REPORT

ON THE EXERCISE
OF CONSTITUTIONAL
JURISDICTION IN 2013

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REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2013

CHIȘINĂU 2014

Republic of Moldova
CONSTITUTIONAL COURT

JUDGEMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2013

CHISINAU
28 January 2014

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

Mr. Alexandru TĂNASE, *President,*
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Tudor PANȚÎRU,
Mr. Petru RAILEAN , *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 2013,

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 2013, according to the Annex.
2. This Judgment shall be published in the *"Official Gazette of the Republic of Moldova".*

President Alexandru TĂNASE

Chisinau,
28 January 2014, No. 1

Approved
by the Judgment of the Constitutional Court
No. 1 of 28 January 2014

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2013

TITLE I

ROLE OF THE CONSTITUTIONAL COURT IN THE LEGAL SYSTEM OF THE REPUBLIC OF MOLDOVA

TITLE I

ROLE OF THE CONSTITUTIONAL COURT IN THE LEGAL SYSTEM OF THE REPUBLIC OF MOLDOVA

A | CONSTITUTIONAL JURISDICTION

The position of the Constitutional Court as autonomous and independent authority in relation to the legislative, executive and judiciary powers is cherished in the Constitution, which at the same time establishes the principles and the main functional powers of the Court – the sole authority of constitutional jurisdiction in the Republic of Moldova. This position of the Constitutional Court is dictated by its primary role of ensuring observance of the values of the rule of law, i.e.: guaranteed supremacy of Constitution, ensured realization of the principle of separation of state powers, as well as ensured state accountability to the citizen and of the citizen to the state. These major functions are carried out through instruments guaranteed by the Constitution.

In a good organization of the state power, the role of Constitutional Courts is essential and defining, a true support pillar of the state and democracy, guaranteeing equality before the law, fundamental freedoms and human rights. 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 power.

The constitutional powers provided for in art. 135 of the Constitution are developed in the Law No. 317- XIII of 13 December 1994 on Constitutional Court and Constitutional Jurisdiction Code 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) gives its opinion on 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 deputies 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, referred by the Supreme Court of Justice;

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

It should be noted that most of the jurisdictional activity of the Constitutional Court is conducted based on the complaints concerning the following issues:

Constitutionality control of regulatory acts

The supremacy of 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 compliance 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 decision of a state authority (regulatory acts issued by the Parliament, the Government and the President of the Republic of Moldova) with the constitutional provisions.

Interpretation of the Constitution

The official interpretation of the Constitution is the exclusive prerogative of the Constitutional Court. The assignment of this power to the Constitutional Court guarantees that no other authority of the state power in the Republic of Moldova has the right to give an official interpretation of the Supreme Law, interpretations that are binding for central public administration authorities, local authorities, enterprises, institutions and organizations, officials, citizens and their associations. The judgments of the Constitutional Court on interpretation of the Constitution are official and binding throughout the whole country, they are final and cannot be reviewed by any other state authority.

Exceptions of unconstitutionality

The Constitutional Court settles exceptions of unconstitutionality of regulatory acts upon referral of courts. Thus, according to procedural rules, if it is found under the proceedings that the rule of law, which is to be applied or has already been applied, is inconsistent with the Constitution of the Republic of Moldova, the court submits a complaint to the court of constitutional jurisdiction through the Supreme Court of Justice.

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

This activity of the Constitutional Court is an important means of protection of human rights of individuals who by law are not part of the category of subjects with the

right to appeal to the Constitutional Court, but whose rights may be violated by application or effect of 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.

Confirmation of results of the republican referendum, of parliamentary and presidential elections in the Republic of Moldova, validation of terms of Members of the Parliament (MP) and of the President of the Republic of Moldova

The Constitutional Court confirms the results of republic referendum, validates the parliamentary and presidential elections in the Republic of Moldova, after examining the decision of the Central Election Commission and declares the alternate candidate as MP, based on the materials submitted by the Central Election Commission.

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 | INDEPENDENCE AND IMMOVABILITY OF JUDGES OF THE CONSTITUTIONAL COURT

According to art. 137 of the Supreme Law, the judges of the Constitutional Court are independent, irremovable throughout their term, and obey only the Constitution.

These constitutional principles are provided for in art. 13 and art. 14 of the Law on the Constitutional Court as well as in art. 8 and art. 9 of the Constitutional Jurisdiction Code. The adoption of these principles by the Parliament directly involves the state's obligation to take all necessary measures to observe and protect the independence of constitutional judges. The content of this principle consists in the executive and legislative

obligation to refrain from adopting any measure that may undermine the independence of judges.

This independence is not only a guarantee of the state for carrying out the constitutional justice, but equally, a right and obligation of constitutional judges. Independence is seen as an element of the status, which allows the judge to act in carrying out his/her powers and, in particular, to decide only on the basis of the Constitution and own judgment, without any subordination or external influence.

Defying the existing constitutional guarantees, on 03 May 2013 the Parliament adopted the Law No. 109 amending and completing certain legal acts, by which it amended and completed the Law on the Constitutional Court and the Constitutional Jurisdiction Code. The amendments approved establish a new basis for dismissal of constitutional judge, and namely on the grounds of "loss of confidence", which can be applied only by the Parliament. Thus, under the new provisions, it will be possible to have any of the judges of the Constitutional Court, regardless of the institution which appointed them to this position, dismissed by the Parliament if the legislator finds that it lost confidence in the representatives of constitutional jurisdiction holding such offices.

Law No. 109 of 3 May 2013 has generated a range of reactions from international institutions, the member of which is the Republic of Moldova.

The very immediate Statement of Gianni Buquicchio, President of the Commission for Democracy through Law of the Council of Europe (Venice Commission) (Strasbourg, 03 May 2013), on amendments to the Law on the Constitutional Court, expressly underlines that *"Such a provision is in clear contradiction with European Standards on constitutional justice and is a clear violation of Article 137 of the Constitution of Moldova. A constitutional court has the task of controlling the work of the Parliament. Subjecting its judges to the need of being "trusted" by Parliament is in evident contradiction with the very purpose of a constitutional court. I strongly encourage Parliament not to adopt this law."*[1]

In the same spirit, the Statement of the High Representative of the European Union for Foreign Affairs and Security Policy Catherine Ashton and the European Commis-

[1] http://www.venice.coe.int/webforms/events/?id=1703

sioner for Enlargement and European Neighbourhood Policy Štefan Füle reiterated the concern over the adoption of an amendment to the Law on the Constitutional Court of the Republic of Moldova allowing dismissal of judges of the Constitutional Court if the Partliament does not "trust" them. The Statement provides *"This law [...] has been adopted with extreme haste, and without proper consultation with Moldovan society, or appropriate regard to European standards on constitutional reform, in particular those of the Venice Commission of the Council of Europe [...]. This follows a worrying new pattern of decision-making in Moldova, reflected also in other recent legislative moves, where the institutions of the state have been used in the interest of a few. We reiterate our concern that these measures, carried out without proper preparation and consultation, could constitute a threat to the independence of key national institutions, and an obstacle to Moldova's further democratic development and stable rule of law [...]"*[2]. (Bruxelles, 3 May 2013)

The Statement of the Secretary General of the Council of Europe, Mr. Thorbjørn Jagland, highlights that *"the most recent amendments affecting the Constitutional Court are of particular concern, as the proposed provisions seem to be in contradiction with the Moldovan Constitution, as well as with European standards on constitutional justice."*[3] (Strasbourg, 06 May 2013).

Finally, the Statement of the President of the Parliamentary Assembly of the Council of Europe, Jean-Claude Mignon pointed out that *"Some recent votes in the country's Parliament concerning issues as vital to the operation of democracy as compliance with the constitution, the independence of the judiciary and the electoral system have been conducted in great haste, without any efforts to seek broad consensus within the Parliament."*[4] (Strasbourg, 06 May 2013).

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[2] http://europa.eu/rapid/press-release_MEMO-13- 402_en.htm?locale=en#PR_metaPressRelease_bottom

[3] http://hub.coe.int/en/web/coe-portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1438422&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&pager.offset=0

[4] ttp://hub.coe.int/en/press/newsroom?p_p_id=pressrelease&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=7&_pressrelease_struts_action=%2Fext%2Fpressrelease%2Fview&_pressrelease_pressreleaseUrl=%252FViewDoc.jsp%253Fid%253D2061961%2526Site%253DCM%2526BackColorInternet%253DC3C3C3%2526BackColorIntranet%253DEDB021%2526BackColorLogged%253DF5D383

The Law No. 109 of May 03, 2013 is a direct attack against the work of the Constitutional Court, which is the sole authority of constitutional jurisdiction in the Republic of Moldova. By their statements made when passing this law some MPs threatened the judges of the Constitutional Court with "*in corpore* dismissals" for the issued acts, which is contrary to the principles of the rule of law.

However, despite the pressure exercised by high officials to adopt the bill and the efforts made in this regard, the Law No. 109 of May 03, 2013 was not promulgated by the President of the Republic of Moldova Nicolae Timofti and was returned to the Parliament. In his letter of 08 May 2013 to the Parliament he stated: *"Unlike the Government, which is vested by the procedure of granting a vote of confidence by the Parliament, the Constitutional Court is not the result of such exercise and is not accountable to the Parliament. [...] Given that laws, regulations and decisions of the Parliament, i.e. its core activity, are subject to constitutionality control, it would be absolutely unnatural for the Parliament to decide whether a judge does not longer enjoy confidence and penalize him/her for this. The very principle of independence of judges of the Court is thus endangered, every time they are forced to make convenient decisions to avoid being suspected of this "loss of confidence"*[5].

