 of 27 December 2001 on legislative acts (*JCC no.20 of 04.06.2014*, §100).

Similarly, the Court held that, while being examined within the emergency procedure the draft laws submitted not at the Government's initiative, the legislative proposals entailing increase or decrease of budget revenues or loans, as well as increase or decrease of budget expenditures, shall be necessarily endorsed by the executive body (art. 131 par. (4) of the Constitution) (*JCC no.20 of 04.06.2014*, §101).

3.1.2.4. Requirement by a fraction to verify the quorum

Developing the essence of the rule of law, this means ensuring legality, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, including judicial review of administrative acts, respect for human rights, non-discrimination and equality before the law [Venice Commission Report on the Rule of law, CDL-

AD (2011) 003 rev, Strasbourg, 4 April 2011, paragraph 41] (*JCC no.20 of 04.06.2014*[27], §104).

The Court noted that the chairman of the session is obliged to meet the quorum, as it is a prerequisite for the start of the legislative process (*JCC no.20 of 04.06.2014*, §107).

The Court examined the provisions of Article 88 of the Rules of the Parliament, according to which "the request to verify the presence of the quorum, submitted by a parliamentary faction, is satisfied only if the majority of MPs of that faction are present in the courtroom", and came to the conclusion that it is contrary to the essence of the rule of law (*JCC no.20 of 04.06.2014*, §110).

Respect for the rule of law by ensuring the legality of the legislative process is not only the obligation of the chairman of the session, but also the duty of the MPs, parliamentary factions to require its compliance (*JCC no.20 of 04.06.2014*, §111).

In this context, the Court noted that, if the MP noted that there is no quorum at the session of the Parliament, he is entitled, on his behalf or on behalf of the faction, regardless of other factor, to request the verification of presence of the MPs (*JCC no.20 of 04.06.2014*, §112).

However, if the member of the faction is unable to request the verification of presence of the MPs at a plenary session of Parliament, when a normative act is adopted in the absence of a voting quorum, is a violation of art. 1 para.(3), as well as of art. 74 of the Constitution (*JCC no.20 of 04.06.2014*, §113).

The Court noted that, although, according to the principle of autonomy and pursuant to art. 64 para.(1) of the Constitution, the Parliament has the prerogative to determine its structure, organization and activities, the provisions adopted should not be contrary to the spirit of the Constitution and rule of law established for the procedure of adoption of laws (*JCC no.20 of 04.06.2014*, §114).

A different approach on this issue would lead to tolerance of illegalities committed by MPs during voting process and inaction or ill-will of the chairman of the session in the case of unconstitutional and illegal actions of the MPs by passing laws without a quorum. These provisions are in direct contradiction with the principle of legal certainty, guaran-

[27] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

teed by Article 1 para.(3) of the Constitution in the light of the principles the rule of law. [...] (*JCC no.20 of 04.06.2014*, §118).

Therefore, the condition to have present in the courtroom a majority of MPs of a faction the member of which wants to execute his right to request the verification of the quorum, not only violates the constitutional provisions of Article 1, para.(3), goes beyond the principle of autonomy of the Parliament, provided by the Rules of the Parliament, but also contributes to violation of Article 74 of the Supreme Law, is contrary to the principles of the representative mandate and nullity of the imperative mandate, enshrined in Article 68 of the Constitution (*JCC no.20 of 04.06.2014*, §119).

3.1.2.5. Sanctioning of MPs by retaining a part of the wage

The Court noted that art. 133 para.(1) of the Rules of the Parliament exhaustively provides the categories of sanctions applied to MPs for violation of this law, namely: a) warning; b) calling to order; c) withdrawal of the right to deliver a speech; d) prohibition to deliver speech of up to 5 sessions; e) order to leave the courtroom; f) interdiction to participate at the plenary sessions for up to 10 sessions. That list does not include the financial penalty (*JCC no.20 of 04.06.2014*[28], §122).

The Court also held that as the provisions of art. 133 para.(6), so those of the art.139[1] of the Rules of the Parliament are genuine disciplinary sanctions of a financial nature applied to Members of Parliament (*JCC no.20 of 04.06.2014*, §123).

In this regard, according to the contested provisions, MP can be financially sanctioned by percentage deductions from his salary, as well as from other allowances (*JCC no.20 of 04.06.2014*, §129).

In this sense, the Court noted that the constitutional provisions prohibit deductions from the MP's salary and/or other allowances in case of sanctions for violation of the Rules of the Parliament. However, the amount of these deductions must be, on the one hand, proportional to irregularities committed, and, on the other hand, not violate other constitutional principles such as the representative mandate and prohibition of the imperative mandate (*JCC no.20 of 04.06.2014*, §130).

[28] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

Thus, when determining the amount of monetary sanctions there should be also considered the fact that, Article 70 of the Supreme Law prohibits the MP to hold another remunerated position, except for didactic and scientific activities. Or, the excessive monetary sanctions in a situation where the MP cannot hold other remunerated positions, would harm his financial independence (*JCC no.20 of 04.06.2014*, §131).

3.1.2.6. Legislative and judiciary interaction

The Court held that, in order to ensure the predictability and clarity in the administration of justice, as well as prevent arbitrariness, Parliament has the obligation to adopt organic laws that establish the procedure for consideration of criminal, administrative and civil cases (*JCC no.20 of 04.06.2014*[29], §175).

In this regard, the adoption by the legislator of organic laws that would establish a procedure for consideration of lawsuits is not contrary to the provisions of Articles 6 and 114 of the Supreme Law, the Court shall examine each situation particularly in relation to other constitutional norms (*JCC no.20 of 04.06.2014*, §176).

The Court found that the phrase disputed by the authors of the complaint, according to which the advisory opinions submitted by the Standing Committees for the purpose to ensure the uniform application of the law cannot be used as evidence in court, regulates procedure of justice (*JCC no.20 of 04.06.2014*, §177).

The Court held that, in the process of justice, the judge is obliged to apply the law. The opinions of the parliamentary committees, which interpret the legal provisions, shall not influence the resolution of the case. Unlike the interpretative laws, the opinions are not binding, they are only advisory (*JCC no.20 of 04.06.2014*, §178).

As a representative of the people, the Parliament is empowered to control and inform people about how the people's power prerogatives are performed. Thus, according to Article 66 letter n) of the Constitution, the Parliament initiates investigations and hearings concerning any matters relating to the public interests (*JCC no.20 of 04.06.2014*, §182).

Thus, based on the judgment set out in the Decision no.29 of September 23, 2013 before the parliamentary investigation committees may appear only the subjects of law

[29] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

which has a special constitutional relationship with Parliament (*JCC no.20 of 04.06.2014*, §186).

The Court noted that through the amendments adopted on 12 December 2013, the Parliament ruled out the possibility of inviting/calling the representatives of the judiciary, representative of the prosecutor's office and criminal investigation bodies for presentation of information that may prejudice the fairness of trials and/or confidentiality of criminal prosecution (*JCC no.20 of 04.06.2014*, §188).

This is due to the fact that judges are independent and subject only to the law (Article 116 of the Constitution) and the disciplinary board for them is the Superior Council of Magistracy (Article 123 of the Constitution) (*JCC no.20 of 04.06.2014*, §189).

The Court noted that, although Article 6 of the Constitution provides for collaboration between the three powers, this does not mean that the legislative power can subordinate the judiciary power or can appropriate the competence of justice administration. However, the presence of legislative power in this field is undeniable manifested through adoption of laws that define the organization and functioning of the judiciary, on the one hand, and adoption of legislation to be applied for restoration and maintenance of the rule of law, on the other hand (*JCC no.20 of 04.06.2014*, §198).

3.1.2.7. Limitation of the time for delivering speeches by a member of Parliament

The Court held that, taking into account the principles of democracy and political pluralism, enshrined in Article 1 para.(3) of the Constitution, guaranteeing the freedom of expression is a fundamental component of the parliamentary mandate (*JCC no.20 of 04.06.2014*[30], §206).

The Court noted that the parliamentary mandate expresses the relationship of the MP with the people, in whose service he is. Thus, the phrase "being in the service of the people", contained in Article 68 para.(1) of the Constitution, means that, since the election and up to the end of the term of office, each MP is the representative of the nation as a whole and must serve the common interests of the people and not just the interests of his party. In exercising his powers, the MP obeys only the Constitution and the laws, and

[30] Judgment no.20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996

must adopt such decisions that conscientiously serve the public interests (*JCC no.20 of 04.06.2014*, §207).

Both parliamentary and extra-parliamentary content of the mandate is achieved through the political rights of the MPs, one of which is the freedom of expression, freedom of speech and the right to vote (*JCC no.20 of 04.06.2014*, §208).

The Court noted that according to the provisions of the Rules of the Parliament, speeches in plenary sessions may not exceed 7 minutes for parliamentary factions and 5 minutes for deputies (*JCC no.20 of 04.06.2014*, §210).

The Court noted that the amendments mentioned define different timeframe for the speeches of the parliamentary factions and the MPs (*JCC no.20 of 04.06.2014*, §211).

At the same time, the Court held that the timeframe set refers to speeches of the MPs on the draft laws in the first reading and draft laws included in the agenda (*JCC no.20 of 04.06.2014, §212*).

The Court noted that, in preparing the draft law for debate in the second reading, the MP is offered a 10-day period to submit amendments to the responsible committee (art.65 par. (2)) and 2 minutes to argue the amendments during the debate on the draft articles, if the proposed amendments were rejected (art.68 par. (2)). Also, according to art.70 para.(3) of the Rules of the Parliament, members of Parliament have 3 minutes of speech in the debate in the third reading, if the amendments were not taken into consideration (*JCC no.20 of 04.06.2014*, §213).

Thus, the Court held that the time constraints for the speech of the MP does not affect the essence of representative mandate and does not infringe the right to freedom of expression in its essence, but only subordinates its exercise to the requirement of compliance with the timeframe set (*JCC no.20 of 04.06.2014*, §214).

Similarly, the Court noted that, through new provisions of Article 132 of the Rules of the Parliament, there was restricted the access on the premises with portable sound amplification equipment or objects that might disturb the order, as well as was prohibited the blocking of stands and access to the courtroom of the Parliament (*JCC no.20 of 04.06.2014*, §215).

In respect of the opinion of the authors of the complaint that these actions represent the manifestation of the right to a parliamentary protest, the Court stressed that, by Judg-

ment no.8 of 19 June 2012, the parliamentary protest is a method of political struggle, by which the MP or a group of MPs oppose certain actions of the majority, without acts of violence, express their view against acts or decisions that are, in their opinion, illegal or contrary to the common interest, in order to obtain certain *concessions* (*JCC no.20 of 04.06.2014*, §216).

Accordingly, the MPs' actions that disturb the conduct of plenary sessions of Parliament in normal circumstances cannot be regarded as parliamentary protest (*JCC no.20 of 04.06.2014*, §217).

3.1.3. Confirmation of the results of elections and validation of the mandates of Members of Parliament

Elections represent the celebration of fundamental human rights, more specifically, civil and political rights. A genuine election is a political competition that takes place in an environment characterized by political pluralism, confidence, transparency and accountability. It provides voters with an informed choice between distinct political alternatives. Such an election presupposes respect for basic fundamental freedoms: expression and information; association, assembly and movement; adherence to the rule of law, including access to effective remedy; the right to freely establish political parties and compete for public office on a level playing field; non-discrimination and equal rights for all citizens, freedom from intimidation and pressure; and a range of other fundamental human rights and freedoms that the state is obliged to protect and promote (*JCC no.29 of 9.12.2014*[31] *§59*).

Democratic elections are decisive for guaranteeing the will of the people in the process of forming the legislative body or executive body at all levels, and also ensure the elected bodies consist of efficient representatives (*JCC no.29 of 9.12.2014, § 60*).

The fundamental objective of the mission of the Constitutional Court on confirming the results of parliamentary elections is to assess whether the electoral process was con-

[31] Judgment no.29 of 9.12.2014 on confirmation of the results of elections for the Parliament of the Republic of Moldova of 30 November 2014 and validation of the mandates of the elected Members of Parliament

ducted in accordance with national legislation and other universal principles for democratic elections (*JCC no.29 of 9.12.2014, § 69*).

Meanwhile, the powers of the constitutional court does not exclude the competence and, at the same time, the obligation of public authorities to ensure the fair parliamentary elections and, any final and enforceable judgment on the legality of the acts adopted by these bodies has the character of a matter already judged and involves the observance of the *res judicata* principle. Thus, the Court cannot comment on the validity of evidence examined in court proceedings relating to the legality of the acts adopted by electoral authorities. To act otherwise would mean to substitute the state authorities, whose competences are established by law (*JCC no.29 of 9.12.2014, §70*).

The constitutional court has the competence to declare the elections null in case of violations committed during the elections, capable to influence the election results (*JCC no.29 of 9.12.2014, § 71*).

The Constitutional Court noted that during an election campaign some irregularities are possible, but the validity of the elections depends on the scale and seriousness of the violations found by the public authorities (*JCC no.29 of 12.09.2014, §72*).

In this context, the Court held that:

- The elections may be declared invalid only if the voting procedure and the determination of voting results have been falsified;
- Not every fraud in the election process amounts to election fraud, only the one that is likely to alter the assignment of mandates;
- The requirement to declare the election invalid shall be justified and substantiated (*JCC no.29 of 9.12.2014, § 73*).

The Court emphasized the importance of prompt consideration of election complaints and appeals for providing clear and predictable rules of the election process and ensure fair elections (*JCC no.29 of 9.12.2014, §95*).

The Court held that in order to ensure fair conditions for all candidates in the next elections, it is necessary that competent electoral authorities exclude any attempt of participation in elections of electoral blocks hidden into one single political party (*JCC no.29 of 9.12.2014, § 99*).

The Court drew the attention of the Central Election Commission to the necessity of avoiding situations that might create confusion among the uninitiated public as regarding the identification elements of the candidates, not only by identity, but also by similarity (*JCC no.29 of 9.12.2014, § 101*) .

The Court held that party symbols have the role to identify the parties. By its very nature a party symbol is a sign subject to graphical representation, serving to distinguish it from other political parties. Therefore, the symbol must be designed in such a way that it would allow and ensure the opportunity for the voter to identify the party. Therefore, the symbols can be registered only if they are sufficiently different from previously registered symbols, excluding the risk of confusion (including the risk of association) among the public. The likelihood of confusion must be assessed globally, taking into account all relevant factors. The most common way to create confusion among the citizens is the use of identical or similar signs, which repeat other protected symbols (whether registered or notorious symbols). The attempt to mislead the citizens is the most common form of unfair competition (*JCC no.29 of 9.12.2014, §102*).

Given the above, the Court concluded that within the parliamentary elections of 30 November 2014 and within the process of counting of casted votes, no infringements of the Electoral Code as to substantially influence the outcome of elections and distribution of mandates occurred (*JCC no.29 of 9.12.2014, § 119*).

The above observations are unlikely to lead to a different conclusion than the one that has led to the examination of the allegations and of the evidence submitted by the authors of the complaints. The infringements found by the Election Commission and the courts of law represent, as it appears from the evidence submitted, a series of sequential elements that have not formed a phenomenon destined to change the will of the voters, meaning a change in the distribution of mandates (*JCC no.29 of 9.12.2014*, §120).

In the exercise of its duties under the Constitution, the Court confirmed that on 30 November 2014 the Parliament of the Republic of Moldova was duly elected by universal, equal, direct, secret and freely expressed suffrage (*JCC no.29 of 9.12.2014*, §121).

[...] All candidates included in the lists are voting citizens of the Republic of Moldova, have a permanent residence in the country and a valid residence permit, have submitted a

declaration on their own responsibility for the absence of legal or judicial interdictions to stand in elections (*JCC no.29 of 9.12.2014*, §147).

The Court held that it possess no documents that would establish the guilt of any candidate for the position of a MP in committing any electoral offenses or violations (*JCC no.29 of 9.12.2014*, §152).

Given the above, the Court validated the mandates of all members of the Parliament of the Republic of Moldova elected in the parliamentary elections of 30 November 2014, according to the list approved by the Decision no.3106 of 5 December 2014 by the Central Election Commission regarding the distribution of mandates to the Members of the Parliament of the Republic of Moldova to electoral candidates according to election results from 30 November 2014 (*JCC no.29 of 9.12.2014*, §153).