Despite the fact that the law has not been enacted, it is important to mention that it is still pending on the agenda of the Parliament, and can be proposed for review at any time, and if the Parliament does not take account of the arguments and insists on its adoption, the President of the Republic of Moldova, compelled by the Constitution, will promulgate it, which will directly undermine the work of the Constitutional Court.

C | COURT PROCEDURE

1 COMPLAINTS FILED TO THE COURT

The activity of the Constitutional Court is driven by the subjects vested with the right to file complaints, taking into account the fact that the legislation does not provide

[5] http://www.presedinte.md/rom/comunicate-de-presa/presedintele-nicolae-timofti-a-trimis-spre-re-examinare-parlamentului-legea-nr-109-din-3-mai-ac

the competence of the Court to exercise constitutional jurisdiction ex-officio. 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 Constitutional Jurisdiction Code):

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

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

2 EXAMINATION OF COMPLAINTS

Upon verifying compliance of the complaint with the legal requirements, the President of the Court appoints a judge-rapporteur and establishes the term for examination of the complaint and for submission of the opinion on its admissibility, which cannot exceed 60 days from the date of registration of complaint, and in case of a large amount of inquiries, over 90 days. The issue of admissibility of the complaint is of great importance, since complex and reasoned examination makes the preparation of case materials easier, and also causes elimination of cases of cessation of process due to the fact that the subject of the complaint does not fall within the competence of the Court.

The judge, assistant-judge and judicial assistant carry out preliminary examination of the complaint, when they ask opinions of relevant authorities (Parliament, President

of the Republic of Moldova, Government, other central public administration authorities), and if necessary, turn to international entities to obtain their opinions on issues of constitutional jurisdiction.

3 SUSPENSION OF A REGULATORY ACT

The institution of suspension of a regulatory act is quite recent for the constitutional jurisdiction of the Republic of Moldova and is an innovative competence of the Constitutional Court.

Thus, according to completions operated[6], the validity of regulatory acts properly referred to the Constitutional Court, which affects or relates to the areas set out below, may be suspended until the settlement of the case on the merits by delivering a judgment. As a result, there may be suspended the following acts:

1) acts which affect or relate to the following areas:
   a) sovereignty and state power;
   b) fundamental human rights and freedoms;
   c) democracy and political pluralism;
   d) separation and collaboration of powers;
   e) basic principles on property;
   f) national unity and identity right;
   g) economic or financial security of the state;
   h) other areas for which the Constitutional Court deems necessary to suspend the challenged act, to prevent imminent damage and negative consequences;
2) individual acts issued by the Parliament, the President of the Republic of Moldova and the Government, referring to state officials subject to particular public and / or political interest.

According to the amendments, the Constitutional Court examines the application for suspension of the challenged regulatory act no later than in the second working day

[6] Law No. 82 of 18 April 2013 amending and completing certain legal acts (completion of the Law No. 317-XIII of 13 December 1994 on the Constitutional Court and the Code of Constitutional Jurisdiction No. 502-XIII of 16 June 1995) (Official Monitor of the Republic of Moldova of 20 April 2013, No. 91, art. 296.)

after the registration of the complaint. The decision to suspend the challenged act is adopted by the plenary session of the Constitutional Court with the votes of at least three judges. In case of impossibility of convening the plenum of the Court, the decision on suspension is delivered by an order of the President of the Constitutional Court, with further mandatory confirmation by the plenum of the Constitutional Court. The decision to suspend a challenged regulatory act shall take effect on the date of adoption, and shall be published in the Official Gazette of the Republic of Moldova. In case of suspension of the challenged regulatory act, the Constitutional Court will examine the merits of the complaint within a reasonable term not exceeding 15 days from registration. If required, the Constitutional Court may reasonably decide to extend the 15 days term for other 15 days.

Although recently entered into force, the provisions on suspension of regulatory acts have already been applied in the judicial activity of the Constitutional Court. As example the Judgment of the Constitutional Court No. 11 of 10.09.2013 *on suspension of the Government Decision No. 321 of 30 May 2013 on the approval of concession of assets of the SE "Chisinau International Airport" and terms and conditions of their concession,* as well as the Judgment of the Constitutional Court No. 12 of 19 September 2013 *on invalidation of the Government Decision No. 715 of 12 September 2013 on approval of the Report on the progress and results of closed competition for selection of concessionaire of the assets of the SE "Chisinau International Airport"* may be invoked, both documents were issued in the examination of the Complaint No. 39 of 9 September 2013 on the control of constitutionality of the Government Decision No. 321 of 30 May 2013.

4 SITTINGS OF THE CONSTITUTIONAL COURT

The Constitutional Court exercises jurisdiction in plenary meetings that are headed by the President of the Court. The meetings are convened by the President on his/her own initiative or at the request of at least two judges of the Court. The Court's meeting is deliberative if at least two thirds of the constitutional judges are present. The examina-

tion of the case begins with information provided by the presiding judge on the essence and the case materials, on the basis of which the Court will carry out the examination. The author of the complaint and representatives of relevant authorities give their explanations in compliance with the prohibition of using the right to speak in the meeting to make political statements. The constitutional judges' deliberations are held in the council chamber according to the principle of secrecy of deliberations. The procedure before the Court ends with the delivery of the judgment, of the decision or of the opinion.

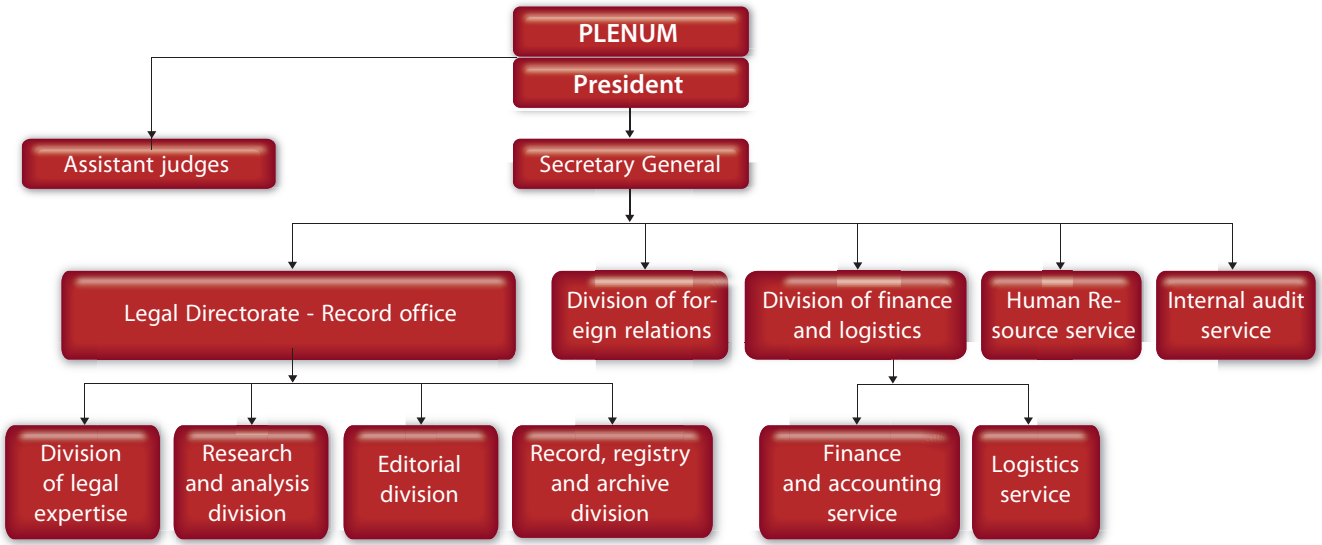
5 ACTS OF THE COURT

After examining the complaints, the Court adopts decisions, judgments and issues opinions. The judgments and opinions are adopted and issued on behalf of the Republic of Moldova and are delivered in the Plenum of the Constitutional Court in case of examining a complaint on its merits. The decisions are delivered in case of failure to settle a complaint on its merits and are prepared as separate documents or are recorded in the minutes. The acts of the Constitutional Court are not subject to any appeal; they are conclusive, enter into force upon adoption and shall to be published in the Official Gazette of the Republic of Moldova. 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 do not apply since the adoption of the corresponding judgment by the Constitutional Court.

D | COMPOSITION OF THE CONSTITUTIONAL COURT

1 ORGANIZATIONAL CHART

In 2013 the Constitutional Court carried out its activity based on the organizational chart approved on June 05, 2012 as follows:



2 JUDGES OF THE CONSTITUTIONAL COURT

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

In 2013 the composition of the Constitutional Court was modified and completed following the expiry of the terms of four judges. Thus, on February 22, 2013, Mr. Igor Dolea and Mr. Tudor Panțîru took the oath before the Parliament as judges of the Constitutional Court, following their appointment by the Superior Council of Magistracy,

and on April 5, 2013 Mr. Victor Popa and Mr. Aurel Băieșu took the oath as judges of the Constitutional Court, being appointed by the Parliament.

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

1. Judge, President of the Constitutional Court – Alexandru TĂNASE
2. Judge – Petru RAILEAN
3. Judge – Igor DOLEA
4. Judge – Tudor PANȚÎRU
5. Judge – Aurel BĂIEȘU
6. Judge – Victor POPA

Alexandru TĂNASE

Born on 24.02.1971, bachelor of Law, University "Alexandru Ioan Cuza", Iasi, Romania (1994); Ph.D. Candidate, Faculty of Law, State University of Moldova (2007). Lawyer, member of Moldova Bar Association (1999-2009); Chairman of the Committee on legal issues, public order and the activity of the local administration, Chisinau Municipal Council (June 2007 - April 2009); Member of the Parliament of the Republic of Moldova, member of the Parliamentary Legal Committee on Appointments and Immunities (April 2009 - March 2010, November 2010 - February 2011); Minister of Justice (September 2009 - May 2011). Judge of the Constitutional Court since April 2011. On 4 October 2011 elected as President of the Constitutional Court for a three years term.

Has activated within the Governmental Commission on drafting a new law on the Constitutional Court, the Governmental Commission on drafting the new law on prosecution; has been member of the working group on drafting the Commentary to the new Criminal Code, of the working group on drafting the Law on the National Institute of Justice, member of the working group on drafting the Law on bailiffs. Has coordinated the working group on drafting the Commentary on the Law on Administrative Jurisdiction. Has worked as expert in the United Nations Democracy Program in the field of strengthening the judiciary and the legislature (1998 - 2003), SOROS Moldova Program in the field of law (2003-2005).

Petru RAILEAN

Born on 23.10.1948, graduated the Faculty of Law, State University of Moldova (1975); Doctor of Law, the Academy "Stefan cel Mare" of the Ministry of Internal Affairs (2014). Intern judge at Tiraspol Court (1975-1976); judge at Cotovsc (Hînceşti) Court (1976-1982); judge at Grigoriopol Court (1982-1985); judge in the Criminal Division and Civil Division of the Supreme Court of Justice (1985-1997); member of the Superior Council of Magistracy (1997-2003); Chairman of the Central Election Commission (1995-1996, 2004-2005); President of the Economic Court (1997-2003); judge of the Economic Court (2005-2008); President of the Economic Court (2006-2008); member of the Plenum of Economic Court of the Commonwealth of Independent States (1997-2003). Judge of the Constitutional Court since October 2008.

Has conducted the activity of the working group on drafting the new Code of Civil Procedure (1999-2003), member of the Coordinating Council for Judicial Reform (1997-2003). Author of over 30 scientific articles in national and international professional journals.

Distinguished with the awards "Meritul Civic" Medal (*Civil Merits*) (1998) and "Gloria Muncii" Medal (*Glory of Labour*) (2003), holder of the honorary titles of the Superior Council of Magistracy "Veteran of the Judiciary" and "Dean of Judicial Authority".

Igor DOLEA

Born on 17.07.1962, graduated the Faculty of Law, State University of Moldova (1988); Doctor of Law (1996); Doctor Habilitatus of Law (2009). Associate Professor at the Department of Criminal Procedure Law and Criminalistics, State University of Moldova (since 2000); Head of the Department of Criminal Procedure Law and Criminalistics, State University of Moldova (1996 - 2013), University Professor at the Department of Criminal Procedure Law and Criminalistics, State University of Moldova (2010 - present); PhD supervisor; Director of the Institute for Penal Reform (2001-2009); Member of the Superior Council of Magistracy (2009-2013); chairman of the Group on coordination and monitoring the implementation of the Justice Sector Reform Strategy (2012 - 2013); Chairman of the Experts Committee of the National Council for Accreditation and Attestation (2011 - present); expert in the Scientific Council of the Bar of the Republic of Moldova (2007 - present), expert in the Advisory Scientific Council under the Constitutional Court (2007-2013), member of the Scientific Advisory Council under the Supreme Court of Justice (2002 - present); member of the Qualification Committee under the Superior Council of Magistracy (2002-2006); expert in the Scientific-Methodical Council of the General Prosecutor's Office (2005 - 2009); expert on the National Working Group on Juvenile Justice (2005 - 2007); member of the National Council for the Reform of Law Enforcement Bodies (2012-2013). Judge of the Constitutional Court since February 2013.

Member of the working group for drafting the Code of Criminal Procedure, Enforcement Code, Code of Administrative Offences, Law on Mediation, Law on Probation, Law on the Protection of Witnesses and Other Participants in Criminal Proceedings. Has activated as expert in international projects supported by the Council of Europe, OSCE, IOM, etc. Author of over 100 publications, including monographs and textbooks in the field of justice and human rights.

Holder of the honorary title "Om Emerit" (Emeritus Person) (2009).

Tudor PANȚÎRU

Born on 26.10.1951, graduated the Faculty of Law, State University of Moldova (1977). Lawyer, member of the Bar Association of the Republic of Moldova (1977-1980); Judge in Frunze District Court, mun. Chisinau (1980-1990); President of Frunze District Court, mun. Chisinau (1987-1990); Chairman of the Committee on assessment, admission and promotion of judges (1988-1990); Member of Parliament of the Republic of Moldova (1990-1994); Chairman of the Parliamentary Legal Committee (1990-1992); Ambassador, Permanent Representative of the Republic of Moldova to the United Nations (1992-1996); International Judge, European Court for Human Rights (1995-2001); Legal Adviser, Monitoring Department of the Council of Europe, Strasbourg (2001- April 2002); International Judge, Constitutional Court of Bosnia - Herzegovina (2002 -present); International Judge, Criminal Division of the Supreme Court of Kosovo (April 2002 - January 2004) ; International judge, the UN Mission in Kosovo, President of the UN Commercial Court (January 2004 - December 2008); Member of the Parliament of Romania (December 2008 - December 2012). Judge of the Constitutional Court from February 2013.

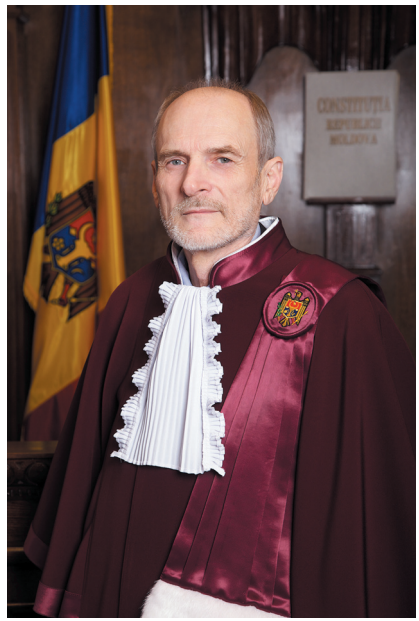
Legal Advisor and Program Coordinator within United Nations Development Program on strengthening the legal and judicial sector (1996-1998).

Aurel BĂIEȘU

Born on 19.07.1964, graduated the Faculty of Law, State University of Moldova (1986); Doctor of Law, State University "M.V.Lomonosov", Moscow (1990); Doctor Habilitatus of Law, State University of Moldova (2012). Lecturer at the Department of Civil Law, State University of Moldova (1990-1993), Associate professor at the Department of International and Foreign Economic Relations, Faculty of Law, State University of Moldova (1994 - present); Head of Department of International and Foreign Economic Relations, Faculty of Law, State University of Moldova (1994-2005); member of the Parliament of the Republic of Moldova; deputy chairman of the Parliamentary Legal Committee on Appointments and Immunities (August 2009 - December 2010); Legal Advisor of the interim President of the Republic of Moldova (April 2011 - January 2012); Ambassador of the Republic of Moldova to the Italian Republic (January 2012 - April 2013). Judge of the Constitutional Court from April 2013.

Has been member of the Bar Association of the Republic of Moldova, member of the International Commercial Arbitration Court under the Chamber of Commerce and Industry of the Republic of Moldova, member of the Scientific Advisory Council under the Supreme Court of Justice of the Republic of Moldova; member of the working group on drafting the Civil Code. Has activated as expert in international projects under the World Bank, European Bank, Council of Europe, UNDP, TACIS, USAID, etc.

Victor POPA



Born on 15.04.1949, graduated Union Institute of Law, Moscow (1976); Doctor of Law at the University of Bucharest (1998); Doctor Habilitatus of Law (2000). Associate professor (since 2003); Lecturer of constitutional law at the Humanist University of Moldova (1992-1993); Senior lecturer of Constitutional Law at the Academy of Public Administration of the Republic of Moldova (1993-1997); Senior lecturer of Constitutional Law at the International Academy of Economics; Law and Audio-visual Arts (1995-1997); Senior lecturer, Associate professor, Professor at the International University of Moldova (1995 -present); Associate professor at the Department of Legal Sciences, Academy of Public Administration under the Government of the Republic of Moldova (2011 - present); member of Parliament of the Republic of Moldova (2010 - 2013); Chairman of the Parliamentary Legal Commission on Appointments and Immunities (2011-2013); member of the Scientific and Advisory Council under the Constitutional Court (2007-2013). Judge of the Constitutional Court since April 2013.

Independent expert of the Congress of Local and Regional Authorities of the Council of Europe (2005-2010); member of the Steering Committee on the implementation of the Central Public Administration Reform in the Republic of Moldova (2006-2008); President of the specialized Scientific Council under the Free International University of Moldova for conferring the title of PhD and PhD in law; Adviser in the working group on drafting the Constitution of the Republic of Moldova (1991-1993); author of the Law on the basis of local self-administration (1991), of the draft Law on parliamentary elections (1993); expert in the working group on drafting the Election Code (1997); Chairman of the working group on drafting amendments to the Constitution of the Republic of Moldova (1999); member of international OSCE working group created to develop the Special Legal Status of Transnistria (2000), associate member of the parliamentary committee on drafting the legal framework on local public administration (2006). Expert in international projects supported by the Council of Europe, UNDP, TACIS, Soros, USAID, "Viitorul" Foundation. Author of over 50 scientific articles in the field of organization and functioning of state powers at central and local levels.

Holder of the State Award "Ordin de Onoare " (*Medal of Honour*) (2012).