3.2. Judicial Authority

3.2.1. Immunity of judges

3.2.1.1. Initiation of criminal proceedings against judges without the consent of the Superior Council of Magistracy

The Court held that by the Judgment No. 22 of 5 September 2013 it has recognized as constitutional the provisions of art. 19 para. (4) of the Law No. 544-XIII of 20 July 1995 on the Status of Judges, according to which the Attorney General may initiate criminal prosecution against a judge without the consent of the Superior Council of Magistracy for the offenses indicated in art. 324 (passive corruption) and 326 (influence peddling) of the Criminal Code (*JCC no. 26 of 11.11.2014*[32]*, §42).*

The Court also noted that following the amendments operated by the Law no. 177 of 25 July 2014, paragraph (4) of art. 19 of the Law No. 544-XIII of 20 July 1995 was complemented additionally to the components of the crime provided in Art. 324 and 326 of the Criminal Code, with the offenses stipulated in art. 243 (money laundering) and 330^2 (illicit enrichment) of the Criminal Code. Thus criminal prosecution with regard to these

[32] Judgment no. 26 of 11.11.2014 on the control of constitutionality of certain provisions on the immunity of the judge

crimes may be initiated against a judge by the Attorney General without the consent of the Superior Council of Magistracy *(JCC no. 26 of 11.11.2014, §43).*

In light of the above and taking into account its previous case law the Court held that the components of the offences referred to in art. 243 (money laundering) and 330[2] (illicit enrichment) of the Criminal Code are adjacent to corruption offenses and initiation of criminal prosecution against judges by the Attorney General without the consent of Superior Council of Magistracy for commitment thereof is not contrary to Article 116 para. (1) of the Constitution *(JCC no. 26 of 11.11.2014, §49).*

3.2.1.2. Procedural actions with respect to a judge prior to criminal prosecution

According to paragraph (5[1]) of Art. 19 of the Law No. 544-XIII of 20 July 1995, following the commencement of criminal proceedings until the initiation of criminal prosecution, for the offenses indicated in articles 243, 324, 326 and 330[2] of the Criminal Code, the judge may be detained, seized by force, searched according to the provisions of the Criminal Procedure Code, without the consent of the Superior Council of Magistracy, only if authorized by the Attorney General or the first deputy Attorney General, in the absence of the latter – by a deputy appointed by the order of the Attorney General *(JCC no. 26 of 11.11.2014, §50).*

Thus, referring to the stage of commencement of *"criminal proceedings"* and *"criminal prosecution"*, the Court held in its Judgment No. 22 of 5 September 2013 that any procedural action with respect to a judge shall be carried out only following the issuance by the Attorney General of the order on the initiation *of criminal prosecution (JCC no. 26 of 11.11.2014, §54).*

Concurrently with the aforementioned judgment, the Court issued to the Parliament an address in which it stressed the necessity to establish in the law certain procedural guarantees in respect of actions related to detention, forced seizure, searching of the judge, which may be carried out only following the initiation of criminal prosecution by the Attorney General *(JCC no. 26 of 11.11.2014, §55).*

The Court also noted that according to paragraph (5[1]), detention, forced seizure and the search of a judges in case of the offenses indicated in articles 243, 324, 326 and 330[2] of the Criminal Code may be carried out prior to the issuance of the order on the initia-

tion of criminal proceedings. The Court thus mentions that although a new wording, the legislature provided the same legislative solution that previously has been criticized *(JCC no. 26 of 11.11.2014, §56).*

Based on the above and applying *mutatis mutandis* the rationales held in the Judgment No.22 of 5 September 2013, the Court emphasized that all procedural actions with regard to judges, except for the cases of flagrant crimes, shall be carried out only following the initiation of criminal prosecution, preserving the guarantees established by constitutional norms and by international documents *(JCC no. 26 of 11.11.2014, §57).*

3.2.1.3. Liability of judges in cases of administrative offences

The Court noted that it is undisputable that judges should be held liable for committing administrative offenses. However, in order to ensure the independence of judges, it is necessary to guarantee the examination of administrative offenses and application of administrative sanctions against them by the courts of law *(JCC no. 26 of 11.11.2014[33], §60).*

The Court also stressed that the involvement of the Superior Council of Magistracy in procedures on administrative offences against judges, namely its consent in order to held a judge liable before the court for an administrative offence, could entail also disciplinary responsibility of the judge, which would contribute to the realization of the principle of his/her accountability *(JCC no. 26 of 11.11.2014, §61).*

3.2.2. The wages of judges

The judge is the sole representative of the judicial power. The constitutional status of the judge is not a personal privilege thereof, it is rather a good of the whole society, as he/she is called to provide effective protection of the rights of each member of the society *(JCC no. 25 of 06.11.2014[34], §83).*

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[33] Judgment no. 26 of 11.11.2014 on the control of constitutionality of certain provisions on the immunity of the judge

[34] Judgment no. 25 of 06.11.2014 on the control of constitutionality of certain provisions of Law no.146 of 17 July 2014 on the amendment and competition of certain legislative acts (remuneration of public servants within courts and of judges)

According to Article 116 of the Constitution, judges from the courts of law are independent, impartial and irremovable according to the law *(JCC no. 25 of 06.11.2014, §84).*

Given the fact that judges are the sole actors entitled to exercise judicial power, the Court held that the principle of judicial independence is the cornerstone for the maintenance of that power as a full-fledged one within the architecture of the state. The principle of separation and cooperation of powers in the state involves maintaining a balance between them. Therefore, the principle of independence of judges is not only the constitutional basis but also a means to monitor the respect for the rights and competences of the judiciary in order to maintain a balance between the state powers *(JCC no. 25 of 06.11.2014, §86).*

The principle of independence of the judge appears under two aspects: functional independence and personal independence *(JCC no. 25 of 06.11.2014, §87).*

Functional independence implies that on the one hand judges should not be influenced by the executive or the legislature, and, on the other hand, the courts are not subject to interference by the legislature, the executive or by the individuals *(JCC no. 25 of 06.11.2014, §88).*

Personal independence concerns the status of a judge to be ensured by the law. Generally, the criteria assessing personal independence are: the manner of recruitment of judges; term of appointment; irremovability; establishment by the law of wages for the judges; freedom of expression of judges and the right to set up professional organizations meant to protect their professional interests; incompatibilities; prohibitions; continuous training; liability of judges *(JCC no. 25 of 06.11.2014, §89).*

Remuneration of judges, consisting of a variety of means of financial or social support, is one of the key components of their independence; it is a counterbalance to the restrictions, prohibitions and responsibilities imposed on them by the society. Only maintaining this balance can ensure the litigants' confidence in the independence and impartiality of judges *(JCC no. 25 of 06.11.2014, §90).*

The judiciary resolves legal disputes arising in the society, including those appeared as a result of actions of the two powers. Therefore, the quality of the act of justice as an act emanating from the judiciary, is directly proportional to the independence of judges supported by both the legislature and the executive *(JCC no. 25 of 06.11.2014, §97).*

In ascertaining the financial guarantees of judges as pillars of their independence, the Parliament has adopted, on 23 December 2013, the Law no. 328 on the remuneration of judges, which came into force on 1 January 2014. This law establishes uniform standards and procedures to determine the wages of judges *(JCC no. 25 of 06.11.2014, §100).*

The Court held that the new Law on the wages of judges does not provide for a fixed amount, rather for a formula (base) for the calculation thereof *(JCC no. 25 of 06.11.2014, §101).*

Thus, when operating the amendments by the Law no. 146 of 17 July 2014 the reference unit for calculating the wage of the judges was the average salary in the country determined by the Government annually *(JCC no. 25 of 06.11.2014, §102).*

Following the amendments operated by the Law no. 146 of 17 July 2014 the reference unit for the calculation of the salary of judges is the average salary registered in the year previous to the current one *(JCC no. 25 of 06.11.2014, §103).*

According to the Law no. 146 of 17 July 2014, the new calculation formula had to be implemented from 1 September 2014. The Court held that although the amendments refer only to the introduction of a new calculation formula, however when entering into force it resulted with a reduction of judges' wages due to the decrease of the amount of the calculation base. Thus, if until the entry into force of new regulations the unit of reference was "average salary annually determined by the Government" and the amount of the calculation base constituted 4225 lei (Government Decision no. 1000 of 13 December 2013), starting with 1 September 2014 the reference unit became "average salary in the year previous to the current one" and the amount of the calculation base was 3775.1 lei (National Bureau of Statistics, Official Gazette of the Republic of Moldova no. 66-71 of 21 March 2014). Therefore, the reduction of the wages of judges is an obvious state of things and was determined by the decrease of the amount of the calculation base *(JCC no. 25 of 06.11.2014, §106).*

The Court held that establishment of the policies on remuneration, including the remuneration of judges, is the competence of the legislature and of the executive. Concurrently, when adopting solutions on remuneration it is necessary to respect the relevant constitutional principles *(JCC no. 25 of 06.11.2014, §108).*

The Court stated that, as a principle, any lowering of wages may occur only under conditions of objectively existing economic and financial crisis officially recognized, and there should be fair lowering of wages for all or the majority of the categories of budgetary employees, according to the principle of solidarity *(JCC no. 25 of 06.11.2014, §109).*

In this context, the Court noted that in fact the decrease of the amount of wages was not determined by an objectively existing economic and financial crisis officially recognized. Moreover, this decrease occurred only in respect of judges and not for other categories of budgetary employees *(JCC no. 25 of 06.11.2014, §111).*

In light of the above and given that the new formula for the calculation of salaries of judges provided by the challenged law leads to the reduction of wages for judges in position, a compensation of difference created is compulsory *(JCC no. 25 of 06.11.2014, § 112).*

3.3. Constitutional Court

3.3.1. Statute of Constitutional Court judges

The independence of judges is one of the constitutional principles of justice. According to this principle in his/her activity the judge shall obey only to the law and to his/her conscience. While resolving the disputes the judge cannot by influence by any orders, instructions, directions, suggestions or other such incentives with regard to the solution to be delivered *(JCC no. 18 of 02.06.2014*[35]*, §42).*

The independence of the judiciary has an objective component, as it is an essential feature of the judiciary, and a subjective component, which concerns the right of the person to have the rights and freedoms determined by an independent judge. Failure to have independent judges cannot ensure fair and legal respect of the rights and freedoms *(JCC no. 18 of 02.06.2014, §45).*

Therefore independence of the judiciary is not an end in itself. This is not a personal privilege of the judges, it is justified rather by the need to allow judges to act as defenders

[35] Judgment no. 18 of 02.06.2014 on the control of constitutionality of the Law no. 109 of 3 May 2013 on the modification and completion of certain legislative acts (Law on the Constitutional Court and the Code of constitutional jurisdiction)

of the rights and freedoms of citizens (§ 6 of the Report of the Venice Commission on judicial independence, Part I: Independence of Judges) *(JCC no. 18 of 02.06.2014, §46).*

Irremovability is a guarantee of proper administration of justice and *a sine qua non* condition of independence and impartiality of the judge. It is enshrined not only in the interest of the judge, but in the interest of justice *(JCC no. 18 of 02.06.2014, §51).*

Irremovability is a strong guarantee of judicial independence, as it is a protective measure thereof. According to this principle, the judge can be neither removed, or downgraded or transferred to an equivalent job nor advanced without his consent. Irremovability shelters the magistrates against any revocation or transfer required, except for very serious mistakes and following corresponding legal proceedings *(JCC no. 18 of 02.06.2014, §52).*

Both the Constitution and the Law on the Constitutional Court regulates the most important principles and guarantees of independence and neutrality of judges of the Constitutional Court enabling them to objectively exercise jurisdictional activity, due to the fact that the Court itself, under Article 134 para. (2) of the Constitution, "independent of any other public authority" and obeys only to the Constitution. In this regard, the Constitutional Court has the exclusive right to decide on its jurisdiction [Article 6 para. (3) of the Code of constitutional jurisdiction]; the competence of the Constitutional Court is provided by the Constitution and cannot be challenged by any public authority [Article 4 para. (2) of the Law]; judges of the Constitutional Court may not be held accountable for their votes and opinions expressed in the exercise of their functions even following the expiry of the mandate [Art. 8 para. (3) of the Code and Art. 13 para. (2) of the Law]; among other duties, Constitutional Court judges are obliged "to perform their duties impartially and with respect for the Constitution" [Art. 17 para. (1) a) of the Law]; judges must "inform the President of the Constitutional Court on any activity that is incompatible with the duties they perform" [Art. 17 para. (1) let.d) of the Law]; Judges must refrain from any actions contrary to the status of a judge [Art. 17 para. (1) let. f) of the Law]; determination of the disciplinary violations committed by judges, of sanctions and of the procedure to apply them is the exclusive competence of the plenum of the Constitutional Court (Art. 84 of the Code); the Constitutional Court enjoys its own budget approved by Parliament

upon recommendation of the Plenum of the Constitutional Court (Art. 37 of the law) *(JCC no. 18 of 02.06.2014, §56).*

Control of constitutionality is not an impediment to democracy, it is rather a necessary instrument as it offers the parliamentary minority and the citizens the opportunity to monitor the compliance with the Constitution and constitutes a necessary counterpart against parliamentary majority, if the latter detaches from the letter and spirit of the Constitution *(JCC no. 18 of 02.06.2014, §58).*

The task of the Constitutional Court is to check the work of the Parliament. Subjecting the Court judges to the need of benefitting from the "confidence" from the part of Parliament is an evident contradiction with the scope of a Constitutional Court *(JCC no. 18 of 02.06.2014, §60).*

In this context it should be noted that there is a risk of pressure from the Parliament in certain cases that may be brought before the Court; as well, the responsibility before the Parliament can exercise indirect pressure on a judge to avoid taking unpopular decisions or to take decisions that will be popular for the legislative for the single reason not to "lose confidence". Therefore, there cannot be admitted any responsibility of the Constitutional Court judges before the Parliament whose activity it controls *(JCC no. 18 of 02.06.2014, §61).*

Moreover, the possibility for the Parliament to withdraw the mandates of Constitutional Court judges is a legal nonsense, since it is not only the Parliament entitled to appoint them. Even if the Court judges take their oath before the plenum of the Parliament, the President and the Superior Council of Magistracy, this does not mean that Parliament appears as the decision-making body for their appointment, this is more an element of the official appointment protocol and is meant to designate the date of commencement to exercise the mandate of Judge *(JCC no. 18 of 02.06.2014, §63).*

In light of the above, withdrawing of mandates of Constitutional Court judges by the Parliament represents an impermissible interference in the activity of the Constitutional Court, i.e., a violation of the principle of its independence, and is contrary to the principles of irremovability and independence of its judges [Art. 134 para. (2) and 137 of the Constitution]. Accordingly, paragraphs 1 and 2 of Art. I of Law no.109 of 3 May 2013 amending certain legislative acts are unconstitutional *(JCC no. 18 of 02.06.2014, §65).*

3.3.2. The competence of the Constitutional Court - a priori control of laws

According to Art. 135 para. (1) let.a) of the Constitution, the Constitutional Court "shall carry out, upon referral, the control of constitutionality of laws [...]", without any direct limitation of the exercise of that power to the laws "in force" *(JCC no. 9 of 14.02.2014[36], § 36).*

The Constitutional Court, by virtue of the competences provided in the Basic Law with a view to fulfill its role as guarantor for the supremacy of the Constitution, is the only one entitled to establish by its case-law the framework to exercise the control of the constitutionality of acts subjected to its jurisdiction by the provisions of Article 135 the Constitution; this indeed has happened so far, and the Court shall examine the object of the complaints filed with it and address them accordingly in light of the affected values and constitutional principles *(JCC no. 9 of 14.02.2014, § 54).*

The Court held that evaluative interpretation of the powers of the Constitutional Court is meant to increase and extend the mechanisms which the constitutional court may enjoy *(JCC no. 9 of 14.02.2014, § 55).*

Therefore, a restrictive interpretation of the fundamental rule with a view to limit, eliminate or reduce the powers of the Constitutional Court would result in a diversion from the purpose of improving the constitutional democracy which has been pursued by the constituent legislator *(JCC no. 9 of 14.02.2014, § 56).*

The control of constitutionality of laws prior to their promulgation inextricably integrates with the legal mechanism aimed to contribute to the effective preventive protection of fundamental human rights and freedoms *(JCC no. 9 of 14.02.2014, § 58).*

[...] The Court held that the control of constitutionality of a law, according to art. 135 para. (1) let. a) of the Constitution, may occur both prior to the promulgation and following its entry into force, provided the procedures required by law are fulfilled *(JCC no. 9 of 14.02.2014, § 59).*

Concurrently, the Court held that according to Article 93 of the Constitution, the President of the Republic of Moldova is entitled, in case of any objections against a par-

[36] Judgment no. 9 of 14.02.2014 on the interpretation of Article 135 para.(1) let. a) of the Constitution of the Republic of Moldova

ticular law, to submit it within a maximum period of two weeks to the Parliament for reconsideration. If the Parliament upholds its previously adopted decision, the President shall promulgate the law *(JCC no. 9 of 14.02.2014, § 61).*

The control of the law performed by the President within promulgation procedure is based on three components (directions): respect for procedure, opportunity and control of constitutionality *(JCC no. 9 of 14.02.2014, § 63).*

In this context, the Court considered that the President of the Republic of Moldova, when sending the law to the Parliament for repeated examination given the reasons of unconstitutionality, may simultaneously address a complaint to the Constitutional Court, as the unique authority of constitutional jurisdiction, in order to conduct the control of constitutionality of the adopted law (*JCC no. 9 of 14.02.2014, § 66*)

On the other hand, given the mandatory rule provided in Article 93 of the Constitution, the Court held that challenging the law with a view of the control of constitutionality prior to the publication does not directly affect the procedures referring to promulgation so that in the event of the promulgation of a challenged law until the delivery of the judgment by the Constitutional Court, *a priori* control of constitutionality of the law continues its effect within *a posteriori* control *(JCC no. 9 of 14.02.2014, § 67).*

The Court also held that it is the essence of the principle of constitutional loyalty that if a law that has been sent by the President of the Republic of Moldova to Parliament for reconsideration on grounds of unconstitutionality was challenged before the Court, the Parliament casts its repeated vote only following the judgment of the Constitutional Court confirming the constitutionality thereof *(JCC no. 9 of 14.02.2014, § 68).*

In the same context the Court held that under Art. 135 para. (2) of the Constitution, it carries out its activity upon referral by the subjects entitled by the law. The Court therefore considered that any of the subjects entitled to submit a complaint to the Constitutional Court may challenge a law that was not published in the Official Gazette, provided the legal conditions are met, similar to the cases of challenging a law that has already been published in the Official Gazette *(JCC no. 9 of 14.02.2014, § 69).*

3.4. Local autonomy

3.4.1. Issues to be subjected to local referendum

The Court noted that paragraph (2) of Art. 2 of the Constitution provides as a principle that no private individual, no national segment of population, no social group, no political party or other public organization may exercise state power on their own behalf. Usurpation of state power shall constitute the gravest crime against people *(JCC no. 21 of 05.06.2014[37], §31).*

The Court pointed out that according to constitutional norms, national sovereignty can be exercised directly by the people, through participation in referendums and elections, as well as by their representative bodies; in this regard according to Article 60 of the Constitution, the Parliament is the sole supreme representative of the people of the Republic of Moldova (*JCC no. 21 of 05.06.2014, §32).*

Given the fact that the referendum is a mechanism of direct exercise of sovereignty, the Court noted that in this respect Article 75 para. (1) of the Constitution states that the most important problems of the society and of the state shall be submitted to a referendum *(JCC no. 21 of 05.06.2014, §33).*

The Court noted that, in terms of territorial criterion, the Election Code separates the republican and local referenda *(JCC no. 21 of 05.06.2014, §35).*

According to art. 109 of the Constitution, public administration in territorial-administrative units is based on the principles of local autonomy, decentralization of public services, eligibility of local public administration authorities and consulting of citizens on local problems of special interest *(JCC no. 21 of 05.06.2014, § 39).*

The Court thus held that being directly enshrined in Article 109 paragraph (1) of the Constitution, the principle of consultation of citizens on local problems of special interest is integrated and subordinated to the constitutional principle of local autonomy, appearing in the form of referendums and other forms of consultation of the population *(JCC no. 21 of 05.06.2014, §40).*

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[37] Judgment of the Constitutional Court no. 21 of 05.06.2014 on the control of constitutionality of certain provisions of articles 177 and 178 of the Election Code, as amended by the Law no. 29 of 13 March 2014

The Court noted that the alleged constitutional norm provides also the limits for the consultation of the population of a local authorities, namely the local issues of particular interest *(JCC no. 21 of 05.06.2014, §42).*

Given this fact Art. 8 para. (1) of Law no. 436-XVI of 28 December 2006 on public administration also regulates the aspect that the public may be consulted within a local referendum on "issues of particular importance to the administrative-territorial unit". Moreover, para. (2) thereof provides the possibility to carry out various forms of consultations, public hearings and conversations even with regard to issues of local interest in which only a part of the population of the administrative-territorial is concerned *(JCC nr. 21 of 05.06.2014, §43).*

Consultation of citizens is also regulated in Art. 17 para. (1) and Art. 18 of Law no. 764-XV of 27 December 2001 on administrative division of the Republic of Moldova when the Parliament resolves issues referring to the setting up, dissolution, change of status and change of borders of a territorial-administrative unit to transfer the administrative center *(JCC no. 21 of 05.06.2014, §44).*

Concurrently the Court held that it is the very essence of the principle of local autonomy to grant the right to resolve and to administer within legal frameworks proper legal interests, without any interference by central authorities. The powers transmitted to local authorities are governed by the law, and the state shall under specific forms exercise the control over the manner this is carried out *(JCC no. 21 of 05.06.2014, §49).*

The limit of powers of local authorities is provided in Art. 112 para. (2) of the Constitution, stipulating that local councils and mayors operate, under the law, as autonomous administrative authorities and resolve public affairs in villages and towns. Also, according to Art. 113 of the Constitution, the district council shall coordinate the activity of village and town councils with the view of carrying out the public services at district level. *(JCC no. 21 of 05.06.2014, §50).*

The Court noted that, in terms of the subjects that may be addressed at the local referendum, Recommendation R (96) 2 on Referendums and Popular Initiatives at Local Level provides: "Local referendums and popular initiatives should be organized by the local authorities only on questions which fall within their sphere of competence. Regulations, however, may enlarge the application of these instruments to other matters which affect

essential local interests or exclude certain issues. The competent authority should decide on the admissibility of the request for a referendum or popular initiative without delay. The admissibility criteria should be laid down in regulations" *(JCC no. 21 of 05.06.2014, §51).*

Thus, it appears that the legislature only is able to extend the scope of regulation of issues that may be subject to referendum *(JCC no. 21 of 05.06.2014, §52).*

In this context, the Court pointed out that the Parliament as the supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the state, according to this exclusive competence assigned by the Constitution, regulates issues related to the organization of local administration, territory, as well as the general rules on local autonomy by organic law. While carrying out legislative powers provided for in Art. 72 of the Constitution, the Parliament is entitled to adopt, amend and repeal any law and in this respect the constitution does not provide any rule on the approval or consultation of the opinion of citizens on in a referendum, especially a local one *(JCC no. 21 of 05.06.2014,* §54).