3 ASSISTANT-JUDGES

According to the organizational chart, the judges of the Constitutional Court are assisted by 6 assistant-judges. In carrying out this activity, the assistant-judge fulfils the following basic functions:

- assists judges in exercising jurisdiction on complaints submitted by the subjects stated by the Constitutional Jurisdiction Code;
- proposes measures necessary for proper exercise of jurisdiction to the judge-rapporteur, to the plenum and to the President of the Court;
- reviews the written objections of the authorities on the complaint;
- takes appropriate actions necessary to settle the case according to the instructions of the judge-rapporteur, the plenum and the President of the Court;
- the assistant-judge is assimilated with the judge of the Court of Appeal and has the same status as judges of other courts.

4 SECRETARIAT OF THE COURT

The Secretariat of the Court assists constitutional judges throughout the process of managing and processing cases, provides informational, organizational, scientific and other assistance to the Court, organizes audience of citizens, performs the prior examination of complaints filed with the Constitutional Court, the settlement of which by judges of the Court is not mandatory.

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

- preparation, organization and coordination of work within the competence of the Secretariat;
- ensuring control related to meeting deadlines for the examination of complaints;
- preparation of the draft plan of examination of complaints and presentation of the plan approved by judges, assistant-judges, subunits of the Secretariat and ensuring control over its implementation;
- supervision of communication of acts of the Constitutional Court to public authorities, according to the law;

- preparation of recommendations and consulting the President of the Court on matters pertaining to enforcement 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.

TITLE II

JURISDICTIONAL ACTIVITY

TITLE II

JURISDICTIONAL ACTIVITY

A | COURT'S ASSESSMENT

1 STATE OF THE REPUBLIC OF MOLDOVA

1.1 Constitution, the Supreme Law

1.1.1 The Role of the Preamble in the Application of the Text of the Constitution

The Constitution, as the fundamental law setting out the principles based on which the state and the society are organized, is a document of particular significance not only in legal terms but also in political and historical context *(JCC no. 36 of 05.12.2013[7], §78).*

The Preamble of the Constitution is not just a series of legal statements. The reasons for writing the preamble, the process of its construction and its sociological functions are different. The purpose of the preamble is not only to ensure rights and provide legal arguments, but also to establish the fundamental values of the society (constitutional faith) *(JCC no. 36 of 05.12.2013, §79).*

The 1994 Constitution lists the constitutional values in its Preamble: secular aspirations of the people to live in a sovereign country, expressed through proclamation

[7] Judgment of the Constitutional Court no. 36 of 05.12.2013 on interpretation of article 13 para. (1) of the Constitution inter-related with the Preamble of the Constitution and the Declaration of Independence of the Republic of Moldova

of independence of the Republic of Moldova; continuity of the statehood of Moldovan people in the historical and ethnic context of its development as a nation; respect for the interests of citizens of other ethnic origin, who together with the Moldovans are the people of the Republic of Moldova; rule of law, civic peace, democracy, human dignity, human rights and freedoms, the free development of human personality, justice and political pluralism; responsibility and obligations to generations of the past, present and future; devotion to universal human values, desire to live in peace and harmony with all peoples of the world, according to the generally recognized principles and norms of international law *(JCC no. 36 of 05.12.2013, §80).*

This means that the Constitutional Court must take these constitutional values into account and interpret them with regard to: a) *aspirations [...] expressed through the proclamation of independence of the Republic of Moldova*; b) historical and ethnic context of development [of the people] as a nation *(JCC no. 36 of 05.12.2013, §81).*

[...] The Court held that the preamble plays a key role in understanding and applying the text of the Constitution and could be used as a source of law (*JCC No. 4 of 22.04.2013*[8]*, §58)*

The Preamble, which opens the constitutional text, is the part of the Constitution that reflects exactly the spirit of the Supreme Law. Thus, the Preamble sets mandatory constitutional clauses that can serve as sources to rules that are not necessarily reflected in the text of the Constitution. Any interpretation of the Constitution is to be conducted based on the original objectives of the Constitution, which are set out in the Preamble and from which the text of the Constitution itself derives. In conclusion, when there are several interpretations, the option based on the Preamble prevails *(JCC no.4 of 22.04.2013, §59).*

[8] Judgment of the Constitutional Court no. 4 of 04.22.2013 on the control of constitutionality of Decrees of the President of Moldova no.534-VII of March 8, 2013 on the resignation of the Government, as regards keeping the position of the Prime Minister dismissed by motion of censure (for suspected corruption) on March 8, 2013, before the new government is appointed, and no.584 VII of April 10, 2013 on the appointment of the candidate for the office of the Prime Minister

1.1.2 Legal Value of the Declaration of Independence

The provision *„aspirations* [...] *expressed through declaration of independence"* in the Preamble of the Constitution makes direct referral to the act through which the independence was proclaimed - the Declaration of Independence of the Republic of Moldova. It is the judicial document by which the independence of the Republic of Moldova has been expressed and where the aspirations that accompanied this process are reflected *(JCC no. 36 of 05.12.2013, §82).*

The Court held that, based on the Declaration of Independence, Moldova was established as a sovereign and independent state. The Declaration of Independence is the political and legal foundation of the Republic of Moldova as a sovereign, independent and democratic state. It is the act by which the Republic of Moldova was born. It was based on the Declaration of Independence that Moldova gained recognition from other states, was accepted in the Conference on Security and Cooperation in Europe on January 31, 1992 and in the United Nations on March 2, 1992 *(JCC no.36 of 05.12.2013, § 47).*

The Declaration of Independence is a political and legal document by which a new independent state - the Republic of Moldova was created, thus being the "birth certificate" of the new state, and laying foundations, principles and the underlying values of the state organization of the Republic of Moldova *(JCC no. 36 of 05.12.2013, §49).*

In addition to being the "birth certificate" of the new independent state, the Declaration of Independence is the most succinct statement of the constitutional ideas of the Republic of Moldova. In the country's historical context, this judicial document proclaimed the constitutional values of the new independent state, from which the legitimacy of the power of the ruling parties in Moldova derives *(JCC no. 36 of 05.12.2013, §50).*

There is no other document where the constitutional understanding of the founding parents and the national creed would be reflected as clearly as in the Declaration of Independence. The Declaration of Independence, reflecting the fundamental political decisions, is the national consciousness defining the "constitutional identity" of Moldova. Thus, the enumeration in the Declaration of Independence includes the items that were considered essential in defining the constitutional identity of the new state and its people: *aspirations for freedom, independence and national unity, linguistic identity, democrati-*

zation, rule of law, market economy, history, moral and international law norms, European geopolitical orientation, ensuring the social, economic, cultural and political freedoms to all Moldovan citizens, including people belonging to national, ethnic, linguistic and religious groups (JCC no. 36 of 05.12.2013, §86).

In this context, by reference to the Constitution in its Preamble, the Declaration of Independence has an unquestionable value of a constitutional text [...], as it is the major expression of the will of the people to build and live in a free and independent state, a will that predetermines the need to adjust the Constitution to the ideals, principles and values of the Declaration *(JCC no. 36 of 05.12.2013, §87).*

1.1.3 Block of Constitutionality

The Court held that the Declaration of Independence is the primary legal and political foundation of the Constitution. Thus, no provision of the Constitution, reflected in the text of the Declaration of Independence, can violate the limits (provisions) of the Declaration *(JCC no. 36 of 05.12.2013, §88).*

Moreover, as the founding act of the Republic of Moldova, the Declaration of Independence is a legal document that cannot be subject to any amendments and / or additions. Thus, the Declaration of Independence has the status of *"eternity clause"* because it defines the constitutional identity of the political system, the principle of which cannot be changed without destroying this identity *(JCC no. 36 of 05.12.2013, §89).*

For this reason, the Court held that the Declaration of Independence is the original, intangible and immutable block of constitutionality *(JCC no. 36 of 05.12.2013, §90).*

By Preamble to the Constitution, the Declaration of Independence refers to the Constitution in its entirety [...]. Therefore, any constitutionality control or any interpretation must consider not only the text of the Constitution, but also the constitutional principles in the constitutionality block *(JCC no. 36 of 05.12.2013, §91).*

1.1.4 Conflict between Two Fundamental Acts

The Court held that, under article 13 para. (1) of the Constitution, the state language of Moldova is "Moldovan, used based on Latin alphabet" *(JCC no. 36 of 05.12.2013, §106).*

On the other hand, the Declaration of Independence uses the term "Romanian" for the official language of the newly created state the Republic of Moldova *(JCC no. 36 of 05.12.2013, §107).*

Therefore, the reference to "Romanian" as the official language is a factual situation stipulated in the very text of the Declaration of Independence, which is the founding act of the Republic of Moldova. Regardless of the glotonyms used in legislation prior to proclamation of independence, the Declaration of Independence made a clear distinction, expressly opting for the term "*Romanian language*" *(JCC no. 36 of 05.12.2013, §108).*

The principle value of the Declaration of Independence derives from general popular consensus that legitimated it and from its contents defining the new state. This gives the Declaration of Independence, in the constitutional order of the Republic of Moldova, a crossing function [...] in relation to other constitutional provisions (in a manner similar to general principles of the rule of law, fundamental rights and freedoms, justice and political pluralism, etc.), as the core of the block of constitutionality *(JCC no. 36 of 05.12.2013, §118).*

Based on a historical and teleological interpretation of the Preamble of the Constitution, the Court held that the Declaration of Independence had been used as the basis for the adoption of the Constitution in 1994 [...] *(JCC no. 36 of 05.12.2013, §120).*

Therefore, in application of the principles set out in the Judgment no. 4 of April 22, 2013 (§ § 56, 58, 59), any interpretation of the Constitution is to be operated from the original objectives of the Constitution, which are set out in the Preamble and implicitly in the Declaration of Independence, and from which the text of the Constitution itself derives. Thus, when there are several interpretations, the option according to the Preamble and thus the Declaration of Independence prevails *(JCC no. 36 of 05.12.2013, §122).*

Therefore, no legal act, regardless of its power, including the Basic Law, can be inconsistent with the text of the Declaration of Independence. As long as the Republic of Moldova functions based on the same political order as established by the Declaration of Independence on August 27, 1991, the constituent legislature cannot adopt regulations that contradict it. At the same time, if the constituent legislator admitted certain contradictions to the text of the Declaration of Independence in the Basic Law, the text in the Declaration of Independence remains to be the authentic one *(JCC no. 36 of 05.12.2013, §123).*

In the light of the above, examining the cumulative effect of the two provisions on the name of the official language, the Court held that a combined interpretation of the Preamble and Article 13 of the Constitution was targeting the uniqueness of the official language, the name of which is given by the primary imperative provision of the Declaration of Independence. Therefore, the Court found that the provision contained in the Declaration of Independence on Romanian language as the official language of the Republic of Moldova prevailed over the rule concerning the Moldovan language contained in Article 13 of the Constitution *(JCC no. 36 of 05.12.2013, §124).*

1.2 Practical Valences of the Rule of Law in the Fight against Corruption

The rule of law was the culmination of constitutionalization of the political system. This means that the policy must be circumscribed by legal rules which specify the action limits. Given the intrinsic link between the state and the law, the development of the public power is accompanied by the development of the legal system *(JCC no.7 of 18.05.2013*[9]*, §45).*

The rule of law is a mechanism the operation of which involves the establishment of a climate of order, where the recognition and valuing of individual rights cannot be conceived in absolute and discretion terms, but only in conjunction with the rights of others and of the community as a whole *(JCC no.7 of 18.05.2013, §47).*

The principles of the rule of law require ensuring of legality, judicial security, interdiction of arbitrary decisions, and 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[10] *(JCC no.4 of 22.04.2013*[11]*, §54).*

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[9] Judgment of the Constitutional Court No. 7 of 05.18.2013 on the control of constitutionality of some provisions of the Law No. 64-XII of 31 May 1990 on the Government, as amended by Laws no.107 and no.110 of May 3, 2013, and Decrees of the President of the Republic of Moldova no. 635-VII and no. 635-VII of May 16, 2013 and the Government Decision no. 364 of May 16, 2013.

[10] Report of the Venice Commission on the rule of law, CDLAD (2011) 003rev, Strasbourg, April 4, 2011, § 41.

[11] Judgment of the Constitutional Court no.4 of 22.04.2013 on the control of constitutionality of the Decrees of the President of the Republic of Moldova no. 534-VII of March 8, 2013 on the resignation of the Government, as regards keeping the position of the Prime Minister dismissed by motion of censure (for

The Court held that the rule of law, as enshrined in the preamble to the Constitution, targeted the Constitution in its entirety. This principle underlies the requirement of adequate protection against arbitrary interference by public authority *(JCC no.4 of 22.04.2013, §56).*

Derived from the text of the Preamble to the Constitution, the rule of law is covered by Article 1 para.(3) of the Constitution (JCC no.4 of 22.04.2013, §57).

The Court held as follows: corruption undermines democracy and the rule of law, leads to violations of human rights, undermines the economy and erodes the quality of life. Therefore, the fight against corruption is an integral component of ensuring respect for the rule of law *(JCC no.4 of 22.04.2013, §62).*

The Court considered that keeping the Prime Minister who had been dismissed for reprehensible acts in position was contempt of the rule of law and of the principles related to integrity and endangered the stability of democratic institutions. In the Court's view, it is unacceptable that a decision of the Parliament that expressed lack of confidence in a government headed by its prime minister for corruption is disregarded and ignored, at least as long as evidence to the contrary has not been submitted and the groundlessness of suspicions has not been proved *(JCC No.4 22.04.2013, § 89).*

[...] The Court reiterated, as a rule, the findings of the European Commission [...] that it is essential for the credibility of a government that persons holding ministerial positions enjoy public confidence, for example, by resigning when there are suspicions related to their integrity *(JCC no.4 of 22.04.2013, §90).*

The Court held that a Prime Minister who acquiesced in the Cabinet ministers suspected of corruption, for which prosecution was initiated, is contempt against the rule of law and shows a clear lack of integrity, thus becoming incompatible with this position *(JCC no.4 of 22.04.2013, §91)*

In a true democracy, a normal thing following such suspicions is the immediate resignation of people who have lost public confidence, without waiting for being dismissed *(JCC no.4 of 22.04.2013, §73).*

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suspected corruption) on March 8, 2013, before the new government is appointed, and no. 584-VII of April 10, 2013 on the appointment of the candidate for the position of the Prime Minister.

The Court held, *mutatis mutandis,* reasoning *a contrario,* that such situations where people excluded from the act governance for reasons of corruption would be appointed again in senior state positions at short intervals of time without having demonstrated the groundlessness of allegations that caused the dismissal were not only reprehensible, but also inadmissible. In this context, appointment to ruling positions in the state of people surrounded by doubts of integrity or who have been dismissed for reasons of corruption is contrary to the rule of law *(JCC no.4 of 22.04.2013, §76).*

[...] The Court reiterated that a Prime Minister of a government ousted by vote of no confidence for suspected corruption, thus showing contempt of the rule of law and demonstrating lack of integrity, had become incompatible with the exercise of senior public offices *(JCC no.4 of 22.04.2013, §113).*

Therefore, the appointment of such person for the position of Prime Minister is contrary to the rule of law [Article 1, para. (3) of the Constitution]. [...] *(JCC no. 4 of 22.04.2013, §114).*

Given these findings [...] the Court held that the Prime Minister heading a government dismissed by vote of no confidence for suspected corruption was incompatible with the office and was unable to continue exercising the mandate *(JCC no.4 of 22.04.2013, §99).*

Therefore, if the Government is dismissed by motion of censure on suspicion of corruption, the President of the Republic of Moldova, in accordance with Article 101 para. (2) of the Constitution, has the constitutional obligation to appoint, while accepting the resignation of the Government, an Interim Prime Minister from among the members of the Government, whose integrity has not been affected *(JCC no.4 of 22.04.2013, §100).*

1.3 Separation and Collaboration of Powers

The Court emphasizes the fundamental essence of the principle of separation and collaboration of powers in the state, proclaimed by article 6 of the Constitution, as the fundamental principle of organization and efficient operation of state institutions to exclude any mutual interference (JCC no. 24 of 10.09.2013[12], §37).

[12] Judgment of the Constitutional Court no. 24 of 09.10.2013 on the control of constitutionality of some provisions of Annex 2 of the Law No. 48 of 22 March 2012 on the System of wages of public ser-

According to constitutional principle, the legislative, executive and judiciary powers cannot compete with each other, being assigned the task to perform separate powers within the rigors of the Constitution, through mutual cooperation for the exercise of state power *(JCC no. 24 of 10.09.2013, §38).*

The principle of separation of powers was established for the purpose of creating a system of government that would allow stopping the abuse of a power *(JCC no. 24 of 10.09.2013, §39).*

The Court reiterated that 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 stated in the Supreme Law or imposed by a ruling of the Constitutional Court, which, under article 134 of the Constitution, ensures the principle of separation of state power *(JCC no.33 of 10.10.2013*[13]*, §51).*

The Court noted that a component of the state power that had a stronger influence potential could subordinate another power at any time. As a social power can be braked in the event of abuses in the exercise of state power by another power only, which is equivalent in its powers and possibilities, the Court in its case law has developed the principle of separation and collaboration of state powers as guaranteed by Article 6 the Constitution and deducted the balance of state power branches as the inalienable component of this principle *(JCC no. 24 of 10.09.2013, §40).*

The balance of the three components of state power results from the constitutional ban imposed on them to compete with each other. Or, the prohibition in question follows from the requirement of collaboration provided by Article 6 of the Constitution. Maintaining the balance of powers in the state is an inherent requirement for avoiding subordination of a component of power by another component *(JCC no. 24 of 10.09.2013, §41).*

The Court held that the essence of any democratic government is balance in the allocation of public functions inherent to any authorities involved in governance. This distribution of powers is based on maintaining the institutional and social balance through

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[13] Judgment of the Constitutional Court no. 33 of 10.10.2013 on interpretation of art. 140 of the Constitution

the checks and balance system in the exercise of state power. Such a system of state power distribution is established by the principle of separation and collaboration of state powers, enshrined in art. 6 of the Constitution *(JCC no. 7 of 18.05.2013*[14]*, §55).*

Based on the mutual control of state powers based on the checks and balances system, the executive power cannot be established without the will expressly stated by the legislative power, through the Parliament, exercised in the process of Government institution.[...] *(JCC no.7 of 18.05.2013, §106).*

The Court notes that the separation of powers is not rigid, absolute, as it would create institutional bottlenecks and imbalances. Therefore, the principle of separation of powers in the state takes the form of delimitation of some public authorities independent of each other, with different tasks and powers, by which specific activities are conducted, but also of cooperation between powers, doubled by mutual control *(JCC no. 29 of 23.09.2013, §49).*[15]

Thus, characterizing the essence of the powers in the state, the Court notes that the legislative power is the direct representation of people, as the holder of national sovereignty. The legislative power establishes the rules of behavior of all natural and legal persons in the society *(JCC no. 29 of 23.09.2013, §50).*

The executive power is formed by the legislative one, ensuring the enforcement of laws and of the internal and external politics of the state *(JCC no. 29 of 23.09.2013, §51).*