At the same time, according to Art. 109 para. (3) of the Constitution, given the obligation to ensure the principle of local autonomy, the application thereof cannot hinder the character of the unitary state *(JCC no. 21 of 05.06.2014, §55).*

Taking into account the constitutional norms that assign to local collectivities the right to submit to a referendum only issues of particular local importance, the Court observed that Art. 178 of the Election Code specifies the problems that cannot be submitted to the referendum, namely: a) issues of national interest that follow under the competence of the Parliament, Government or other central authority, according to the powers determined by the Constitution and the legislation; b) related to the domestic and foreign policy of the state; c) that contradict the Constitution and the laws of the Republic of Moldova; d) related to taxes and budget; e) regarding extraordinary or emergency measures with a view to ensure public order, health or security of the population; f) regarding election, appointment in or dismissal from certain positions of persons that fall under the exclusive competence of the Parliament, the President of the Republic of Moldova and the Government; g) concerning the withdrawal of the mayor dismissed on the basis of a final judgment issued by a court of law; h) issues that fall under the competence of the courts or

prosecution offices; i) related to the modification of administrative-territorial subordination of localities, except for the cases provided by the Law on the Special Legal Status of Gagauzia (Gagauz-Yeri) *(JCC no. 21 of 05.06.2014, §56).*

Given these provisions, in light of the aforementioned constitutional and legal principles the Court reiterated that it is unacceptable to submit issues of national importance that are the competence of the Parliament, Government and other central public authorities for a resolution at the local level. The issues of national interest are a concern of people throughout the Republic of Moldova, and are solved by legislative and executive powers within the limits of constitutional competences assigned, or may be submitted to a republican referendum *(JCC no. 21 of 05.06.2014, §58).*

The Court also pointed out that issues related to domestic and foreign policy of the state cannot be appreciated as issues concerning a single community. However, according to Art. 66 let. d) of the Constitution, the Parliament shall approve the main directions of domestic and foreign policy of the state, and according to Art. 96 the Government shall ensure its realization *(JCC no. 21 of 05.06.2014, §59).*

Concurrently, according to Art. 142 para. (1) of the Constitution and Art. 146 of the Election Code, the issue related to the approval of constitutional laws adopted by the Parliament in order to revise provisions regarding sovereignty, independence and unitary character of the state, as well as on the permanent neutrality of the state, shall mandatorily be submitted to a republican referendum. Moreover, the constitutional provision (Art. 142 para. (2)) imperatively provides that no revision shall be performed if it implies the infringement of fundamental rights and freedoms of citizens or their guarantees *(JCC no. 21 of 05.06.2014, §64).*

3.4.2. Local budgetary autonomy

In its jurisprudence the Court reiterated that a key element of the constitutional system is the local public administration. Being called upon to solve problems of local interest it is of particular importance for the development of administrative-territorial units and for the insurance of the activity of public services *(JCC no. 2 of 28.01.2014[38], §90).*

According to Art. 109 para. (1) of the Constitution, public administration within the administrative-territorial units shall be based on the principles of local autonomy, decentralisation of public services, eligibility of the local public administration authorities and consultation of citizens on local problems of special interest. *(JCC no. 2 of 28.01.2014, §91).*

Para. (2) thereof provides that concept of autonomy shall encompass both the organisation and functioning of the local public administration, as well as the management of the communities represented by that administration *(JCC no. 2 of 28.01.2014, §92).*

Thus, the local autonomy means the right and effective capacity of local communities to solve and administer within the law, under their own responsibility and on behalf of the local population, an important segment of public affairs *(JCC no. 2 of 28.01.2014, §93).*

In order to ensure effective and functional autonomy of local authorities whereby they could enjoy the power and capacity to regulate and manage public affairs in the interest of the local population, the legislature had provided in Art. 9 of the Law no. 436-XVI of 28 December 2006 their right to develop, approve and manage in an autonomous manner their budgets as well as their right to establish and collect local taxes, according to legal provisions *(JCC no. 2 of 28.01.2014, §97).*

The Court held that local budgets represent tools meant to facilitate planning and management of financial-economic activity of the territorial administrative units. The structure thereof reflects the degree of autonomy of local governments against central power. The local budgets also reflects the flows of revenues and expenditures of the local administration, the manner of financing the expenditure for particular purposes and the coverage of budgetary deficits *(JCC no. 2 of 28.01.2014, §98).*

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[38] Judgment no. 2 of 28.01.2014 on the control of constitutionality of certain fiscal provisions referring to local taxes

As a part of the budgetary system, local budgets fulfill a complex role arising from the general role of the state budget. The local budgets thus fulfill the financial role to mobilize and redistribute the state budget of the local level given the corresponding tasks assigned to administrative-territorial units *(JCC no. 2 of 28.01.2014, §99).*

The Court noted that the delineation of local public finances is the result of financial empowerment of local authorities, of their increasing importance and role and is related to budgetary decentralization within the system of public budgets *(JCC no. 2 of 28.01.2014, §100).*

Decentralization of public administration implies decentralization of public services and strengthening of local autonomy from the administrative and financial point of view, acting with a view to raise awareness and increase the involvement of local communities in managing the problems they face, as well as to establish of an inherent policy, increase economic performance and improve the social life, the life of citizens from their communities by defining and assuming local responsibilities related to local services and financial performance necessary to achieve them *(JCC no. 2 of 28.01.2014, §101).*

The Court held that [...] the procedures for the distribution of the financial resources of local authorities as well as any amendment to the legislation concerning the functioning of local public finances shall be obligatorily coordinated with the representative bodies of local public administrations *(JCC no. 2 of 28.01.2014, §109).*

4. NATIONAL ECONOMY

4.1. Economic aspects of the Association Agreement

The Court noted that the Association Agreement contains an important commercial component, namely Deep and Comprehensive Free Trade Area (DCFTA), which entails the gradual liberalization of trade in goods and services with the European Union, reduction of customs duties, technical and non-tariff barriers, abolition of quantitative restrictions and harmonization of the legislation of the Republic of Moldova in this domain with EU legislation *(JCC no. 24 of 09.10.2014[39], §154).*

[39] Judgment no. 24 of 09.10.2014 on the constitutionality of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, and of the Law No.112 of 2 July 2014 on its ratification

The Court found that the Association Agreement provides for an asymmetric liberalization of bilateral trade so that the market of the Republic of Moldova will not be completely open to the imports from the EU of the most sensitive agricultural products. Our country will import these products from the EU free of customs duties only within certain quantitative quotas. This mechanism will mitigate the risk of abundant growth of imports of certain food products, which will help to protect the domestic manufacturer *(JCC no. 24 of 10.09.2014, §158).*

The Court therefore held that, in the spirit of constitutional norms the provisions of the Association Agreement will ensure and will strengthen the free trade, protection of fair competition and will create a favorable environment of all elements of production *(JCC no. 24 of 09.10.2014, §161).*

4.2. The national public budget

4.2.1. The procedure for adopting national public budget

The Court noted that the financial mechanism of the state, which is a constitutive part of the economic mechanism consists of structures, forms, methods, principles and economic instruments that contribute to the development, administration and use of financial funds of the state necessary in order to carry out its functions and tasks and targeted especially for sustainable economic development and, based on this, for the insurance of an adequate standard of living *(JCC no. 2 of 28.01.2014[40], § 41).*

The Court found that by the constitutional provisions of Art. 131 the legislative constituent introduces on the one hand, the fundamentals of the national public budget in terms of its structure and content, and on the other hand, imposes certain mandatory restrictions, including for the legislative, referring to the budgetary process. The second aspect of the content of the constitutional norm invoked is strongly emphasized by the importance of the budgetary system for the economic security of the state, which dictates the imposition of harsh and predictable rules, including the procedures of the process of

[40] Judgment no. 2 of 28.01.2014 on the control of constitutionality of certain fiscal provisions referring to local taxes

development by the competent authorities of all components of the national budget *(JCC No. 2 of 28.01.2014, § 43).*

The Court also noted that according to paragraph (4) of Article 131 of the Constitution: "Any legislative initiative or amendment, which entails the increase or diminishing of the budgetary revenues or loans, as well as the increase or curtail of the budgetary expenditures shall be adopted following an approval of the Government" *(JCC no. 2 of 28.01.2014, § 47).*

Thus, the Court noted the provisions of the Basic Law, which provides for mandatory existence of a prior consent of the Government with respect to the amendments or legislative proposals involving any increase or reduction of expenses, incomes or borrowings as an essential condition on which the legislature cannot derogate in the process of adopting national public budget, non-compliance with this requirement constitutes a violation of the procedure related to budgetary matters established by the Constitution. This constitutional principle is incidental to budgetary procedure *(JCC no. 2 of 28.01.2014, § 48).*

The Court noted that, in accordance with constitutional requirements, any legislative initiative or proposal bearing budgetary impact shall be presented only upon identification of the sources of financing and following prior approval by the Government. In this regard the norm stipulated in paragraph (4) of Article 131 of the Constitution shall be applied in conjunction with paragraph (6) of this article *(JCC no. 2 of 28.01.2014, § 63).*

The Court held that Government cannot waive a constitutional right / obligation, including expression of its acceptance or refusal in respect of certain legislative proposals or amendments with a budgetary impact *(JCC no. 2 of 28.01.2014, § 66).*

The Court mentioned that according to the constitutional norm, the aforementioned consent should be expressed by the Government, and not by a member of the executive. Under Article 97 of the Constitution and Article 4 of Law No. 64-XII of 31 May 1990 on Government, the Government is a collegial body and is composed of the Prime Minister, the Deputy Prime Minister, Deputy Prime Ministers, Ministers and other members provided by the law. Article 30 of the Law on Government stipulates that the exercise of constitutional powers and those arising from legal provisions as well as the activities to organize the implementation of laws, the Government adopts decisions that are signed by the Prime Minister. Collegial nature of the Government is expressed by the participation

of all of its members in the decision-making process which results in the adoption of decisions by the majority of its members *(JCC no. 2 of 28.01.2014, § 68).*

The Court confirmed that Article 131 para. (4) of the Constitution is the sole constitutional provision requiring a direct decisional dependence of the Parliament on the Government [...] *(JCC no. 2 of 28.01.2014, § 74).*

4.2.2. Protection of Competition

According to Art. 126 of the Constitution, the economy of the Republic of Moldova is a market economy, socially oriented, based on private and public property that are competing freely *(JCC no. 6 of 13.02.2014[41], § 93).*

However, Article 9 of the Supreme Law bearing a generic title "Basic principles regarding property" outlines the basic factors of the economy, namely: market, free economic initiative and fair competition *(JCC no. 6 of 13.02.2014, § 94).*

In order to implement the aforementioned principles the constituent legislator, by Art. 126 para. (2) imposed the state the obligation to regulate economic activity. Concurrently, the provisions of art. 126 para. (2) of the Constitution guarantee the implementation of the principles of market economy *(JCC no. 6 of 13.02.2014, § 95).*

Thus referring to that issue the Court noted that the constituent legislator imposed upon the state a number of positive obligations, such as ensuring freedom of commerce and entrepreneurship, protection of fair competition, creation of a framework benefic for the development of all elements of production *(JCC no. 6 of 13.02.2014, § 96).*

The Court held that an constitutional element inherent to a functioning and open market economy, together with the freedom of movement of goods, persons, services and capital represent the freedom of competition. Therefore, any act aimed at preventing, restricting or distorting competition will result in improper functioning of the economy, creation of imbalances and discontinuities in economic relations *(JCC no. 6 of 13.02.2014, § 101).*

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[41] Judgment no. 6 of 13.02.2014 on the control of constitutionality of the Law no. 199 of 12 July 2013 on the exemption of payment certain taxes, contributions, primes and disbursements, and cancellation of the increasing penalties and fines related to them

The Court noted that, consequently, effective competition is the "engine" that determines the economic agents operate in a market, to fight in order to achieve a proper distribution of resources, both at the level of their own business and, due to the synergistic effect, for the entire economy *(JCC no. 6 of 13.02.2014, § 104).*

In this regard, the Court recalled that a fundamental condition to achieve practical implementation of the principle of free competition is to ensure, through an adequate legal framework established by the state, equal opportunities for economic agents. This means, in particular, failure to favor certain economic agents by granting financial or other types of advantages as compared to their competitors in the same field of activity *(JCC no. 6 of 13.02.2014, § 111).*

Similarly, the Court noted that economic agents cannot be privileged among each other based on the fact either the state is the founder thereof or not, as given the market conditions, regardless of the quality of the founder, all enterprises are equal and suchlike behavior would prejudice the principles of market economy and free competition *(JCC no. 6 of 13.02.2014, § 112).*

Exemption of an economic agent from payment of taxes, as compared to other economic agents obliged to execute their tax duties inevitably lead to the favoring of a certain legal person against another one activating in the same field of activity *(JCC no. 6 of 13.02.2014, § 117).*

The Court held that exemption of an economic agent from payment of taxes and duties and granting of other tax facilities infringes the constitutional principle of free competition, in particular, and the principles of market economy, in general *(JCC no. 6 of 13.02.2014, § 128).*

4.3. Freedom of Trade

The Court held that development and promotion of the fiscal policy is a mechanism with the use of which the state regulates, according to art. 126 para. (2) of the Constitution, the economic activity *(JCC no. 17 of 29.05.2014[42], §52).*

[42] Judgment no. 17 of 29.05.2014 on the exception of unconstitutionality of section 2 of the Government Decision no. 243 of 8 April 2010 on the sewing of the "Excise duty. State trademark" and "Excise duty" of the new type

The Court noted that, according to art. 123 para. (5) of the Fiscal Code the goods subject to excise duty, bottled in packaging for final consumption, such as alcoholic products, provided by the legal provision, sold, transported or stored on the territory of the Republic of Moldova or imported for sale on its territory, as well as goods subject to excise duty bottled in packaging for final consumption, purchased from resident economic agents located on the territory of the Republic of Moldova having no tax relations with its budgetary system, are subject to mandatory marking with "Excise Duty" *(JCC no. 17 of 29.05.2014, §53).*

The Court noted that, in order to improve the manufacturing process and use of excise stamps that shall mandatorily be applied according to Art. 123 para. (5) and (5^1) of the Tax Code by Government Decision No.243 of 8 April 2010 it has been established that from 1 April 2010 there should be applied "Excise Dutys. State Trade Mark" and "Excise Duty" of a new type, which will be made upon order by the State Enterprise "Fiscservinform". According to the aforementioned Decision, they will have a higher degree of protection and will be distributed according to the current legislation *(JCC no. 17 of 29.05.2014, §57).*

The Court emphasized that any purchase of goods by the economic agents aiming to retail selling is based on an economic interest and this fact generates a legitimate expectation to obtain an income *(JCC no. 17 of 29.05.2014, §59).*

Thus the right of economic agents to dispose of their goods through their further selling is a property value and enjoys the characteristics of a "good" within the meaning of the first sentence of Article 1 of the Additional Protocol to the European Convention *(JCC no. 17 of 29.05.2014, § 61).*

The Court noted that, prior to the approval of the Government Decision No.243 of 8 April 2010, the national legal framework did not provide any norm referring to the validity term of the excise stamps when these have to be substituted with new ones *(JCC no. 17 of 29.05.2014, §62).*

The Court held that the Regulation on the purchase and application of excise duty on tobacco products approved by the Government Decision nr.1427 of 18 December 2007, failed to provide any reference on the manner to change the excise stamps the validity terms of which has already expired, it provided only for their restitution to the State in

case of non-usage or deterioration in the production process. Similar provisions are found in the Government Decision nr.1481 of 26 December 2007 on the labeling of alcohol products *(JCC no. 17 of 29.05.2014, §63)*.

The Court held that, by the Order no. 72 of 2 January 2011, SE "Fiscservinform" was supposed to provide, upon request, free substitution only of old stamps that have not been applied and that were in the stocks of the manufacturers or importers. Thus the given order failed to cover the old stamps which have already been affixed to the goods *(JCC no. 17 of 29.05.2014, §65)*.

The Court noted that at the time of purchase of goods subject to excise duty and to mandatory marking with "Excise Duty" introduced in 2005 and 2008, the legal framework did not provide any time limits for the economic agents referring to their applicability. Therefore, the amounts of the purchased stocks could be limited *(JCC no. 17 of 29.05.2014, §67)*.

Given these circumstances, the Court mentioned the necessity to develop a legal framework that would be predictable for economic agents, including appropriate indications in particular circumstances *(JCC no. 17 of 29.05.2014, §68)*.

The Court accepted that the issuance of new excise stamps with a higher degree of protection has been fully justified by the existence of numerous counterfeit goods. The legitimate aim pursued by the interference was the need to combat tax evasion, exclusion from the market of counterfeit goods and finally consumer protection *(JCC no. 17 of 29.05.2014, §70)*.

The Court also held that the restriction imposed by the ban to trade after 1 April 2011 of indigenous and imported goods which were marked with "Excise Dutys" put into circulation on 1 July 2008 and, correspondingly, from 1 April 2005 represent a disproportionate interference to the aim pursued *(JCC no. 17 of 29.05.2014, §71)*.

However, the interference with the property right must keep a balance between the general interest of the state and the private interest of the individual *(JCC no. 17 of 29.05.2014, §75)*.

Also, given the fact that the new stamps have been put into circulation from 1 April 2010, and the goods bearing previous stamps could have been sold until 1 April 2011, the Court noted that within one year it was possible to trade concurrently both types of

goods. In this situation the purpose of the time limit instituted is not clear *(JCC no. 17 of 29.05.2014, §77).*

The Court held that the state has a sufficient number of control and sanction mechanisms capable to ensure the authenticity of the goods displayed on the market. However, the state cannot impose the duty to achieve a public interest on the individual *(JCC no. 17 of 29.05.2014, §80).*

Accordingly, the Court recalled the need to establish by the normative acts predictable and proportionate standards concerning the activity of economic agents *(JCC no. 17 of 29.05.2014, §82).*

B | COURT FINDINGS

1. PROVISIONS RECOGNIZED CONSTITUTIONAL

The Court recognized as constitutional:

- - Parliamentary Decision no. 126 of 30 May 2013 on the election of one vice-president of the Parliament;
  - Parliamentary Decision no. 127 of 30 May 2013 on the election of one vice-president of the Parliament (*JCC no. 3 of 04.02.2014, complaint no. 31a/2013*);
- Article 139 para. (3) – (4) and Article 140 para. (1) and para. (3) – (10) of the Enforcement Code of The Republic of Moldova no. 443-XV of 24 December 2004 (*JCC no. 4 of 06.02.2014, complaint no. 32a/2013*);
- the wording "in case the answer has not been received by the employer within this period of time, the consent (communication of the consultative opinion) of the corresponding body shall be presumed" of para. (4) Art. 87 of the Labour Code no. 154/XV of 28 March 2003 (*JCC no. 12 of 20.05.2014, complaint no. 17a/2014*);
- The Law no. 61 of 11 April 2014 on the modification of certain legislative acts (*JCC no. 15 of 27.05.2014, complaint no. 29a/2014*);
- The wording "*in a period of 12 months*" included in art. 10 para. (3) of the Law no. 1569-XV of 20 December 2002 on the import and export of goods on/from the territory of the Republic of Moldova by individuals, art. 348^5 para.(1) and (2) let.

e) of the Fiscal Code no. 1163-XIII 24 April 1997 and Article 184[1] para. (1) of the Customs Code no. 1149 of 20 July 2000, as amended by the Law no. 324 of 23 December 2013 for the modification and amendment of legislative acts (*JCC no. 16 of 28.05.2014, complaint no. 47a/2013*);

- Provisions of art. 27 para. (3), art. 31 para. (4), art. 36 para. (1), art. 46 para. (1) – (2), art. 47 para. (13) – (15), art. 61 para. (4), art. 105 para. (2) and (6), art. 132 let. d[1]) and d[2]), art. 133 para. (6) and art. 139[1] para. (2) and (3) of the Rules of the Parliament adopted by the Law no. 797-XIII of 2 April 1996 (*JCC no. 20 of 04.06.2014, complaints no. 9a/2014, 11a/2014, 28a/2014*);
- - the wording "and that is only the legal competence of the local public authorities" of para.(1) and the provisions of para. (1[1]) of art. 177;
  - letters a), b) and c) of art. 178 of the Election Code no. 1381-XIII of 21 November 1997 (*JCC no. 21 of 05.06.2014, complaint no. 25a/2014*);
- - provision of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part;
  - the Law no. 112 of 2 July 2014 on the ratification of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (*JCC no. 24 of 09.10.2014. complaint no. 44a/2014*);
- The words *"received in the year precedent to the year of inventory"* in art. 1 para (1) of the Law no. 328 of 23 December 2013 on the payment of wages to the judges, as amended by the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts, provided the difference in salaries will be compensated for the judges that were hired on their positions prior to the entry into force of the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts (*JCC no. 25 of 06.11.2014, complaint no. 52a/2014*);
- The wording *"243," and the wording "and 330[2]"* of art. 19 para. (4) of the Law no. 544-XIII of 20 July 1995 on the status of the judge, as amended by the Law no. 177 of 25 July 2014 on the modification and completion of certain legislative acts (*JCC no. 26 of 11.11.2014, complaint no. 51a/2014*);

- Art. 234 of the Contravention Code (*JCC no.28 of 18.11.2014, complaint 53a/2014*);
- Para. (6) of Art. 9 of the Law no. 48 of 22 march 2012 on the system of payment of wages to the public officers (*JCC no. 30 of 11.12.2014, complaint no. 18a/2014*).

2. PROVISIONS RECOGNIZED AS UNCONSTITUTIONAL

The Court declared unconstitutional the following provisions:

- Sections 113-119, 122-123 of Art. IX of the Law no. 324 of 23 December 2013 on the modification and completion of certain legislative acts (*JCC no. 2 of 28.01.2014, complaint no. 2a/2014*);
- Let.e) in art. 4 of the Law on administrative procedures no. 703-XIV of 10 February 2000 (*JCC no.5 of 11.02.2014, complaint no. 38a/2013*);
- Law no.199 of 12 July 2013 on the liberation of payment of certain taxes, contributions, bonuses and breakdowns, as well as on the annulment of the penalties and fines related thereto (*JCC no. 6 of 13.02.2014, complaint no. 3a/2014*);
- Para. (7) of art. 88 of the Fiscal Code no. 1163-XIII of 24 April 1997 (*JCC no. 7 of 13.02.2014, complaint no.5a/2014*);
- The tax rate of "2,00 Euro" on the tariff lines "870324" and "870333" of the Annex no. 2 of Title IV of the Fiscal Code no. 1163-XIII of 24 April 1997, as amended by the Law no. 324 of 23 december 2013 on the modification and completion of certain legislative acts (*JCC no. 8 of 14.02.2014, complaint no. 7a/2014*);
- The tax rate of *"75 lei + 24%"* on the tariff line "240220"of the Annex no. 1 of Title IV of the Fiscal Code no. 1163-XIII of 24 April 1997, as amended by the Law no. 324 of 23 december 2013 on the modification and completion of certain legislative acts (*JCC no. 11 of 25.03.2014, complaint no. 20a/2014*);
- Section 72 of Art. IX of the Law no. 324 of 23 December 2013 on the modification and completion of certain legislative acts (*JCC no. 13 of 22.05.2014, complaint no. 12a/2014*);
- Art. II of the Law no. 56 of 4 April 2014 on the completion of Art. 60 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 (*JCC no. 14 of 27.05.2014, complaint no. 27a/2014*);

- - section 2 of the Government Decision no. 243 of 8 April 2010 on the sewing of the "Excise duty. State trademark" and "Excise duty" of the new type.
  - para. (7) of art. 123 of the Fiscal Code no. 1163-XIII of 24 April 1997 (*JCC no. 17 of 29.05.2014, complaint no. 30g/2014*);
- - Law no. 109 of 3 May 2013 on the modification and completion of certain legislative acts;
  - the words*", that will not exceed 15 days following registration. If required, the Constitutional Court may decide, on grounded bases, the extension of the 15 days term with another term of maximum 15 days"* in para. (6) of art. 25^1 of the Law no. 317-XIII of 13 December 1994 on the Constitutional Court and art. 7^1 of the Code of constitutional jurisdiction no. 504-XIII of 16 June 1995 (*JCC no. 18 of 02.06.2014, complaint no. 34a/2014*);
- The words *"except for the rector of the educational institution under the President of the Republic of Moldova, the rectors of the institutions of higher education subordinated to the Ministry of Interior Affairs, Ministry of Defense and Intelligence and Security Service of the Republic of Moldova"* in art. 48 para. (1) of the Law on education no. 547-XIII of 21 July 1995 (*JCC no. 19 of 03.06.2014, complaint no. 19a/2014*);
- Para.(3) of Art.88 of the Rules of the Parliament, adopted by the Law no. 979-XIII of 2 April 1996 (*JCC no. 20 of 04.06.2014, complaints no. 9a/2014, 11a/2014, 28a/2014*);
- - positions *"Head of section", "head of section within direction", "Head of Division", "Principal advisor", "Superior adviser", "Legal assistant"* in the compartments *"Secretariat of the Constitutional Court"* and *"Superior Council of Magistracy, the Supreme Court of Justice"*, as well as the positions *"Head of direction", "Head of section", "Head of section within direction", "Head of division", "Legal assistant", "Principal specialist"* in the compartment *"Courts of Appeal"* of Annex no. 2 to the Law no. 48 of 22 March 2012 on the system of payment of wages of civil servants, as amended by the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts;
  - the text "*Note: Within the Secretariat of the Constitutional Court, the Secretariat of the Superior Council of Magistracy and the Secretariat of the Supreme Court of Justice the positions of advisors (principal and superior) may be instituted only in the subdivisions*

specialized in legal expertise, research and analysis." of Annex no. 2 to the Law no. 48 of 22 March 2012 on the system of payment of wages of civil servants, as amended by the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts;

- the words *" for the civil servants within the secretariats of the Constitutional Court, the Superior Council of Magistracy and the Supreme Court of Justice, of courts of appeal, of the courts, "* in subpara. one of para.(2) of Art.VI of the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts (*JCC no. 25 of 06.11.2014, complaint no. 52a/2014*);
- Para. (5^1), (5^2), (5^3) of Art. 19 of the Law no. 544-XIII of 20 July 1995 on the status of judge, as amended by the Law no. 177 of 25 July 2014 on the modification and completion of certain legislative acts (*JCC no. 26 of 11.11.2014. complaint no. 51a/2014*);
- Art. 21 para. (5) let. e) of the Law no. 52 of 3 April 2014 on the People's Advocate (Ombudsman) (*JCC no. 27 of 13.11.2014, complaint no. 42a/2014*).

3. INTERPRETATION OF CONSTITUTIONAL PROVISIONS

The Court has interpreted the following constitutional provisions:

- In the meaning of the Article 135 para. (1), let. a) of the Constitution, *the review of constitutionality of laws includes the laws passed by Parliament, both following and prior to their publication in the Official Gazette of the Republic of Moldova*, at the referral by the President of the Republic of Moldova and by other subjects entitled with the right to submit complaints (*JCC no. 9 of 14.02.2014, complaint no. 52b/2013*);
- In the meaning of Art. 35 para.(6) of the Constitution, *election of the rector by the senate of the institution of higher education in an element incidental to university autonomy* (*JCC no. 19 of 03.06.2014, complaint no. 19a/2014*).

4. VALIDATION OF THE MANDATES OF MEMBERS OF PARLIAMENT

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

- Mr. Valeriu Tabuica, born in 1965, residing in Ocnița, engineer-constructor, alternated candidate on the list of Democratic Party of Moldova (*JCC no. 10 of 27.02.2014, complaint no. 14e/2014*);
- Mr. Vladimir Telnov, born in 1976, residing in mun. Chișinău, BA in geography and biology, alternated candidate on the list of Party of Communists of the Republic of Moldova (*JCC no. 22 of 17.06.2014, complaint no. 41e/2014*);
- Mr. Dumitru Godoroja, born in 1976, residing in mun. Chișinău, engineer-technologist, deputy minister of Economy, alternated candidate on the list of Democratic Party of Moldova (*JCC no. 23 of 16.07.2014, complaint no. 45e/2014*);
- Members of Parliament elected in the Parliament of the Republic of Moldova following Parliamentary elections of 30 November 2014 (*JCC no. 29 of 09.12.2014, complaint no. 61e/2014*).

5. SUSPENDED PROCEEDINGS

The Court has suspended the following proceedings:

- On the control of constitutionality of the provisions of Art. 63 para.(3), art. 102 para.(7) and art. 129 para.(4) of the Rules of the Parliament, adopted by the Law no. 797-XIII of 2 April 1996 (*JCC no. 20 of 04.06.2014, complaints no. 9a/2014, 11a/2014, 28a/2014*);
- On the control of constitutionality of the Government Decision no. 1022 of 28 December 2012 on the reorganization of certain medical institutions (*DCC no.1 of 30.01.2014, complaint 44a/2013*);
- On the control of constitutionality of the provision "Carrying out of the census of the population and dwellings on the site in the period 12-25 May" in the Program of Statistical works for 2014, approved by the Government Decision no. 39 of 23 January 2014 (*DCC no. 3 of 17.02.2014, complaint no. 8a/2014*).

6. COMPLAINTS DENIED

In the process of exercising constitutional jurisdiction in 2014 the Court issued 10 decisions ***on inadmissibility of complaints*** based on the following reasons:

- The Court is not competent *ratione materiae* to decide on the opportunity or the object of the complaint exceeds the legal competence of the Court (*DCC no. 2 of 04.02.2014, complaint no. 4a/2014, § 44; DCC no. 6 of 02.04.2014, complaint no. 10a/2014, §42; DCC no. 7 of 02.04.2014, complaint no. 22a/2014, §47*);
- The complaint does not meet the conditions of admissibility to exercise the control of constitutionality (*DCC no. 4 of 19.03.2014, complaint no. 1a/2014, §32; DCC no.5 of 25.03.2014, complaint no. 15a/2014, §27*);
- Constitutional provisions which interpretation has been requested are not ambiguous, imprecise or unclear, are explained and detailed in the subsequent legal framework (*DCC no. 6 of 02.04.2014, complaint no. 10a/2014,§ 47*);
- Aspects related to the interpretation and clarification of the authentic meaning of a legal norm is the competence of the legislative (*DCC no. 2 of 04.02.2014, complaint no.4a/2014, § 41*);
- In its prior jurisprudence the Court decided on similar issues (*DCC no. 8 of 05.06.2014, complaint no. 53a/2013, §18*);
- The complaint fails to contain grounded arguments that indicate violation of constitutional provisions (*DCC no. 9 of 09.10.2014, complaint no. 46a/2014, §26; DCC no. 11 of 18.11.2014, complaint no. 58a/2014, §26; DCC no. 12 of 15.12.2014, complaint no. 57a/2014, complaint no.54a/2014, §42*);
- The issues challenged by the authors of the complaints, regulated by the legal provisions, does not require an interpretation by the Constitutional Court *(DCC no. 10 of 18.11.2014, complaint no. 55b/2014, §22).*

7. COMPLAINTS RESTITUTED BY LETTERS

The Court has restituted by letters 16 complaints, based on the provisions of the Code on Constitutional Jurisdiction no. 502-XIII of 16.06.1995 and of the Rules on the examination of the complaints submitted to the Constitutional Court, approved by the Court Decision no. AG-3 of 3 June 2014. Thus, as grounds for the restitution of the aforementioned complaints there appeared the following circumstances:

- The complaint was lacking grounds and fails to describe the object on which the requirements exposed are based (*complaints no. 24b/2014, complaint no. 13a/2014*);
- The authors have not proved the causality between the provisions challenged and the implied constitutional norms (*complaint no. 56a/2014, complaint no. 35a/2014, complaint no. 40a/2014, complaint no. 36a/2014, complaint no. 39a/2014, complaint no. 32a/2014, complaint no. 23a/2014, complaint no. 21a/2014*);
- The complaint fails to meet the conditions of form (*complaint no. 49a/2014; complaint no. 47b/2014; complaint no. 50a/2014; complaint no. 31a/2014; complaint no. 33a/2014; complaint no. 26a/2014*).

C| ADDRESSES

The Court has prepared the following addresses to the Parliament:

- ***Address PCC-01/44a of 30.01.2014, DCC no.1 of 30.01.2014, Complaint no.44a/2013***

The Court has mentioned that the provisions of the Law on health protection fail to provide with clarity and predictability the structure of the national system of health protection, as well as the means to protect person's physical and mental health.

In art. 2 of the Law on health protection it is indicated that the health protection system is made up of units of curative - prophylaxis nature, units of sanitary - prophylaxis nature, units of sanitary - anti-epidemic nature, pharmaceutical and other type of units.

The Court mentioned that the provisions of the aforementioned article indicated only the type of medical units that are part of the health system and does not provide any details regarding the manner of organization and functioning of these units. Moreover,

the enumeration of the structural elements of the health protection system is not definite, and the wording "and other type of" in this provision may generate extensive interpretation thereof.

The Court has considered that in order to implement constitutional provisions included in Art. 36 para.(3) it is necessary to clearly define by the law the structure of the national health protection system and institutional organization, the institutions included in the corresponding units, as well as the means to protect person's physical and mental health.

• ***Address PCC-01/38a of 11.02.2014, JCC no.5 of 11.02.2014, Complaint no.38a/2013***

The Court held that according to the wording of Article let. 4 e) of the Law on administrative procedure, administrative acts issued under exceptional circumstances are entirely exempt from judicial review and thus any competence of the court to adjudicate the legality thereof is excluded.

The Court noted that the documents issued under exceptional circumstances have to meet a minimum set of requirements on their legality. The legality of acts shall be assessed by the court in terms of their purpose, namely the protection of public interest, and will envisage any possibility of sanctioning of abuse of power admitted by public authorities.

The Court accepted that while the court exercises the review of legality of these acts the legislator may establish certain special rules of procedure.

The Court also pointed out that the law has to grant the court the opportunity to verify at the issuance of such acts the compliance with several cumulative conditions, namely: existence of an exceptional situation; existence of the exceptional situation when the document has been issued; competence of the authority issuing the document; the purpose of issuing the act should be protection of the public interest.

The Court therefore considered it necessary to provide norms in order to regulate the procedure of judicial review of aforementioned administrative acts so that the legal framework provides protection against arbitrary interferences by the public authorities

with the rights and fundamental freedoms, and at the same time, enables authorities with the right to genuinely and effectively intervene in case of exceptional circumstances.

• ***Address PCC-01/3a of 13.02.2014, JCC no.6 of 13.02.2014, Complaint no.3a/2014***

The Court noted that Art. 73 of the Constitution offers the right of legislative initiative to the Members of Parliament, the President of the Republic of Moldova, the Government, to the autonomous territorial unit People's Assembly of Gagauzia.

At the same time, the Court noted that Art. 59 of the Rules of the Parliament, the amendments to the draft legislation may be submitted by Members of Parliament, standing committees and parliamentary factions. Similarly, according to the regulatory norms, the amendments should be motivated in writing and are submitted to the responsible standing committee.