The judicial power solves the legal disputes emerging in the society as result of the actions made by the two powers. For these reasons, the quality of justice, as an act emanating from the judiciary, is directly proportional to the level of independence and to the support provided to it by both the legislative and the executive power *(JCC no. 29 of 23.09.2013, §52).*

The judicial power, being exercised by the judges as the sole representatives of this power consists, in turn, of a system of authorities that must be distinct from the

[14] Judgment of the Constitutional Court no.7 of 18.05.2013 on the control of constitutionality of some provisions of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Laws no. 107 and 110 of May 3, 2013, as well as of the Decrees of the President of the Republic of Moldova no. 634-VII and 635-VII of May 16, 2013 and Government Decision no. 364 of May 16, 2013

[15] Judgment of the Constitutional Court no.29 of 23.09.2013 on the control of constitutionality of certain acts referring to the investigation committee in the case „Pădurea Domnească".

legislative and executive powers authorities and uninfluenced by them *(JCC no. 24 of 10.09.2013, §48).*

Given that the sole bearers of the judiciary power are the judges, the Court holds that the principle of judicial independence is a cornerstone of maintaining the judiciary as a full-fledged power in the architecture of state power organization. The principle of separation and collaboration of powers requires actions to maintain their balance. Therefore, the principle of independence of judges is not only the constitutional basis, but also a measure of control of respect for the rights and capacities of the judiciary in the actions for maintaining the balance between the state powers *(JCC no. 24 of 10.09.2013, §49).*

At the same time, the Court noted that the judicial independence could not be achieved without institutional and structural independence *(JCC no. 24 of 10.09.2013, §50).*

The Court held that the administration of justice was achieved with the involvement of several supporting components, subsequent to judges who directly represented this power *(JCC no. 24 of 10.09.2013, §51).*

Ensuring a balance between state powers is reflected in the degree of proportionality of material endowment of the administrative staff, which ultimately contributes to achieving the tasks by the representatives of these three powers (JCC no. 244 of 10.07.2013, *§52).*

2 PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

2.1 Equality and Non-Discrimination

The Court noted that the observance and protection of the individual was a primary obligation of the state. [...] According to paragraph (2) of the same article [Article 16 of the Constitution], all Moldovan citizens are equal before the law and public authorities, without distinction of race, nationality, ethnic origin, language, religion, sex, political affiliation, property or social origin *(DCC no. 14 of 08.10.2013*[16]*, §26).*

[16] Decision of the Constitutional Court to reject the complaint no. 27a/2013 on the control of constitutionality of some provisions of the Law no. 121 of May 25, 2012 on ensuring equality

The Court held that most of the criteria listed under art.16 para. (2) of the Constitution were also found in the Law on Ensuring Equality. *(DCC no. 14 of 08.10.2013, §27).*

At the same time, the Court found that the list of criteria mentioned in Art. 1 para. (1) of the Law was not exhaustive, and discrimination was prohibited on the basis of any other criteria similar to those listed *(DCC no. 14 of 08.10.2013, §28).*

The Court noted that as regarded the human rights, the international law ensured both the right to equality and the right not to be subjected to discrimination based on the listed specific criteria. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights contain provisions on non-discrimination (*DCC no. 14 of 08.10.2013, §33).*

At the same time, art. 14 of the European Convention indicates 13 grounds of discrimination and states that other criteria can be added to this list, that might result from "any other status", this list thus being indicative and not limiting (*DCC no. 14 of 08.10.2013, §34).*

At the same time, in its case law, the Court stated that Article 16 of the Constitution complemented other substantive provisions of the Constitution and had no independent existence, being applied only for the exercise of the rights and freedoms guaranteed by constitutional provisions. Accordingly, Article 16 is to be combined with another constitutional article that guarantees a right [...] (*DCC no. 14 of 08.10.2013, §35).*

The Court reiterated that Article 16 of the Constitution came into action when the situation referred to by the disadvantage involved one of the conditions for the exercise of a guaranteed right or the criticized measures aimed at exercising a guaranteed right. For Article 16 to be operable, it is sufficient that the situation governed by the challenged rules falls within the scope of one or more provisions of the Constitution, which guarantee fundamental rights [...] *(DCC no. 14 of 08.10.2013, §36).*

2.2 Right to Life and to Physical and Psychological Integrity

Respect for and protection of human dignity is an obligation of public authorities. In this context, exclusion of punishment or cruel, inhuman or degrading treatments is a condition for respecting the human dignity. Therefore, regardless of the nature of the

offense, the penalty imposed should respect the inherent human attributes (physical and mental integrity, human dignity, etc.). *JCC no. 18 of 04.07.2013*[17]*, §50).*

The Constitutional Court refers to the "no derogation" rule, according to which giving consent for health intervention is closely related to the principle of primacy of the human being, enshrined by art. 2 of the Convention for Protection of Human Rights and Human Dignity as regards biology and medicine applications. In the same context, according to art. 5 of this Convention, a health intervention cannot be performed unless the person concerned has given his/her free and informed consent; this person receives adequate prior information about the purpose and nature of the intervention, as well as about consequences and risks; the person concerned may withdraw his/her consent freely at any time *(JCC no. 18 of 04.07.2013, §52).*

As regards the volitional aspect, the Court points out that an important issue concerning the application of medical treatment is the consent of the person concerned. This relates to respect for acknowledged dignity, non-coercive agreement, which recognizes the autonomy of the individuals to make their own decisions; in most cases, this would be accepted by the court, where the issue of treatment is discussed *(JCC no. 18 of 04.07.2013, §53).*

Regarding the health interventions that the detainee is subject to against his/her will, even in the case of a measure which is a therapeutic need from the point of view of well-known principles of medicine, the European Court held that it must be demonstrated convincingly that there was a medical necessity and that there are procedural guarantees for such a decision and these guarantees are respected (see *Nevmerzhitsky v. Ukraine*, §94) *(JCC no. 18 of 04.07.2013, §55).*

Thus, the Court held that health treatments, as safety measures, could be applied to the extent accepted by that person, if they did not cause serious harm to that person, if any medical opinion on the application of such treatment was available and procedural safeguards for such decision were observed *(JCC no. 18 of 04.07.2013, §56).*

[17] Judgment of the Constitutional Court no. 18 of 04.07.2013 on the control of constitutionality of some provisions of the Criminal Code no. 985-XV of April 18, 2002 and the Enforcement Code no. 443-XV of December 24, 2004, as amended by the Law no. 34 of May 24, 2012 to complete some legal acts

The Court also points out that criminal punishment is both a measure of state coercion and a means of correction and rehabilitation of the convict, aimed to restore social justice, to ensure correction of the convict and prevent committing of new offences. However, the execution of the sentence shall not cause physical suffering or demean the dignity of the convicted person *(JCC no. 18 of 04.07.2013, §68).*

The Court held that the imposition of a sentence is aimed not at depriving the convict of the human dignity or neglecting the human dignity of the victim, but rather at restoring the human dignity of those directly involved, with the effect of full social reintegration of the convict and the complete healing of wounds / damage suffered by the victim of the offence *(JCC no. 18 of 04.07.2013, §70).*

Following the reasoning of the European Court on human dignity in the application of health treatment, the Court held that, as a health intervention to be applied to a mentally healthy adult, the chemical castration should only be executed with the free and informed consent of the person concerned *(JCC no. 18 of 04.07.2013, §79).*

In this context, the Court shares the vision of the CPT on the guarantees inherent for human dignity in the case of chemical castration (antiandrogen treatment): - the free and informed consent of the detainees should be obtained before the antiandrogen treatment has commenced; no prisoner should be forced to accept the antiandrogen treatment; - the full and detailed procedure on the antiandrogen treatment, including adequate protection measures, such as criteria or inclusion and exclusion for such treatment; health examination before, during and after treatment; access to external consultation, including granting of the second independent opinion; periodical assessment of the treatment by an independent health authority *(JCC no. 18 of 04.07.2013, §81).*

In this context, the Court held that establishment of the compulsory application of chemical castration without full and informed consent of the person, without a medical individual assessment of the need for its enforcement, without subsequent monitoring, accompanied by psychotherapy, had not taken into account the guarantees of respect for human dignity, violated the fundamental human right of the individual to physical and mental integrity, guaranteed by Article 24 para. (1) and (2) of the Constitution, and prejudiced Article 3 of the European Convention on Human Rights and Fundamental

Freedoms and Articles 2 and 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine Applications (*JCC no. 18 of 04.07.2013, §83).*

2.3 Free Access to Justice

2.3.1 Challenged Acts of the Superior Council of Magistracy

In terms of the lack of the absolute nature of "free access to justice", it should be noted that this principle concerns the right of the individual to notify the courts if he/she believes that her/his rights are violated, and not that this right may not be subject to restrictions. The competence to set the rules for the procedure before the courts, according to art. 115 para. (4) of the Constitution, belongs to the legislator *(JCC no. 17 of 02.07.2013*[18]*, §38).*

Having assessed how the complaints are examined by the Superior Council of Magistracy in terms of the right of the magistrates to appeal these decisions before the Supreme Court of Justice, as regards the issue and adoption of such decisions, the Constitutional Court concluded that access to justice for magistrates was not limited *(JCC no. 17 of 02.07.2013, §39).*

The Court held that, in carrying out its work, the Superior Council of Magistracy examined the appeals of the magistrates on the merits, complying with all procedural safeguards provided for by art. 6 of the European Convention. In other words, when reviewing the complaints, the Superior Council of Magistracy acted as the first authority *(JCC no. 17 of 02.07.2013, §40).*

The Constitutional Court found that the majority of members of the Superior Council of Magistracy were judges who were independent and enjoyed the confidence of the entire judiciary in Moldova *(JCC no. 17 of 02.07.2013, §41).*