All the amendments are presented as modifications to the text of the points, paragraphs, and articles, as completions to the draft normative acts with new articles or proposals to exclude certain words, points, paragraphs or articles from the draft normative act.

The Court held that although the provisions of the article invoked in conjunction with other provisions indicate the rules of procedure to submit the amendments, if the amendments are made by standing committees and parliamentary factions, they fail to provide the specific Member of Parliament proposing it.

Thus, referring to the exercise of the right of legislative initiative of Members of Parliament, including submission of proposals and legislative amendments, the Court noted that constitutional norms provide the requirement for the individualization of authors, even in cases where paternity is assumed by the standing committees; correspondingly anonymity is inadmissible in Parliamentary proceedings.

In view of the above, the Court underlined the need to adopt legal provisions that would expressly permit identification without any evasions of the authors of the amendments, in case these amendments are submitted by the standing committees and parliamentary factions.

• ***Address PCC-01/52b of 14.02.2014, JCC no.9 of 14.02.2014, Complaint no.52b/2014***

By the Judgment no. 9 of 14 February 2014, the Constitutional Court has interpreted Art. 135 para. (1) a) of the Constitution and held that, under the constitutional provisions, the constitutionality of laws operated by the Constitutional Court includes laws passed by Parliament, so after both and before the publication in the Official Gazette of the Republic, upon notification by the President of Moldova and other subjects entitled to appeal.

In this context, the Constitutional Court found the need for a mechanism of notification by Parliament of all subjects entitled to appeal availability to the law, signed by the President or, where appropriate, the Deputy Speaker, to seize the right to petition the Constitutional Court control constitutionality before being published in the Official Gazette of the Republic of Moldova.

• ***Address PCC-01/12a of 22.05.2014, JCC no.13 of 22.05.2014, Complaint no.12a/21.02.2014***

The Court noted that according to Art. 28 of the Constitution the State shall respect and protect intimacy, family and private life against any infringements.

The Court held that one of the components of the right to privacy is the right to personal data protection.

Accordingly, in terms of international standards guaranteeing and instituting mechanisms for the protection of personal data, in the situation when the legislature has regulated in the tax laws the procedure for attributing the tax code to notaries, lawyers, bailiffs, mediators, as well as to the individuals practicing as private detectives and guards, it is mandatory to find the most appropriate and reasonable solutions to guarantee that the legal framework provides protection against arbitrary infringements and fails to permit any influence upon the essence of the right regarding the respect for intimacy, family and private life.

At the same time the Court noted that although the previous wording of Art. 162 para. (1) let. a) of the Fiscal Code referred to all liberal professions mentioned above, the entire tax law regulates the manner of imposing taxes only upon notaries, there are no similar regulation regarding other liberal professions as subjects of taxation.

• ***Address PCC-01/30g of 29.05.2014, JCC no.17 of 29.05.2014, Complaint no.30g/22.04.2014***

The Court held that, according to Art. 123 para. (5) - (5[1]) of the Tax Code, the rules referring to the acquisition and use of "Excise Duty" stamps are established by the Government.

The Court also noted that both the Regulation on the procurement and application of Excise Duty on tobacco products, approved by the Government Decision no.1427 of 18 December 2007 and the Government Decision no.1481 of 26 December 2006 on marking the alcohol production fails to regulate any way to change the validity of expired Excise Duty stamps and provides legal norm only for their restitution to the state in cases of non-usage or deterioration during the production process.

The Court noted that the state, while enhancing the degree of protection for the Excise Duty stamps, shall establish a mechanism to allow the economic agents to empty their stocks of goods bearing previously issued Excise Duty stamps to the extent that would ensure proportionality of the general interest pursued when manufacturing Excise Duty stamps with a high degree of security and the ability of economic agents to dispose of their goods.

In this regard, given the fact that the legislature granted the Government the power to establish the manner to acquire and use Excise Duty stamps, the Court considered it necessary to set up rules to substitute old stamps in manufacturers' or importers' stocks which failed to be applied and to allow the exhaustion of stocks of goods with old Excise Duty stamps applied, taking into account the reasons provided in the Judgment of the Constitutional Court No. 17 of 29 May 2014.

• ***Address PCC-01/9a of 04.06.2014, JCC no.20 of 04.06.2014, Complaint no.9a/14.02.2014, Complaint no.11a/21.02.2014, Complaint no.28a/14.04.2014***

The Court recognized the legal norms of Art.60 para. (5) of the Rules of Parliament, according to which at the request of the Chairman of the sitting of Parliament or at the request of a parliamentary faction, certain draft laws may with majority vote be debated and adopted as a matter of urgency as constitutional.

At the same time, the Court noted that examination as a matter of urgency by the Parliament of certain draft laws complementary to the draft laws presented by the Government may refer only to the shortening of terms, and not to the exclusion or circumvent some stages of the legislative procedure (consultation with the bodies concerned, organizing public hearings if needed etc.). Thus, in the case of employing the urgent procedure the Parliament has to comply with the requirements referring to the stages of the legislative process set out in the Rules of Parliament and the Law no.780 of 27 December 2001 on legislative acts.

The Court mentioned the need to respect all legislative procedures, including when adopting the draft laws as a matter of urgency at the request of the Chairman of the sitting of Parliament or at the request of a parliamentary faction.

• ***Address PCC-01/48c of 22.09.2014, Opinion no.1 of 22 September 2014, Complaint no.48c/2014***

The Court held that the initiative for the revision of the Constitution through a Republican referendum does not comply with constitutional requirements set out in Art. 38 and 143 para. (1) of the Constitution that provide the time limits for the revision of the Constitution and for the validity in the formal sense of the texts submitted to a referendum and thus cannot be submitted to the Parliament in order to declare a republican referendum.

The Court held that given the fact that a referendum is prohibited 60 days prior and following the election day, in order to avoid confusion, it *a fortiori* cannot take place in that given day. This rationale is dictated by a necessity to avoid confusion when carrying out two democratic exercises of different nature.

Thus, taking into account the need to comply with the deadline of 6 months to revise the Constitution, the ambiguities contained in the Election Code regarding the possibility of merging the elections and the referendum should be removed by way of amending the legislation.

The Court also mentioned that concurrently with the Judgment no. 22 of 23 September 2010 on the confirmation of the results of the constitutional referendum of 5 September 2010, the Constitutional Court issued an address to the Parliament in which

it outlined existence of certain legislative gaps in the electoral legislation with regard to democratic referenda.

The Court held that until the present moment deficiencies reported failed to been resolved by the legislature.

D | DISSENTING OPINIONS

Dissenting Opinions have been delivered by the judges *Aurel Băieșu* and *Victor Popa* to the Decision no. 1 of 30.01.2014 on the suspension of the proceedings for the control of constitutionality of the Government Decision no. 1022 of 28 December 2012 on the reorganization of certain medical institutions (Complaint 44a/2013).

TITLE III

ENFORCEMENT OF ACTS OF THE CONSTITUTIONAL COURT

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

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

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

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

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

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

The legislator shall mandatorily eliminate the gaps reported. The unconstitutional vacuum that appears in a field of activity or the legal problem, toleration of an imperfect law or other normative act indicate that the Parliament, a the political institution to which the Constitution has given the power to legislate, fails to properly fulfill the constitutional mission conferred on it. The legislator's obligation to remove the legal regulation gap is established based on the principles of the rule of law and separation of powers.[43]

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

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

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

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

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

Moreover, in the process of control of constitutionality the Court has ascertained that despite the fact that formally the legal provisions were adopted in order to enforce certain previous judgments of the court of constitutional jurisdiction, the legislator merely upheld the legal solution that was challenged before the Court [see, e.g. the Judgment no. 25 of 06.11.2014 on the control of constitutionality of certain provisions of the Law no. 146 of 17 July 2014 on the modification and completion of certain legislative acts (payment of wages of civil servants within the courts of law and of the judges) and Judgment no. 26 of 11.11.2014 on the control of constitutionality of certain legal provisions referring to the immunity of judges].

Finally it should be mentioned that the judgments of the Constitutional Court represent a generally binding legal finding based on the elucidation of the essence of the constitutional issue following official interpretation of the relevant norms of the Constitution and explanation of the content of the challenged constitutional provisions. This implies that the enforcement of judgments of the Constitutional Court only in terms of legal consequences of the resolution part of the judgment is insufficient and incomplete. Respect

for the general binding effect of the Constitutional Court Judgments does not mean a mere appraisal of their dispositive part; it is rather an appreciation of the rationale and interpretation given by the Court in respect of the Constitutional text as the judgment is an aggregate, a unity made up of Court's considerations and the dispositive part.

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

1. Level of Enforcement of Judgments of the Constitutional Court

During 2014, the Court has delivered **12** judgments, where at least one provision was declared unconstitutional, and the Parliament and the Government shall intervene on these issues in order to solve the legal gaps. Out of the mentioned judgments 7 have been enforced until the date of approving this Report.

Following a comparative analysis out of the **11** judgments delivered by the Court in 2013, in which at least one of the challenged provision was declared unconstitutional, during the period 2013-2014 there have been enforced, totally or in part, **7** judgments and in respect of 2 of them the Parliament has to finalize the procedure of adoption of draft legal acts amending and supplementing some laws. *(See Diagram 16)*

With a view to monitor the process of amending legislative acts which provisions were declared unconstitutional based on the judgments of the Constitutional Court in the period 2012-2014, the Court asked the Government and the Parliament to be informed about the level of enforcement of the adopted acts. In their replies, both the legislature and the executive reflected the situation on the execution of Court judgments and addresses, indicating the stage of the legislative procedure of the developed draft laws. The submitted information reveals absence of a timely response from both the Government and the Parliament, which causes a delay in the enforcement of the Court judgments and creates situations causing the maintaining of gaps in legislation and affects the quality of implementation of laws. In other words, both the Government and the Parliament are responsi-

ble for fulfilling the tasks assigned according to art. 28[1] of the Law no. 317-XIII of December 13, 1994.

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

2. Level of Enforcement of Addresses of the Constitutional Court

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

The activity of the Constitutional Court is mainly oriented towards reviewing of the complaints submitted and exercising of constitutional competences in respect of these complaints. Finding the compliance with the Constitution or declaration of unconstitutionality of acts subject to constitutionality control, the interpretation of constitutional provisions, the manner of enforcing judgments of the Constitutional Court, etc. are tools that have a decisive influence on the improvement of the legislative framework. The addresses referring mainly to legal gaps also play an active role for the development of the law.

Therefore, in performing constitutionality control and based on addresses delivered to public authorities on referred acts, the Court acted as a passive legislator. In 2014 the Court issued 8 addresses. According to the information available to the Court, on the day of approval of this Report none of the addresses issued in 2014 was enforced. For comparison, in 2013 the Court has issued 6 addresses, of which 5 have already been enforced, 1 is still not enforced; in 2012 there were issued 7 addresses, of which 6 were enforced, 1 is in process of enforcement; in 2011 there have been issued 9 addresses: 5 of them are enforced, 1 is in the process of enforcement, 3 are still not enforced. *(See diagram 17)*

TITLE

IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

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COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

1. INTERNATIONAL CONFERENCE ON THE OCCASION OF THE 20TH ANNIVERSARY OF THE ADOPTION OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

The date of 29 of July 2014 is the celebration of the 20th anniversary of the adoption of the Constitution of the Republic of Moldova. Given this occasion and with a view to celebrate the affirmation of the control of constitutionality of laws in the Republic of Moldova on 8 and 9 September 2014 the Constitutional Court of the Republic of Moldova organized the international conference *"**The role of constitutional justice in protecting the values of the rule of law**"*.

The conference was organized in cooperation with the Parliament of the Republic of Moldova, with the support of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), United Nations Development Program (UNDP), the German Foundation for International Legal Cooperation (IRZ) and the Coordination Office for Technical Cooperation of the Austrian Embassy in Chisinau.

The Conference was attended by delegations of constitutional courts or the supreme courts of Armenia, Azerbaijan, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Republic of Korea, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia, Norway, Poland, Romania, Russian Federation, Slovenia, Serbia, Tajikistan, Turkey, Ukraine. The Conference hosted a number of special guests, among them the President of the European Commission for Democracy through Law of the Council

of Europe (Venice Commission) Mr. Gianni BUQUICCHIO; President of the General Court of the European Union Mr. Marc JAEGER, as well as guests from universities and foundations carrying out cooperation programs in the field of constitutional justice.

During the official opening of the Conference, the President of the Republic of Moldova, Mr. Nicolae TIMOFTI, President of the Parliament, Mr. Igor CORMAN, Prime Minister Mr. Iurie LEANCĂ, President of the Venice Commission, Mr. Gianni BUQUICCHIO and the President of the Constitutional Court, Mr. Alexandru TĂNASE, addressed to the participants greetings and mentioned the crucial importance of the Constitution to build the state the Republic of Moldova.

The conference was organized in four working sessions[44] and the subjects discussed were inspired by the Conference motto and represented topics of crucial importance for the development of constitutional justice both in the Republic of Moldova and at the international level.

The first session entitled *"General interest – an instrument of human rights protection: seeking efficiency and balance",* was chaired by Mr. Augustin Zegrean, President of the Constitutional Court of Romania; the rapporteurs had the opportunity to express their views on the manner to guarantee the accomplishment of the general interest whilst protecting human rights and individual freedoms. The solution proposed by the majority of European Constitutional Courts and by the European Court of Human Rights, is resumed to the interpretation of the law taking into account the principle of proportionality, which gained the status of a general principle in the system of the European Convention for the protection of Human Rights and Fundamental Freedoms.

In this regard, some instances of constitutional jurisdiction perceive their role as body ensuring the efficient implementation, at the level of constitutional law, of a fair balance between social values in permanent competition, immeasurable in terms of quality: the fundamental rights and public interest. It is important to mention that constitutional courts do not understand general interest as a sum of individual interests, nor as an absolute value subject to an imperative need. The balance between these two values is ensured following the application of the principle of proportionality.

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[44] The program of the International Conference "The role of constitutional justice in protecting the values of the rule of law" and the list of participants may be accessed at the following link: http://constcourt.md/lib.php?l=ro&idc=116&t=/Prezentare-generala/Constitutia-la-20-de-ani/despre-Conferinta

Within the framework of the second session entitled *"Social protection and financial crisis: challenges and limitations"*, chaired by Mr. Aldis Laviņš, President of the Constitutional Court of Latvia, the speakers discussed the overlapping of such dimensions as *Social State* and *Rule of Law,* and the consequences of this fact, that inevitably leads to the need of guaranteeing fundamental rights in the process of administration of justice, with all the risks emerging from the validation or even accomplishment of the definition of economic and social policies using the courts of law, under a democratic control.

In the light of constitutional jurisprudence referring to social rights as challenged by the global financial crisis, the rapporteurs outlined that the constitutional judge is inclined to tolerate a certain margin of discretion of the legislature and thus allows political solutions to be exercised in line with different economic imperatives and various social policies, still below a threshold that is appreciated as the minimum social protection which should be identified in a reasonable and predictable manner.

In their case-law related to the manner in which the states faced the financial crisis, some Constitutional Courts have developed the principle of adjustment of the law to the social relationships and to the development of the society and mentioned that the given

principle imposes the legislative to take the necessary measures in order to solve major problems of the society in times of crisis. However, the measures adopted should correlate with the social reality, and such a duty does not imply freedom of actions in electing anti-crisis measures. Crisis cannot be addressed by adopting unconstitutional measures since admitting such an approach could diminish the effectiveness of the decision-making power. Unconstitutional measures, which at first glance appear to be effective, may cause the worsening of social cohesion and endangering of constitutional integration and contribute to the establishment of social anomalies.

When adopting austerity measures it is necessary to take into consideration generally recognized social guarantees in order to avoid violation of economic and social rights and crumbling of the well-established balance between the interests of the individual and of the society. Similar rationales based on the concept of socially oriented state can be easily outlined in the judgments adopted by a number of constitutional courts in Europe, and such similarity involves the application of the principle of unity through diversity of constitutional doctrine in relation to austerity measures.

The third session entitled *"Principle of the constitutional loyalty: embedding Constitution in society"* was chaired by Mr. Dainius Zalimas, President of the Constitutional Court of Lithuania. The speakers in their presentations have emphasized that constitutional loyalty represents attachment to constitutional values, respect for the letter and spirit of the Constitution, fulfillment in good faith of the duties and respect for the rights provided by the Constitution, compliance with the limits of competence established by constitutional texts and observance of jurisdiction provided for all public authorities, cooperation, collaboration, consultation in the performance of competing powers.

Despite the fact that the principle of constitutional loyalty fails to be directly assigned in the Constitution, it was "constitutionalized" in the case-law, so that now it represents a basis to ascertain infringements of the Basic Law. This is the case especially due to the fact that, at least referring to the relations between public authorities constitutional loyalty cannot be dissociated from the principle of separation of powers.

Finally, the principle of constitutional loyalty constitutional substantiates the whole constitutional construction and is a binder ensuring the proper functioning of public authorities within the rule of law.

The fourth session entitled *"Constitutional identity and globalization: unity in diversity"* was chaired by Mr. George Papuashvili, President of the Constitutional Court of Georgia, member of the Bureau of the Venice Commission and President of the Conference of European Constitutional Courts. The speakers, mostly representatives of the European constitutionalism, indicated that the supranational legal order of the European Union pays particular attention to keep national identity of the Member states unaffected. Keeping the identity of the States of the EU intact is, above all, preserving their legal systems, including the basic elements of their constitutions.

In this context the speakers emphasized that constitutional identity is presented as a conceptual instrument to defend against excessive supra-nationalization of the legal systems of the Member states and is expressed in particular by the values deepened in the Constitution of the state. The concept of identity does not limit sovereignty as such and does not preclude primacy of EU law over national law, still it should reflect the correct balance between supra-nationality and nationality as an expression of constitutional identity of the Member states.

2. EXTERNAL RELATIONS

In 2014 there took place three major events on the European and international level that are organized according to their statutory proceedings every three years. The Constitutional Court of the Republic of Moldova took part in all three triennial meetings due to the fact that it is a full member of these international structures.

The delegation of the Constitutional Court of the Republic of Moldova participated at the 3rd Congress of the World Conference on Constitutional Justice organized by Constitutional Court of the Republic of Korea the that took place on 28 September-1 October 2014 in Seoul.

The World Conference on Constitutional Justice was convened for the first time in 2009 under the aegis of the European Commission for Democracy through Law of the Council of Europe (Venice Commission). The Congresses of the World Conference are held every three years, and the number of its members, which are divided into relevant regional and language groups, grows continuously. Today the World Conference gathers 93 Constitutional Courts and Councils, Supreme Courts and Constitutional Chambers from Africa, America, Asia and Europe.

The 3rd Congress was attended by delegates of 73 constitutional courts - CMJC members, 21 courts that have demonstrated their willingness to become a member, as well as by 3 international and regional tribunals, thus bringing together 306 participants. The Congress entitled "Constitutional Justice and Social Integration" offered the floor for discussions on such issues as social integration challenges in a globalized world; international standards for social integration; constitutional instruments enhancing for social integration; the role of constitutional justice in the process of social integration.

Despite the variety of constitutional systems and given the fact that the involvement of constitutional courts depends on their competences provided by the Constitution, the participants agreed that their jurisdictional activity either is directly related to social rights or civil and political rights or to institutional issues; it also contributes and supports social integration. A constitutional court judges disputes that could escalate into social conflicts. Constitutional Courts thus play the role of peacemakers which is essential for the democratic functioning of states that respect the human rights and values of rule of law.

Upon invitation of the Supreme Court of Canada, presidents and representatives of 27 Constitutional Court members of the Association of Constitutional Courts using the French Language (hereinafter - ACCPUF), delegates of the International Organization of La Francophonie and the European Commission for Democracy through Law of the Council of Europe (Venice Commission) met in Ottawa, between 28 and 30 April 2014, for the 7th Conference of Heads of institutions ACCPUF. The participants discussed the issue "The relationship between constitutional courts and the media", and debated on the following topics: the stakes of the relationship between constitutional courts and media; organization of constitutional courts in matters of communication; methods used by the constitutional courts in communication; the role of media actions undertaken by the Constitutional Court.

During the Conference Mr. Mathieu Disant, University professor at Panthéon-Sorbonne and ACCPUF expert presented a general summary report that has been prepared on the basis of national reports submitted beforehand by the Constitutional Court participating at the event. The conference was full of pertinent interventions and debates by the participants, and offered the opportunity to exchange experience and best practices on such an important subject that is constantly relevant.

The delegation of the Constitutional Court also participated at the XVI Congress of the Conference of European Constitutional Courts (hereinafter - CCCE Congress), that took place in Vienna on 12-14 May 2014 under the auspices of cooperation of constitutional courts in Europe. The congress was organized by the Austrian Constitutional Court, which held the CCCE presidency in 2012-2014. The conceptual theme of the Congress entitled "Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives" embodied three main topics, namely: Constitutional courts between constitutional law and European law; Interactions between constitutional courts; Interactions between European courts in the jurisprudence of constitutional courts.

According to CCCE Statute, each CCCE member shall develop a national report on the topic and based on the questionnaire approved by the "Circle of Presidents". Following the congress, all national reports are included in the general report and are published in a special edition dedicated to the event.

The event marked also taking up of the CCCE presidency for the next 3 years by the Constitutional Court of Georgia.

With a view to expand bilateral cooperation at the initiative of President of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, on 28 September 2014, within the WCCJ Congress in Seoul, the Constitutional Court of the Republic of Moldova and the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic signed a memorandum of cooperation. As an accomplishment of the understanding concluded with a view to develop mutual relations between these institutions, on 17-19 November 2014, a delegation of 16 representatives from various subdivisions of the Secretariat of the Constitutional Chamber conducted a study visit to Chisinau meant to exchange the best experience with the colleagues .

During the study visit, the Kyrgyz delegation had working meetings with the Court staff and conducted discussions focused on the organization, structure, competence and procedure for the examination of complaints, as well as on the competences of the structural subdivisions. The guests held productive discussions and received exhaustive answers to all the questions raised.

Based on traditional relations of friendship and reciprocity, upon the invitation by the Constitutional Court of Romania on 27-29 June 2014 there took place the official visit of the delegation of the Constitutional Court of the Republic of Moldova headed by the

President Alexandru Tănase, consisting of the entire panel of judges, the Secretary-General and the head of External Relations Department.

During the meeting with the members of the Constitutional Court of Romania, have discussed aspects related to the recent jurisprudence of both authorities of constitutional jurisdiction, as well as to the role of constitutional jurisdiction in protecting human rights and promoting the spirit of constitutionalism, thus acknowledging the continuity and strength of the relations between two constitutional courts.

Another important event in terms of bilateral relations of the Constitutional Court was the launching of the book "Selected decisions of the German Federal Constitutional Court" in Romanian. This event took place with the support and contribution of the Rule of Law Program South East Europe of the Konrad-Adenauer-Stiftung, one of the most loyal partners of our institution. The event was attended by distinguished guests from Germany, Mrs. Sybille Kessal-Wulf, Judge of the Federal Constitutional Court of Germany, Prof. Tudorel Toader, Judge of the Constitutional Court of Romania, H.E. Mrs. Ulrike Knotz, Ambassador of the Federal Republic of Germany in the Republic of Moldova, Mr. Thorsten Geissler and Director of Rule of Law Program. The book contains 186 summaries of the latest relevant decisions of the German Federal Court, arranged in 700 pages. All the speakers noted that the case-law the Federal Constitutional Court of Germany cannot be taken by other courts, still it is a source of inspiration enabling identification of certain solutions bearing impeccable moral and legal value, given the experience of one of the most prestigious and uncompromising Constitutional Court in Europe.

During 2014, the President of the Constitutional Court, Mr. Alexandru Tănase, hosted official and documentation visits by high officials from the European Commission for Democracy through Law (Venice Commission) Mr. Thomas Markert, Secretary of the Venice Commission, Directorate for Human Rights and Rule of Law of the Council of Europe; Mrs. Paloma Biglino Campos, member of the Venice Commission, Professor in Constitutional law at the University of Valladolid, Spain; Mr. Srdjan Darmanovic, member of the Venice Commission, Ambassador of Montenegro in the United States of America; Mr. Manuel Gonzalez Oropeza, deputy member of the Venice Commission, Magistrate, Federal Electoral Tribunal, Mexico; Mr. Alberto Guevara Castro, Head of International Affairs Department, Electoral Court of Mexico/TRIFE Mexico; Mrs. Amaya

Ubeda de Torres, legal expert, Secretary of the Elections and Referendum Direction, the Venice Commission, Directorate for Human Rights and Rule of Law of the Council of Europe; representatives of OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR): Mr. Steven Martin, Legal expert, OSCE/ODIHR; Mr. Gaëlle Deriaz, international expert, France; representatives of OSCE/ODIHR Election Observation Mission Mrs. Dorota Ryza, legal analyst; Mr. Igor Pivovar, assistant of the legal analyst; co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) Mrs. Lise Christoffersen, Norway, Piotr Wach, Poland, Mrs. Sylvie Affholder, Secretary of the Monitoring Committee, PACE.

The President received courtesy visit of the ambassadors accredited in the Republic of Moldova – H.E. Mr. Pirkka Tapiola, Head of EU Delegation in the Republic of Moldova, H.E. Mr. Marius Gabriel Lazurca, Ambassador of Romanian to Chisinau, H.E. Michael Schwarzinger, Ambassador of Austria in Romania and the Republic of Moldova (farewell meeting at the end of mission).

Traditionally, there took place meetings with the representatives of partner foundations - German Foundation for International Legal Cooperation (IRZ) and Konrad Adenauer Foundation - Rule of Law Program South East Europe. Discussions focused on the assessment of activities and identification of future projects.

Participation of the judges and staff of the Constitutional Court at conferences, seminars, meetings in 2014

Date	Type of meeting	Place of meeting	Title
31 January	Opening of the judicial year at the European Court of Human Rights, solemn hearing and thematic seminar	Strasbourg, France	*"Implementation of the judgments of the ECHR: a shared judicial responsibility?"*
19-20 February	Scientific seminar on the occasion of celebrating 100 years from the birth of the first president of the Constitutional Court of Romania	Bucharest, Romania	*"Vasile Gionea: life and work."*

11-15 March	Training organized by the venice Commission for the Constitutional Chamber of the Supreme Court of Justice of Kyrgyz Republic	Bishkek, Kirgizstan	*"Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz Constitutional justice system"*
27 April - 1 May	the 7th Conference of Heads of institutions ACCPUF	Ottawa, Canada	*"The relationship between constitutional courts and the media"*
12-14 Mai	The XVIth Congress of the Conference of European Constitutional Courts	Vienna, Austria	*"Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives"*
21-22 May	International Conference organized by the Venice Commission and the Constitutional Chamber of the Supreme Court of Justice of Kyrgyz Republic	Bishkek, Kirgizstan	*"Implementation of decisions of a Constitutional Court as a guarantee for the efficiency of constitutional justice"*
21-23 May	The 17th International Judicial Conference	Valletta, Malta	*"The Rule of Law in diverse cultures," "First Principles: Constitutions, Legal Systems and the Judiciary," "The role of the Judiciary in electoral settings".*
26-28 June	The 13th Meeting of the Venice Commission's Joint Council on Constitutional Justice	Batumi, Georgia	*"Eexchange of information on the 'Classic' Venice Forum, Opinions and studies of the Venice Commission, CODICES database, contributions to the Bulletin on Constitutional Case-Law, Mini conference on the "Role of constitutional courts in economic crises"*

27-29 June	Official bilateral visit at the Constitutional Court of Romania	Bucharest, Romania	*"Recent jurisprudence of both authorities of constitutional jurisdiction; discussions on problems and actual tendencies in the courts' case-law."*
5-7 July	The 4th Black Sea Regional Conference organized by the Constitutional Court of Georgia	Batumi, Georgia	*"Emerging Challenges to the Right to Privacy"*
7-8 July	Conference organized by the Council of Europe	Strasbourg, France	*"Best Practices of Individual Complaint to the Constitutional Courts in Europe„*
18-21 September	International Conference on the occasion of the 20th anniversary of the Constitutional Court of Macedonia	Skopje, Macedonia	*"Contemporary Challenges of the Constitutional Judiciary: the principle of the separation of powers and its protection by the Constitutional Court."*
26 September - 1 October	The 3rd Congress of the World Conference on Constitutional Justice	Seoul, Republic of Korea	*"Constitutional Justice and Social Integration"*
17-18 October	XVIth International Congress on European and Comparative Constitutional Law	Regensburg, Germania	*"Development of international law: Civil law and Constitution."*
23-26 October	The19th Annual International Conference in Erevan	Erevan, Armenia	*"Constitutional Status of Human Dignity"*
26-29 November	International Conference n the occasion of the 50th anniversary of the Constitutional Judiciary in Montenegro	Budva, Montenegro	*"Constitutional protection of human rights and fundamental freedoms"*

3. CONSTITUTIONAL COURT AWARDS


CURTEA CONSTITUŢIONALĂ
A REPUBLICII MOLDOVA

TITLUL DE EXCELENŢĂ
ÎN DOMENIUL DREPTULUI
CONSTITUŢIONAL

Acordat

Dr. Prof. univ. Nicolae OSMOCHESCU

Pentru contribuţia substanţială şi de durată,
recunoscută la nivel naţional şi internaţional,
la dezvoltarea dreptului constituţional
şi la realizarea misiunii Curţii Constituţionale

Alexandru TĂNASE
Preşedinte

11 noiembrie 2014 Chişinău
DCC nr.AG - 10

The Court in order to appreciate the activity of personalities that have contributed to the accomplishment of the mission of the Constitutional Court, has instituted the Court's awards which are offered under the Regulation on honoring the awards of the Constitutional Court, approved by the Decision no. 5 of 3 June 2014[45] (Official Gazette no.185-199 of 18.07.2014).

Thus in order to honor the personalities showing substantial and lasting contribution recognized on the national and/or international level for the development of law in general and of the institution of constitutional law, in particular, the Constitutional Court offered the award *"Title of Excellency in Constitutional Law."*

In 2014 this title was awarded to Mr. Nicolae Osmochescu, University Professor, Doctor of Laws, Judge of the first composition of the Constitutional Court within the period February 1995 - September 1998.

The Court also launched the Prize "Constantin Stere" to stimulate effective resolution of scientific and practical problems of law in general and of the institution of constitutional law, in particular, the development of the judicial system, to support the development of basic research in comparative law and human rights, including in light of constitutional jurisdiction.

The prize shall be awarded annually to the laureates having obtained results through published scientific works (monographs, cycles of works or series of scientific articles published in journals recognized as national or international domain scientific publications) that are relevant for the outlined purpose. The authors of the scientific work are awarded the title of laureate of the Constitutional Court Prize "Constantin Stere", are offered a diploma and a monetary prize in the amount of 10.000 lei from the funds provided for this purpose by the institution.

[45] http://constcourt.md/public/files/file/Baza% 20 legala/d_ag5_2014_ro.pdf

TITLE V

ACTIVITY OF THE CONSTITUTIONAL COURT IN 2014 IN FIGURES

TITLE V

ACTIVITY OF THE CONSTITUTIONAL COURT IN 2014 IN FIGURES

In 2014, 61 complaints were filed with the Constitutional Court, other 7 complaints were taken over from 2013, so that the task of the Court for 2014 implied 68 pending complaints (see Charts No.1, No. 2, No.4 and No.6)

Of the total of 68 pending complaints, in 2014 there were examined 61 complaints, namely: 31 complaints followed by 29 judgments (*3 files were joined*); 1 complaint resulted in the adoption of an Opinion, 2 complaints resulted in the adoption of 2 decision on cessation; 11 complaints were declared inadmissible with the adoption of 10 decisions on inadmissibility (*2 files were joined*) and 16 complaints were restituted to the author by letters. Also, the Court adopted 2 decisions to suspend the challenged regulatory act until the settlement of the case on the merits. Thus, 7 complaints were transferred to 2015(see Chart No. 3, No.11).

Concerning the authors of the complaints submitted to the Court in 2014, their ranking is the following:

- MPs and parliamentary factions - 61 complaints *(5 complaints were transferred from 2013, 50 complaints have been submitted in 2014 and 6 complaints were transferred to 2015)*;
- The Supreme Court of Justice - 3 complaints;
- Ombudsman - 6 complaints *(2 complaints transferred from 2013, 4 complaints filed in 2014, of which 1 was transferred for 2015)*;

- Central Elections Committee - 4 complaints *(see Chart No.6).*

Of the 50 complaints filed by MPs and parliamentary factions, 26 complaints were reviewed on the merits, 24 complaints were declared inadmissible or were restituted by letters and 6 complaints were transferred to 2015. All the 3 complaints filed by the Supreme Court of Justice have been examined on the merits. Of the 6 complaints filed by the Ombudsmen, 4 complaints were reviewed on the merits, while 2 complaints were restituted by letters *(see Charts No.5, No.9, No. 10, No. 14 and No. 15).*

Of the 30 judgments delivered by the Court in 2013:

- 3 judgments concerned interpretation of certain Constitutional provisions;
- 23 judgments concerned the control of constitutionality of normative acts;
- 2 judgments were related to the exception of unconstitutionality;
- 4 judgments concerned the validation of MP mandate;
- 1 judgment concerned the approval of the Report for 2013 *(see Charts No.8 and No.12).*

In 2014 a group of MPs asked the Constitutional Court to deliver its Opinion on the initiative to revise the Constitution *(see Charts No.4, No. 7 and No.11).*

Following settlement of pending complaints in 2014, in 24 judgments the Court ruled on the constitutionality or unconstitutionality of certain legal provisions, as follows:

- in *12 judgments* at least one legal provision of the total of challenged provisions was recognized as constitutional;
- in *9 judgments* at least one legal provision of the total of challenged provisions was recognized as unconstitutional;
- in *6 judgments* the Court ruled on constitutionality of some legal provisions and non-constitutionality of other legal provisions *(see Chart No.13).*