On the other hand, the review of magistrates' appeals by the Supreme Court under Art. 25 of Law No. 947-XIII, i.e. on the issue and adoption procedure, should be under-

[18] Judgment of the Constitutional Court no.17 of 02.07.2013 on the control of constitutionality of some provisions of art. 25 of the Law no. 947-XIII of July 19, 1996 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts and art. VIII para. (6) of the Law no. 153 of July 5, 2002 to amend and complete some legal acts

stood as a de jure examination of the challenged decisions of the Superior Council of Magistracy *(JCC no. 17 of 02.07.2013, §42).*

[...] De jure examination of the decisions of the Superior Council of Magistracy means full verification by the Superior Council of Magistracy of compliance with all procedural guidelines provided for by art. 6 §1 of the European Convention for Human Rights in the examination on the merits of appeals and in decision-making *(JCC no. 17 of 02.07.2013, §43).*

[...] The Parliament of the Republic of Moldova rightly determined that the Superior Council of Magistracy (CSM) conducts the review on the merits, observing all procedural safeguards (Article 6 § 1 of the European Convention) of all magistrates' appeals, and the Supreme Court of Justice examines the appeals brought against decisions of the SCM in respect of the law *(JCC no. 17 of 02.07.2013, §46).*

In this regard, the Parliament considered that the authority of the Superior Council of Magistracy, as an elected body consisting mostly of judges elected by all the judges, met the criteria which are necessary in order to act as an independent and impartial court, appointed under the law *(JCC no. 17 of 02.07.2013, §47).*

Even though the membership of the SCM also includes members appointed based on political criteria, including two ex-officio members - Minister of Justice and the Prosecutor General, who are appointed and controlled on political grounds and who do not meet the criteria of independence and impartiality - basically, most members of the SCM are independent judges, who can ensure the adoption of fair decisions *(JCC no. 17 of 02.07.2013, §48).*

On the other hand, the examination of appeals against decisions of the SCM by the Supreme Court in respect of the procedure for the adoption and issuance, i.e. in law, provides a full control of the fairness of judicial proceedings enjoyed by claimants in examination of the merits, allowing cancellation or change of these decisions when necessary *(JCC no. 17 of 02.07.2013, §49).*

Therefore, the Constitutional Court considered that the less costly procedure of examination of the magistrates' appeals, ensuring timeliness, without prejudice to compliance with all procedural safeguards, meets both the interests of magistrates and the objective interest of the state *(JCC no. 17 of 02.07.2013, §50).*

2.3.2. Competence of Military Court

The Court held that the Constitution enshrines the free access to justice not only as a fundamental right, recognized to each person, but above all, as an imminent principle of the system of guarantees of citizens' rights and freedoms. This is reiterated by the provisions of art. 15 of the Constitution, according to which: "Citizens of Moldova enjoy the rights and freedoms enshrined by the Constitution and other laws and have the obligations provided by these" *(JCC no. 20 of 16.07.2013[19], §30).*

The Court noted that, in its case law, the European Court emphasized that the mechanism of guarantees of the European Convention seeks to protect certain effective and tangible rights, and not theoretical and illusory rights. Under this principle of interpretation, States must not only recognize people's access to a court, but must ensure the independence and impartiality of that court. Independence and impartiality enshrined in art. 6 § 1 of the European Convention are not only features of the court, but also the absolute rights of individuals, not subject to any limitations or waivers *(JCC no. 20 of 16.07.2013, §35).*

The Court held that the criteria of a court's independence in relation to other powers had been specified in the case law of the European Court, as follows: designation and term of judges *(Le Compte, Van Leuven and De Meyer vs. Belgium, 1981*), the existence of guarantees against external pressures *(Piersack vs. Belgium, 1982*) as well as the possibility to check whether the court presents the appearance of independence or not (*Delcourt vs. Belgium, 1970*) *(JCC no. 20 of 16.07.2013, §36).*

From the organic perspective, the independence of judges is checked by the procedure of appointing the judges and by the term of their office. From the functional perspective, independence is verified in relation to other state bodies and to parties. The independence of judges - whether functional or organic - concerns the entire judicial activity as a whole. It does not only affect public procedure, but also previous activities (e.g. establishing the term of the trial) or the activities following this phase (e.g. deliberation and drafting of the decision) *(JCC no. 20 of 16.07.2013, §37).*

[19] Judgment of the Constitutional Court no. 20 of 16.07.2013 on the control of constitutionality of some provisions of article 37 of the Criminal Procedure Code of the Republic of Moldova no.122-XV of March 14, 2003.

Thus, the Court reiterated that justice is made in the name of the law only by courts, where cases are tried freely, excluding any pressure on judges. Neither the legislative nor the executive power is entitled to interfere in the work of the judiciary. In law enforcement, judicial independence excludes any subordination and hierarchy *(JCC no. 20 of 16.07.2013, §39).*

According to the European Court, the European Convention does not prohibit military tribunals to decide on criminal charges against members of the military subordinated staff, provided that the guarantees of independence and impartiality required by Article 6 § 1 (case *Morri vs. United Kingdom, February 26, 2002,* § 59, Cooper vs. United Kingdom, December 16, 200, § 106 and Onen vs Turkey, February 10, 2004) are complied with *(JCC no. 20 of 16.07.2013, §44).*

The Court noted that, according to the legal framework, the military court, by its legal status is a specialized court, part of the Moldovan judicial system, assimilated to courts of common law on issues of organization and operation *(JCC no. 20 of 16.07.2013, §47).*

[...] The procedure for appointment, promotion, transfer and sanctioning of judges is applied as required by law, by the Superior Council of Magistracy for judges in the military court system as well *(JCC no. 20 of 16.07.2013, §48).*

The military judge is constitutionally vested with powers of justice, which he/she carries out on professional basis as a magistrate, part of the judiciary and appointed by the President of the Republic of Moldova at the proposal of the Superior Council of Magistracy. The judges of military courts are independent, impartial, and irremovable. The only additional condition that a military judge must meet is for him/her to be militarily active *(JCC no. 20 of 16.07.2013, §49).*

Moreover, it should be noted that the trial of criminal cases is carried out by the military court in the same manner as in the courts of the entire judicial system, according to the Criminal Procedure Code and under the provisions of other laws. At the same time, according to art. 42 para. (6) of the Criminal Procedure Code, *"where there is competition of competence between the military court and the ordinary court, the case shall be tried by the ordinary court" (JCC no. 20 of 16.07.2013, §50).*

The Court noted that the legality of decisions issued by the military court is verified by the Court of Appeal and the Supreme Court based on appeal *(JCC no. 20 of 16.07.2013, §51).*

Thus, the hierarchical organization of the courts ensures the judicial control over decisions of the military court, by providing the possibility to appeal the decisions as provided by law, which, in term, is a guarantee of the legality of taken decisions *(JCC no. 20 of 16.07.2013, §52).*

[...] The Constitutional Court held that, as the decisions of the Military Court can be subject to control by two superior civil courts, all the necessary guarantees for the procedural rights of persons [...] to be effectively protected, without discrimination and be restored when violated by the military court are available, and thus the challenged provisions are in line with Articles 16 and 20 of the Constitution of the Republic of Moldova *(JCC no. 20 of 16.07.2013, §56).*

2.3.3 Grounds for the Revision of Court Judgments

The Court noted that, as the revision is a way of withdrawal, and not reformation of the judgment, the reopening of the trial occurs based on strict grounds provided by law *(JCC no. 16 of 25.06.2013[20], §58).*

The Court emphasizes that the key issue in the proper regulation of extraordinary appeal lies in finding some "middle assumptions" to reconcile both requirements, on the one hand, the principle of res judicata and, on the other hand, the need to issue a legal and grounded judgment. It is therefore necessary to identify the median assumptions to ensure the right to a fair trial and the principle of legal certainty *(JCC no. 16 of 25.06.2013, §60).*

The grounds for the review are to be laid down in legislation objectively and comprehensively, so that no part is entitled to seek review of a final and binding judgment merely for the purpose of obtaining a review and a new determination of the cause. The court is ruling on review shall exercise jurisdiction to correct judicial errors, omissions

[20] Judgment of the Constitutional Court no.16 of 25.06.2013 on the control of constitutionality of Art. XI section 16 of the Law no.29 of March 6, 2012 to amend and complete some legal acts

of justice and ensure the fundamental rights and freedoms, but not in order to make a new examination. The review should not be considered an appeal in disguise, and the mere existence of two different views on the same matter cannot be a ground for review *(JCC no. 16 of 25.06.2013, §61).*

Thus, the Court held that derogation from the principle of res judicata is justified only when it is necessary because of substantial and compelling circumstances *(JCC no. 16 of 25.06.2013, §62).*

The Court reiterated that in establishment of the grounds of review the legislator must ensure a balance between the observance of the right to a fair trial and the principle of legal certainty *(JCC no. 16 of 25.06.2013, §63).*

At the same time, the repeal of the grounds for review of final judgments rendered by application of a law which has been declared unconstitutional is not a solution of mediation in itself, but instead, it ignores the constitutional norms. Or, the Constitution of the Republic of Moldova is its supreme law. No law or other legal act contrary to the Constitution has legal force (art. 7 of the Constitution). Moreover, art. 2 para. (2) of the Code of Civil Procedure provides that in case of a collision between the rules of the Code and the Constitution of the Republic of Moldova, the provisions of the Constitution are applied *(JCC no. 16 of 25.06.2013, §64).*

The Court held that the regulation of a procedural means to allow retraction of the final and irrevocable judgment pronounced by a court in violation of constitutional principles, it is not likely to violate the right to a fair trial and the principle of legal certainty. A judgment, though final and irrevocable, cannot be considered legal as long as it is based on an act in violation of the Supreme Law *(JCC no. 16 of 25.06.2013, §65).*

The Court held that the principle of stability of legal relationships cannot involve promoting a right through unconstitutional rules. The possibility to review a judgment pronounced in violation of the Constitution is the only way to counter the effects of a law that is contrary to the constitutional principles, which guarantee fundamental rights and freedoms *(JCC no. 16 of 25.06.2013, §66).*

The Court held that the exclusion, by Law no. 29 of March 6, 2012, of the grounds contained in art. 449 let. f) of the Code of Civil Procedure deprives individuals of effective domestic remedy for protection of their rights and constitutes an is an inadmissible

limitation of procedural means that ensure the right of individuals to fair satisfaction. Or, in a democratic society, where respect for and protection of individual is a primary obligation, it is inadmissible for a right which has already been enshrined by legislation to be diminished *(JCC no. 16 of 25.06.2013, §82).*

In conclusion, the Court noted the need for a person to benefit from the possibility of withdrawing a judicial decision through review where the Constitutional Court found that the normative act which had been declared unconstitutional and had been applied in the issue of a final judgment violated the fundamental rights and freedoms guaranteed by the Constitution and the European Convention, and the serious consequences of this violation continue to occur and can only be repaired by reviewing the delivered judgment *(JCC no. 16 of 25.06.2013, §84)* .