A | STATISTICS FOR 2014

Chart no. 1

Jurisdiction of the Constitutional Court in 2014

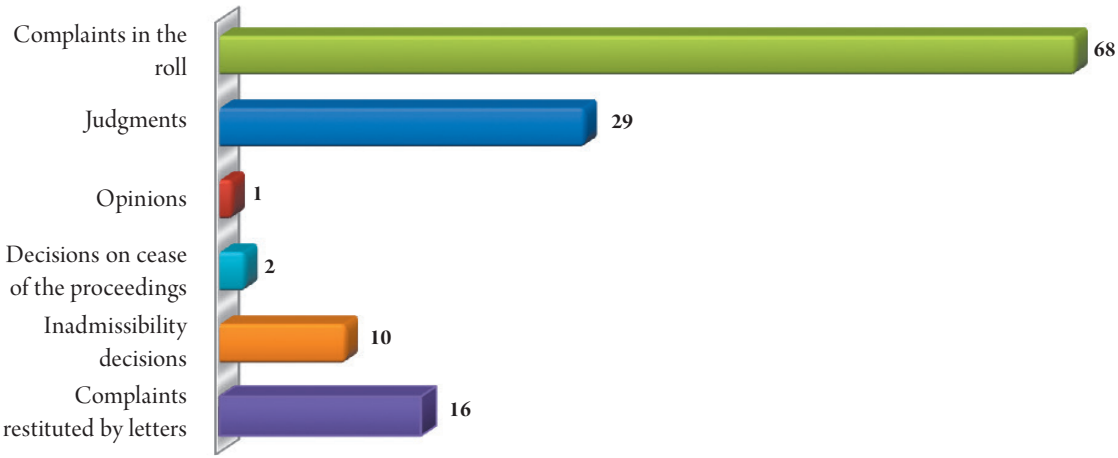


Chart no. 2

Complaints examined in 2014

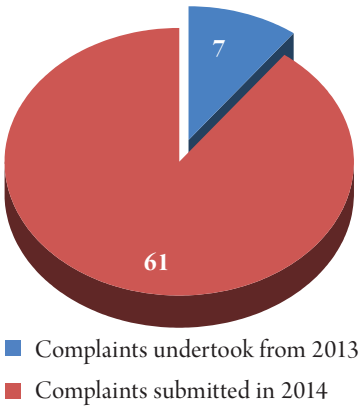


Chart no. 3

Complaints settled in 2014 and transferred for 2015

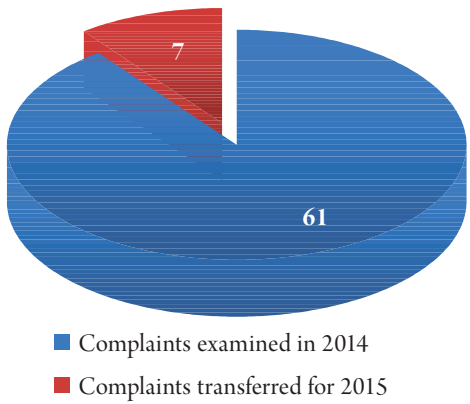


Chart no. 4

Object of complaints examined by the Constitutional Court in 2014

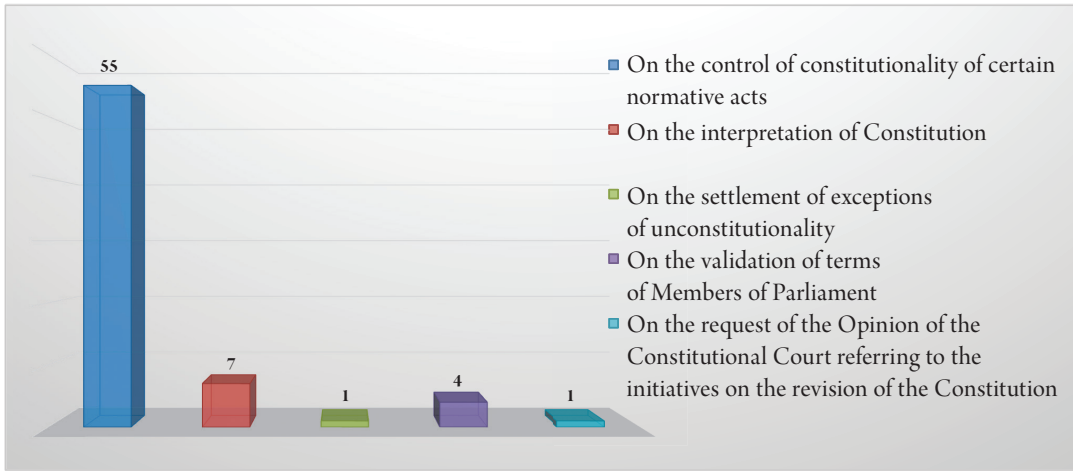


Chart no. 5

Subjects having submitted complaints to the Constitutional Court in 2014

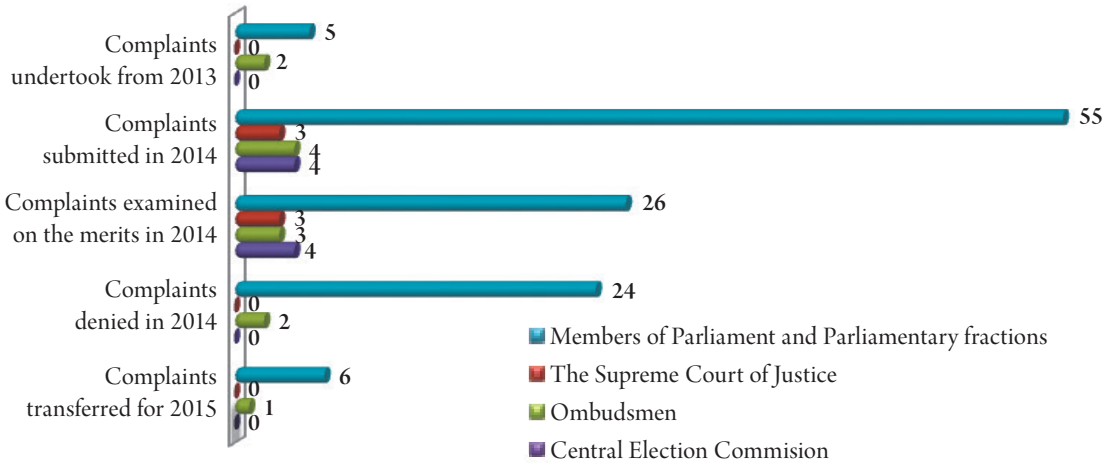


Chart no. 6

Complaints settled by the Constitutional Court in 2104, including those undertook from 2013 and those transfered for 2015 *(per subject)*

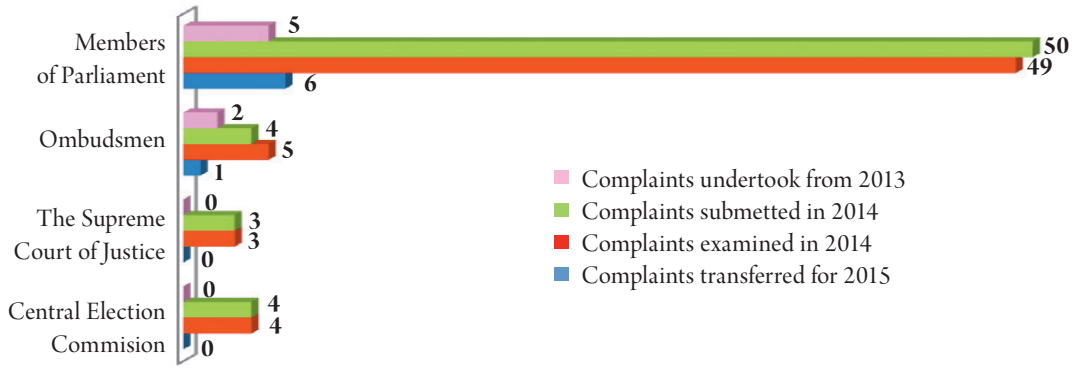


Chart no. 7

Complaints settled by the Constitutional Court in 2014, including those undertook from 2013 and those transferred for 2015 *(per object)*

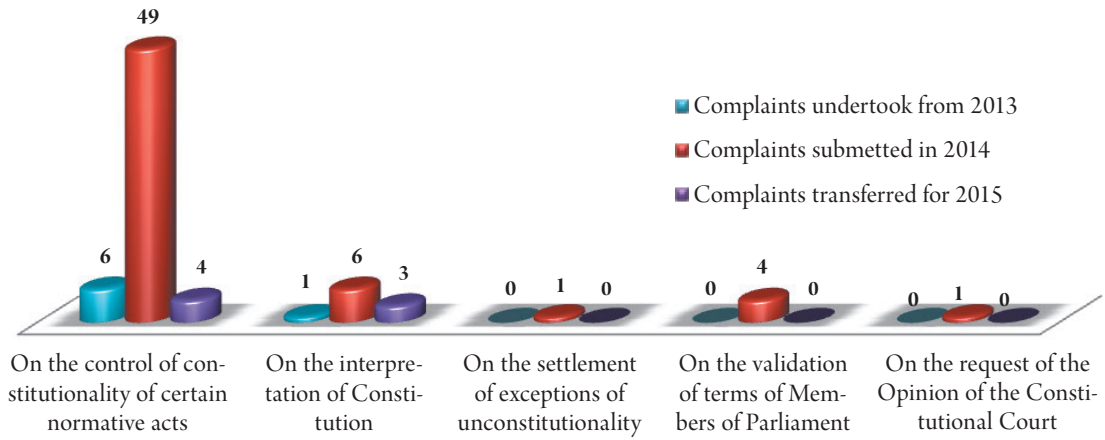


Chart no. 8

Complaints settled by the Constitutional Court in 2014 by judgments *(by object)*

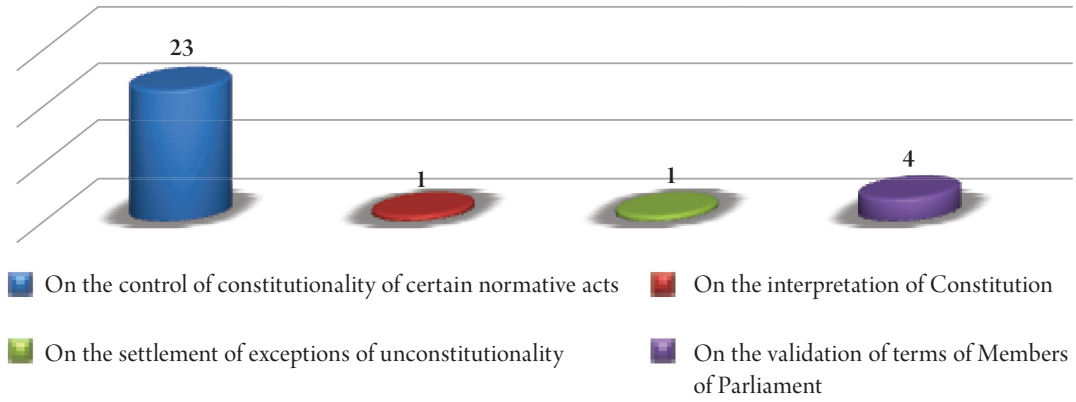


Chart no. 9

Complaints submitted Members of Parliament and Parliamentary fractions, including those undertook from 2013 and those transferred for 2015

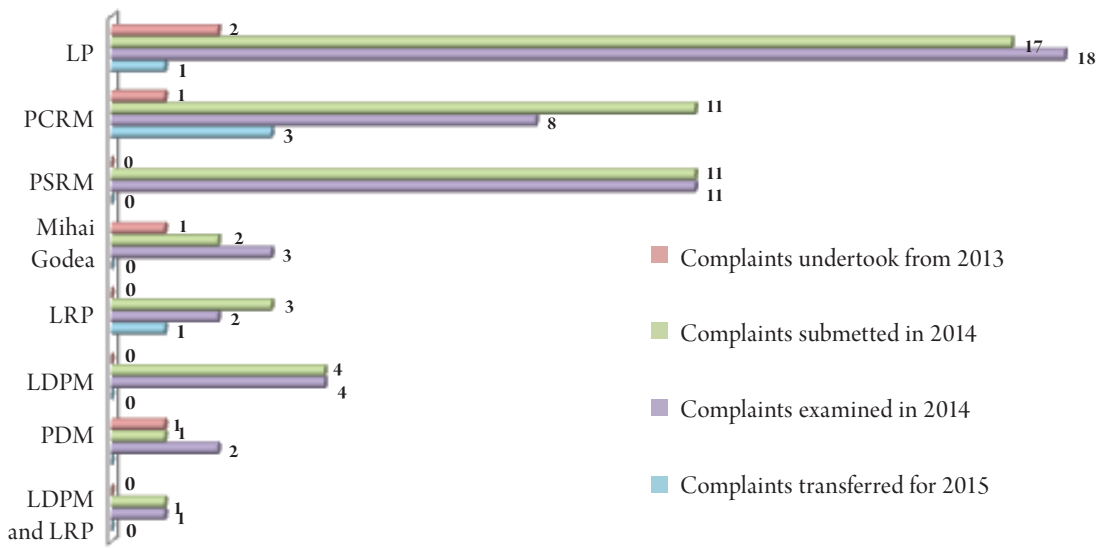


Chart no. 10

Complaints submitted by Members of Parliament and Parliamentary fractions, rejected or examined on the merits

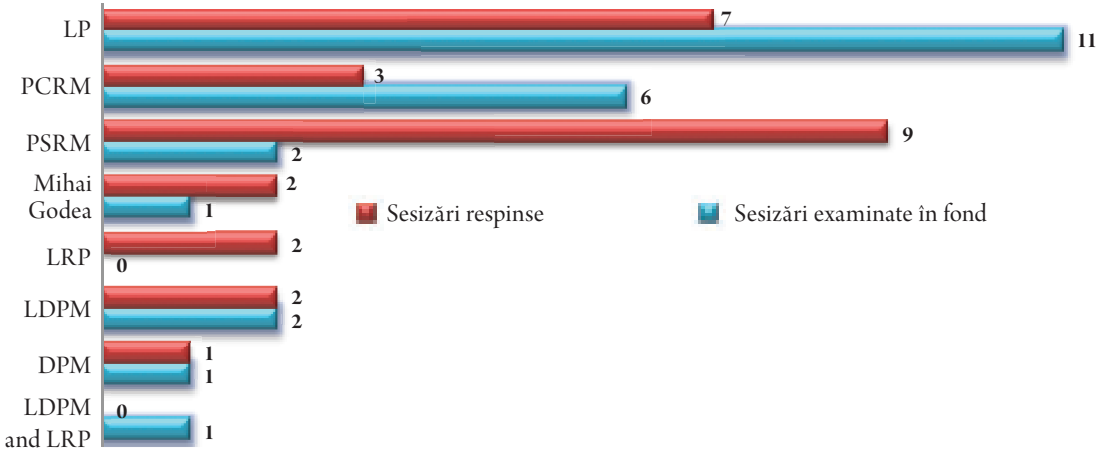


Chart no. 11

Acts rendered by the Constitutional Court in 2014

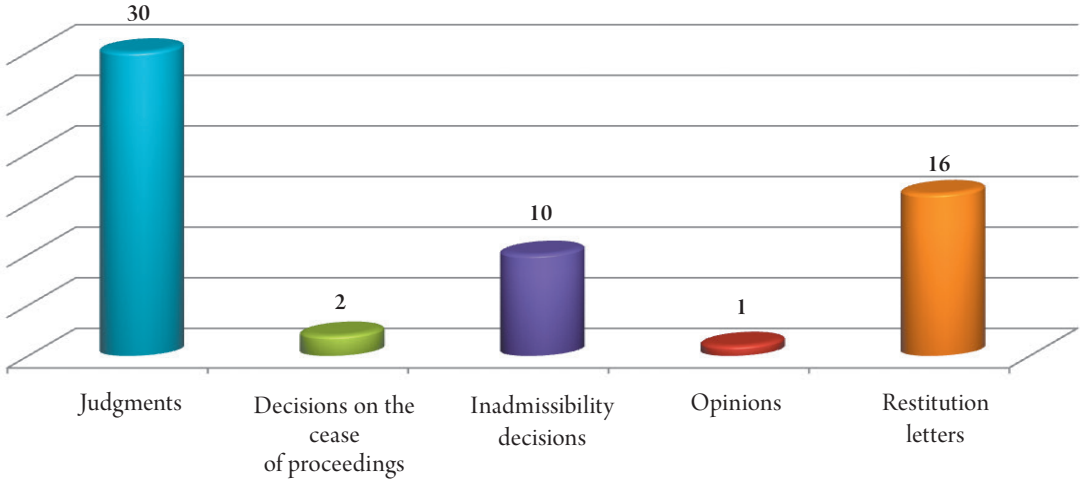


Chart no. 12

Judgements delivered by the Constitutional Court in 2014 (*by object*)

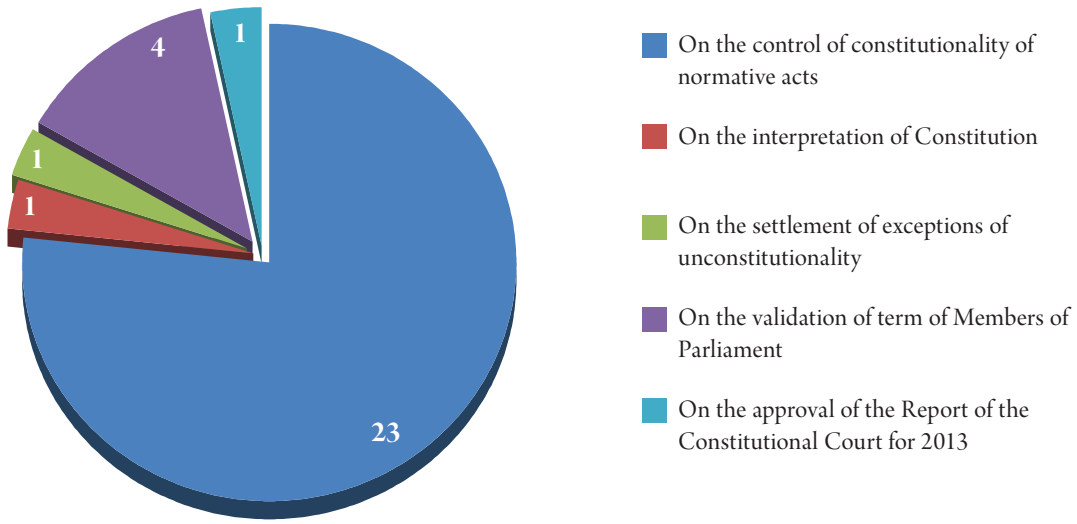


Chart no. 13

Ascertainments of the Constitutional Court in the decisions delivered

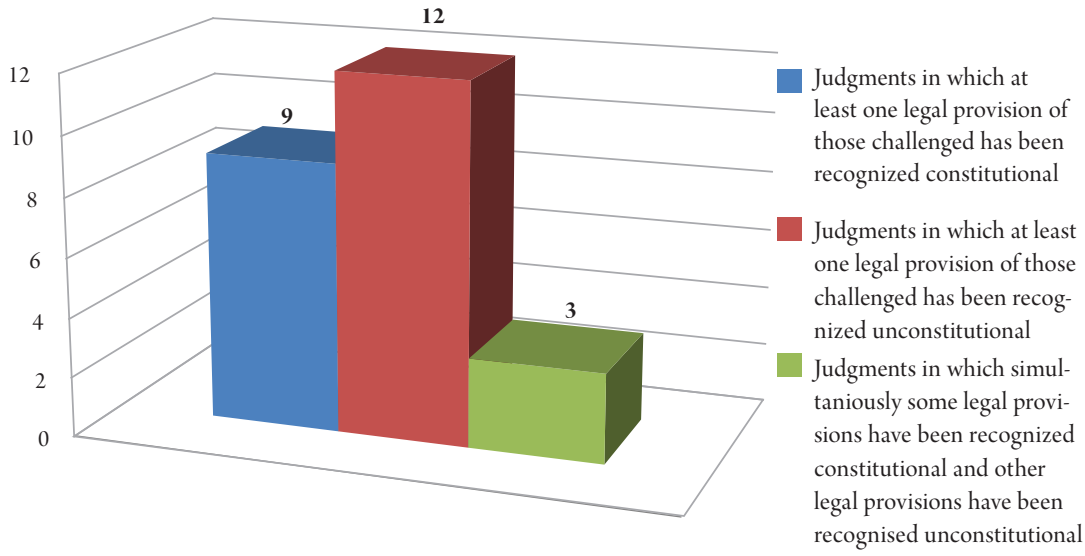


Chart no. 14

Solutions delivered in respect of the complaints examined on the merits (*by subject*)

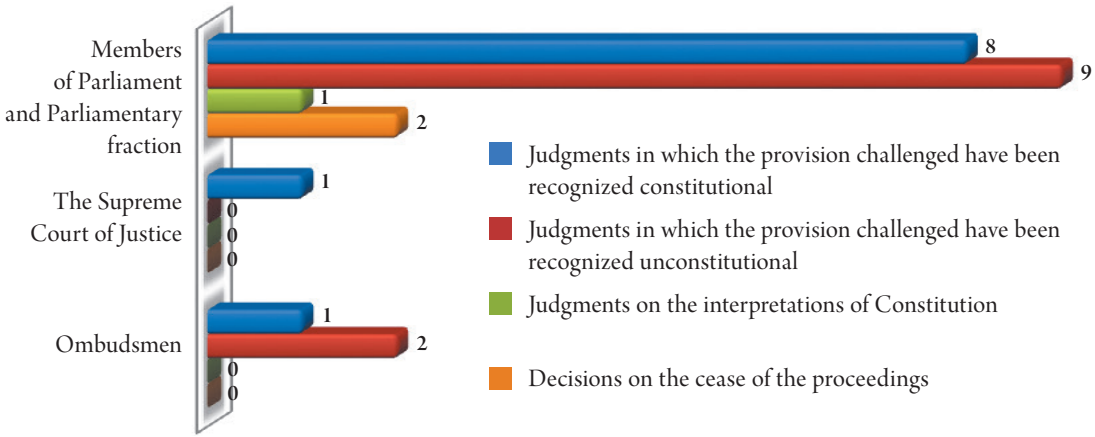


Chart no. 15

Solutions delivered by the Constitutional Court on the complaints submitted by Parliamentary fractions and Members of Parliament

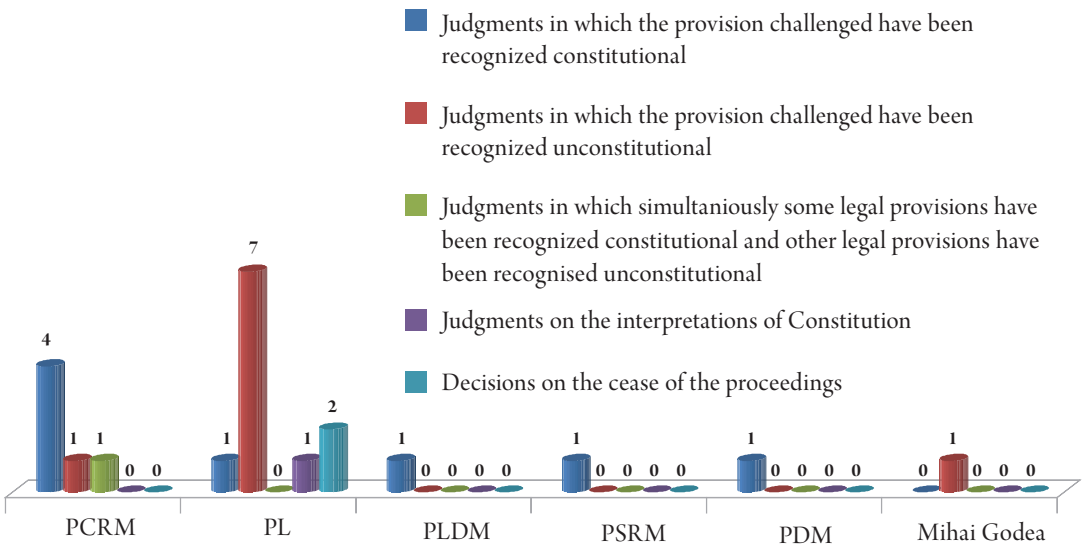


Chart no. 16

Enforcement of Judgments of the Constitutional Court in the years 2010-2014

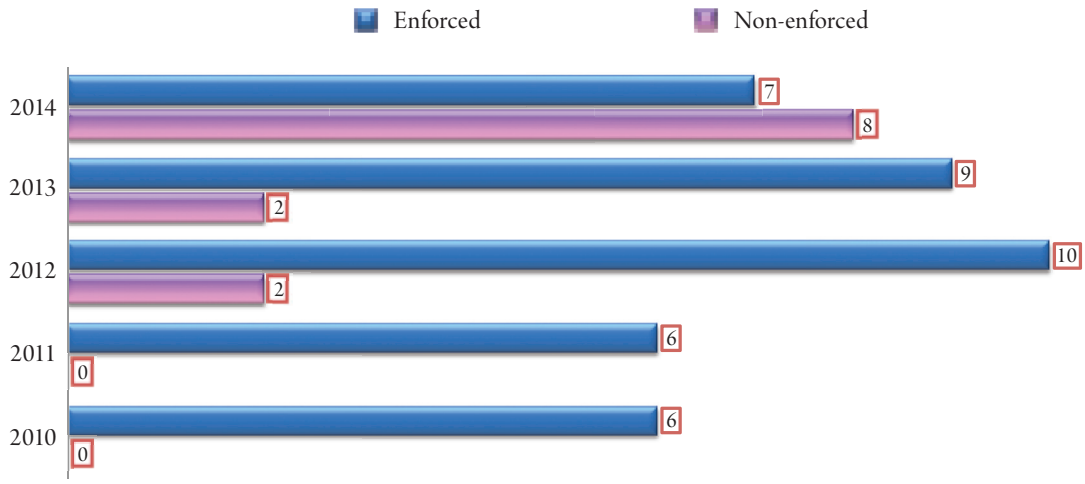
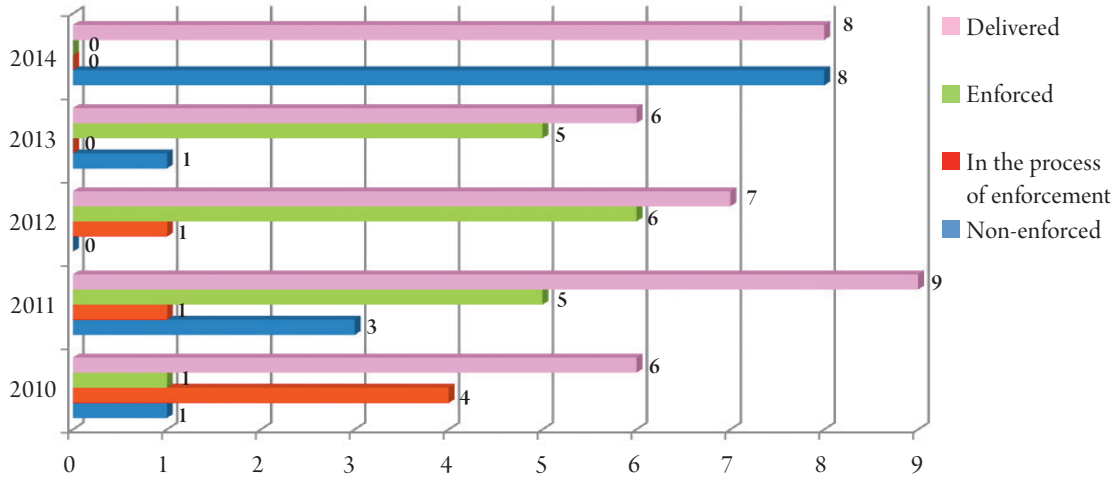


Chart no. 17

Enforcement of the addresses issued
by the Constitutional Court in the years 2010-2014



B | EVOLUTION OF THE ACTIVITY OF THE COURT IN THE PERIOD 1995-2014

Chart no. 18

Exercise of Constitutional Jurisdiction within the period 1995-2014

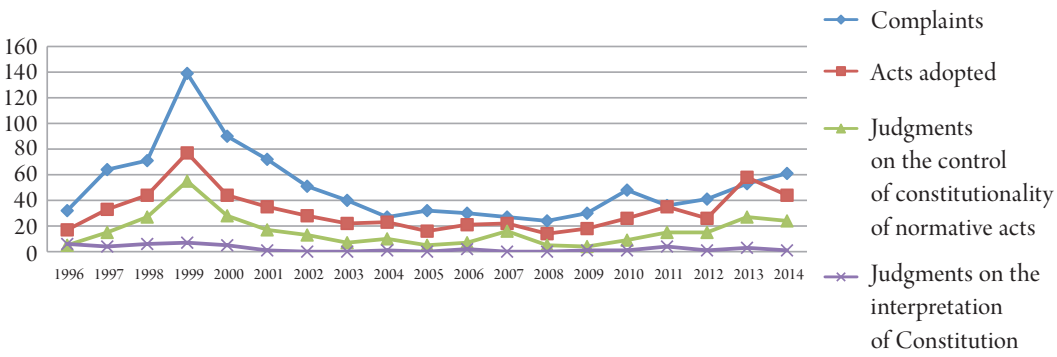


Chart no. 19

Complaints submitted in 1995-2014

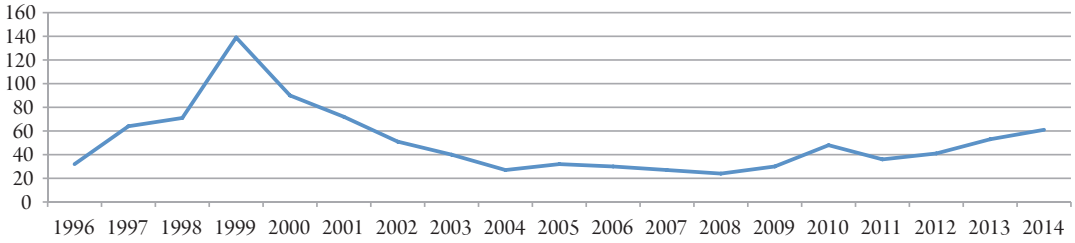


Chart no. 20

Acts adopted in 1995-2014

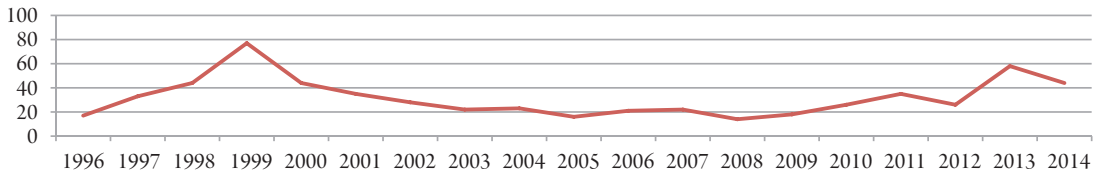


Chart no. 21

Judgments on the control of constitutionality of normative acts in 1995-2014

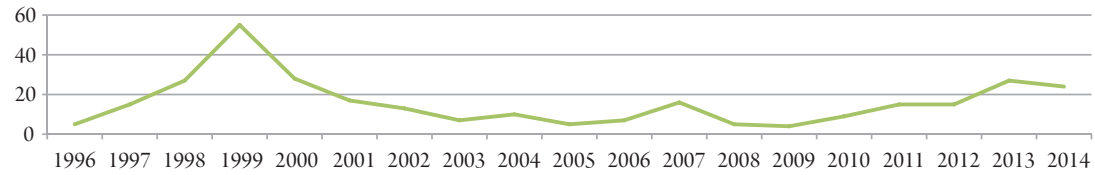
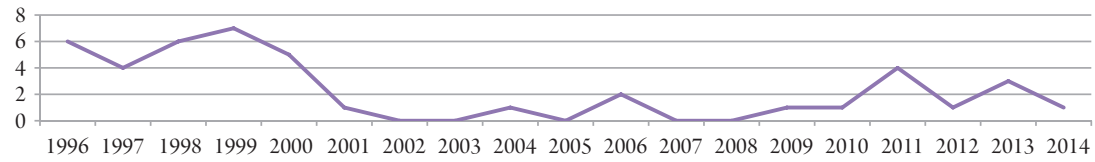


Chart no. 22

Judgments on the interpretation of Constitution in 1995-2014



Judgments and Opinions of the Constitutional Court in 2014

No.	Number and Title of the Act	No. of complaint
1.	Judgment no. 1 of 28.01.2014 on the approval of the Report on constitutional jurisdiction in 2013	
2.	Judgment no. 2 of 28.01.2014 on the control of constitutionality of certain fiscal provisions referring to local taxes	Complaint no. 2a of 14.01.2014
3.	Judgment no. 3 of 04.02.2014 on the control of constitutionality of Parliament Decisions no.126 and no.127 of 30 May 2013 on the election of certain Deputy Speakers of the Parliament	Complaint no. 31a of 07.10.2013
4.	Judgment no. 4 of 06.02.2014 on the control of constitutionality of articles 139 para.(3)-(4), 140 para. (1), (3)-(10) of the Enforcement Code of the Republic of Moldova no.443-XV of December 24, 2004 and of certain provisions of article 28 para.(1) letter e) of the Law on real estate cadaster no.1543-XIII of 25 February 1998 *(modification of the manner to enforce a court judgment)*	Complaint no. 32a of 17.01.2013
5.	Judgment no. 5 of 11.02.2014 on the control of constitutionality of article 4 letter e) of Law no.793-XIV of 10 February 2000 on administrative court	Complaint no. 38a of 13.08.2013
6.	Judgment no. 6 of 13.02.2014 on the control of constitutionality of the Law no. 199 of 12 July 2013 on the exemption of payment certain taxes, contributions, primes and disbursements, and cancellation of the increasing penalties and fines related to them *(exemption of taxes for SRL "Glorinal")*	Complaint no. 3a of 20.01.2014
7.	Judgment no. 7 of 13.02.2014 on the control of constitutionality of para. (7) Article 88 of the Tax Code no. 1163-XIII of 24 April 1997 *(redirecting 2% of income tax)*	Complaint no. 5a of 03.02.2014

8.	Judgment no. 8 of 14.02.2014 on the control of constitutionality of certain provisions of the Annex No. 2 of the Title IV of the Tax Code, as amended by Law No. 324 of 23 December 2013 on changing and amending certain legislative acts *(tax on the luxurious vehicle)*	Complaint no. 7a of 10.02.2014
9.	Judgment no. 9 of 14.02.2014 on the interpretation of the Article 135 paragraph (1), let. a) of the Constitution *(a priori control of law)*	Complaint no. 52b of 26.11.2013
10.	Judgment no. 10 of 27.02.2014 on the validation of the mandate of a member of the Parliament of the Republic of Moldova	Complaint no. 14e of 26.02.2014
11.	Judgment no. 11 of 25.03.2014 on the constitutionality of some provisions of the Annex No. 1 of the Title IV of the Tax Code, as amended by Law No. 324 of 23 December 2013 on changing and amending certain legislative acts *(modification of the excise rate for filter cigarettes)*	Complaint nr.20a of 17.03.2014
12.	Judgment no. 12 of 20.05.2014 on the control of constitutionality of certain provisions of paragraph (4) of article 87 of the Labour Code no.154-XV of 28 March 2003 *(trade union consent for dismissal)*	Complaint no.17a of 05.03.2014
13.	Judgment no. 13 of 22.05.2014 on the control of constitutionality of para.72 of Article IX of the Law no.324 of 23 December 2013 on amendment and completion of certain legislative acts. *(fiscal evidence of certain people carrying out liberal professions)*	Complaint no.12a of 21.02.2014
14.	Judgment no. 14 of 27.05.2014 on the control of constitutionality of Art.II of Law no.56 of April 4, 2014 on the amendment of article 60 of the Criminal Code of the Republic of Moldova *(limitation period for criminal liability)*	Complaint no.27a of 11.04.2014

15.	Judgment no. 15 of 27.05.2014 on the control of constitutionality of the Law no.61 of 11 April 2014 on amending certain legislative acts *(prohibition to vote on the basis of ex-soviet passports)*	Complaint no. 29a of 17.04.2014
16.	Judgment no. 16 of 28.05.2014 on the control of constitutionality of the wording "for a period of 12 months" from Article 10 para.(3) of Law no.1569-XV of 20December 2002 on import and export of goods to and out of the territory of the Republic of Moldova by natural persons, art. 3485 para. (1) and (2) letter e) of the Tax Code and art. 1841 para. (1) of Customs Code, as amended by Law no.324 of 23 December 2013 on amendment and completion of certain legislative acts. *(term of validity of the vignette)*	Complaint no. 47a of 30.10.2013
17.	Judgment no. 17 of 29.05.2014 on the exception of unconstitutionality of section 2 of the Government Decision no. 243 of 8 April 2010 on the sewing of the "Excise duty. State trademark" and "Excise duty" of the new type	Complaint no. 30g of 22.04.2014
18.	Judgment no. 18 of 02.06.2014 on the control of constitutionality of the law no. 109 of 3 May 2013 on the modification and completion of certain legislative act (Law on the Constitutional Court and the Code of constitutional jurisdiction) (*statute of judges, competences and procedure of the Constitutional court)*	Complaint no. 34a of 20.05.2014
19.	Judgment no. 19 of 03.06.2014 on the control of constitutionality of the provisions of the Law on education no.547-XIII of 21 July 1995 *(the mechanism of appointing rectors of the institutions of higher education subordinated to public authorities – university autonomy)*	Complaint no.19a of 12.03.2014

20.	Judgment no. 20 of 04.06.2014 on the control of constitutionality of certain provisions of the Rules of the Parliament, adopted by the Law no. 797-XIII on 2 April 1996	Complaint no. 9a of 14.02.2014, Complaint no. 11a of 21.02.2014 and Complaint no. 28a of 14.04.2014
21.	Judgment no. 21 of 05.06.2014 on the control of constitutionality of certain provisions of articles 177 and 178 of the Election Code, as amended by the Law no. 29 of 13 March 2014 *(problems that may be submitted to the local referendum)*	Complaint no. 25a of 07.04.2014
22.	Judgment no. 22 of 17.06.2014 on the validation of the mandate of a member of the Parliament of the Republic of Moldova	Complaint no. 41e of 13.06.2014
23.	Judgment no. 23 of 16.07.2014 on the validation of the mandate of a member of the Parliament of the Republic of Moldova	Complaint no. 45e of 15.07.2014
24.	Judgment no. 24 of 09.10.2014 on the constitutionality of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, and of the Law No.112 of 2 July 2014 on its ratification	Complaint no. 44a of 14.07.2014
25.	Judgment no. 25 of 06.11.2014 on the control of constitutionality of certain provisions of Law no.146 of 17 July 2014 on the amendment and competition of certain legislative acts *(remuneration of public servants within courts and of judges)*	Complaint no.52a of 29.09.2014
26.	Judgment no. 26 of 11.11.2014 on the control of constitutionality of certain provisions on the immunity of the judge	Complaint no. 51a of 29.09.2014

27.	Judgment no. 27 of 13.11.2014 on the control of constitutionality of article 21 para.(5) letter e) of the Law no.52 of 3 April 2014 on People's Advocate (Ombudsman) (non-examination by the Ombudsman of the complaints submitted by incapable persons)	Complaint no. 42a of 13.11.2014
28.	Judgment no. 28 of 18.11.2014 on the control of constitutionality of Art.234 of Contravention Code of the Republic of Moldova *(administrative sanctions against the owner of the vehicle for nondisclosure of the identity of the person entrusted with driving the vehicle)*	Complaint no.53a of 03.10.2014
29.	Judgment no. 29 of 9.12.2014 on confirmation of the results of elections for the Parliament of the Republic of Moldova of 30 November 2014 and validation of the mandates of the elected Members of Parliament	Complaint no. 61e of 5.12.2014
30.	Judgment no. 30 of 11.12.2014 on the control of constitutionality of article 9 para.(6) of the Law no.48 of March 22, 2012 on the pay system of civil servants (*financial stimulation of customs officers*)	Complaint no. 18a of 10.03.2014
31.	Opinion no. 1 of 22.09.2014 on the initiative to revise Art, 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova by a republican referendum	Complaint no. 48c of 16.09.2014

Summary

Tiparul executat la Întreprinderea de Stat „Fiscservinform”