2.3.4 Enforcement of Judgments

2.3.4.1 Provision of a deadline for voluntary enforcement of judgments

The Court held that the enforcement of a judgment is the last stage of the judicial process and is a right enshrined by Articles 20 and 120 of the Supreme Law. An unenforced enforceable document or, in other words, a formal justice cannot achieve the basic goal - protecting the rights and freedoms proclaimed by the national and international regulations *(JCC no.1 of 15.01.2013* [21]*, §62).*

In this context the Constitutional Court notes that, since it is possible that the debtor does not voluntarily comply with the court-ordered obligation, the legislature has established a set of procedural means for the actual implementation by the lender of the right either by decision of the court or by another document that is enforceable *(JCC no.1 of 15.01.2013, §65).*

The Court noted that the forced execution of a judgment occurs only when the debtor refuses to voluntarily execute a judgment, i.e., failure to voluntarily execute an enforceable decision opens the way for forced execution *(JCC no.1 of 15.01.2013, §69).*

[21] Judgment of the Constitutional Court no.1 of 15.01.2013 on the control of constitutionality of some provisions of article 60 para. (3) and para. (3^1) of the Enforcement Code of Moldova no. 443-XV of December 24, 2004

Since enforcement of judgments is an integral part of the judicial process, the Court held that to establish rules of conduct of the enforcement is an exclusive prerogative of the legislature, which can establish special rules of procedure in consideration of special circumstances *(JCC no.1 of 15.01.2013, §71).*

The Court stated that the principle of free access to justice implies the unlimited possibility of those interested in using it in the form and under the conditions provided by law *(JCC no.1 of 15.01.2013, §74).*

The Court held as a principle that enabling the debtor to execute an enforceable document voluntarily, before proceeding to forced execution is a necessary formality established in the interest of the debtor, in order to grant a respite to fulfill the obligation *(JCC no.1 of 15.01.2013, §75).*

The Court also found that the provisions of Article 60 para. (3) of the Enforcement Code, establishing a period for voluntary execution of judgments, is an option granted by the legislator to the debtor for fulfillment of own obligations before the coercive power of the state is applied. *(JCC no.1 of 15.01.2013, §76).*

At the same time, the Court noted that, in the absence of rules setting out the ways for voluntary execution of judgments, individual enforcement proceedings can be triggered, which would inevitably result in bottlenecks, including in the functioning of public institutions, where the state appears as a borrower *(JCC no.1 of 15.01.2013, §80).*

The Court also noted that the period of 15 days allowed for voluntary execution is not at variance with the principle of free access to justice, nor does it violate the right to a fair trial, because the regulation by the legislature, within the competence conferred by Constitution, of the conditions for the exercise of a right - subjective or procedural - including by setting deadlines, is not a restriction on the exercise thereof *(JCC no.1 of 15.01.2013, §86).*

[...] The Court found that the adoption by the legislator of some changes to incident enforcement rules, establishing the procedure for voluntary execution of the judgment, is not likely to restrict the right to obtain just satisfaction, and does not exclude the obligativity of the judgment for the debtor. Or, under Article 120 of the Supreme Law, the judgment becomes binding when the judgment becomes final and the binding nature

does not depend on the submission by the creditor f the enforcement document to the bailiff *(JCC no.1 of 15.01.2013, §97)*.

Based on the positive obligation of the State to ensure the enforcement of judgments, the Court held that the institution of "forced execution", in addition to the debtor's obligation to voluntarily execute the judgment when it becomes final, is a necessary tool that facilitates obtaining by creditor of the rights conferred by the enforcement document *(JCC no.1 of 15.01.2013, §98)*.

The Court held that the imposition by the legislature of the term of 15 days for voluntary execution of the judgment is not likely to violate the reasonable term, ensures a fair balance between the means employed and the aim pursued, observing the requirements of state of law and therefore not impairing the right protected by Article 1 of Protocol No.1 to the European Convention *(JCC no.1 of 15.01.2013, §112)*.

2.3.4.2 Repeated sanctioning for non-enforcement of judicial acts in co-relation with the non-bis-in-idem principle

According to Article 120 of the Constitution, respecting sentences and other final decisions of the courts, and collaboration requested by them in the process, enforcement of sentences and other final judgments is compulsory. The compulsoriness of judgments is expressed in compulsoriness of enforcement thereof *(JCC no. 13 of 11.06.2013 [22], §52)*.

Comparison the constitutional provisions of Article 120 of the Constitution with the constitutional provisions of Article 20 reveals that access to justice means not only effective legal means to turn to a body with full jurisdiction for the settlement of an appeal and obtain a satisfaction, but also the right to request the enforcement of the judgment. Thus, enforcement of judgments should be regarded as an integral part of the trial process *(JCC no. 13 of 11.06.2013, §53)*.

The European Court has reiterated on several occasions that the state has a positive obligation to organize a system for the enforcement of judgments, to be effective both in

[22] Judgment of the Constitutional Court no. 13 of 11.06.2013 on exception of unconstitutionality of some provisions of article 320 of the Criminal Code of the Republic of Moldova no. 985-XV of April 18, 2002, as amended by the Law no. 173 of July 9, 2010 to amend some legal acts.

practice and in law, and to ensure the execution of these judgments without undue delay, otherwise the state being liable under Article 6§1 of the European Convention *(JCC no. 13 of 11.06.2013, §58)*

In the context and in light of the findings of the European Court, the Court states that the right to enforcement of a judgment is an integral part of the right of access to justice *(JCC no. 13 of 11.06.2013, §60).*

The *non bis in idem* principle derives from the constitutional provisions of articles 4, 21 and 25 of the Constitution. The right to not be tried or punished twice for the same act has become a fundamental and undeniable principle of any law system and is guaranteed by international instruments to which the Republic of Moldova is a party *(JCC no. 13 of 11.06.2013, §61).*

The Court noted that the European Court recalled in its case law that Article 4 of Protocol No.7 was aimed at prohibiting the duplication of criminal proceedings which had been permanently closed, avoiding a person to be tried or punished again in criminal proceedings for the same offense [...]. The principle of *non bis in idem* can be invoked only if at least two independent and different procedures on the same indictment end with more than one conviction [...] *(JCC no. 13 of 11.06.2013, §66).*

The Court notes that, in order to ensure the implementation of Article cited above, for intentional non-enforcement or avoiding of enforcement of court judgment, Art.318 of the Code of Administrative Offences establishes penalties in the form of fine *(JCC no. 13 of 11.06.2013, §70).*

At the same time, the Court holds that the persistence of the same facts, after applying the sanction may attract criminal liability of the person (Art.320 of the Criminal Code) *(JCC no. 13 of 11.06.2013, §71).*

[…] The Court noted that, according to the case law of the European Court, most offences fall within the "criminal matter" of the European Convention. Thus, the European Court ruled that despite the decriminalization of certain offenses, both the preventive and the coercive nature of administrative substitution sanctions is sufficient in accordance with Article 6 of the European Convention, to establish the criminal nature of the offense [...]. Consequently, not only the guarantees provided by art. 6 on criminal matters (including the presumption of innocence) are applicable, but also the more gen-

eral guarantees (art. 7 of the Convention, double jurisdiction degree), including the *non bis in idem* principle. As a result, a person who has been sanctioned under administrative law (even if acquitted) cannot be subject to criminal prosecution for the same deed *(JCC no. 13 of 11.06.2013, §74).*

With reference to the effective implementation of sanctions for the non-enforcement of a final judgment, the Court found that, in its case law, the European Court held that the failure to execute a legal obligation was an instant offense that was completely consumed by failing to carry out the action prescribed by law. Such an offense is made at a time by a single deed. [...] *(JCC no. 13 of 11.06.2013, §77).*

In the same context, by applying *mutatis mutandis* the rationale of the European Court in the judgment *Smolickis vs. Latvia,* the Court held that the first sanction in accordance with Article 318 of the Code of Offences and the second one under Article 320 of the Criminal Code refer to distinct periods, which do not overlap, even if the inertia of the sanctioned person towards the enforcement of judgment was the same before , over and between the two periods *(JCC no. 13 of 11.06.2013, §82).*

As the debtor obstinated to not execute the judgment which became enforceable after his first administrative sanctioning, the second criminal sanction is based on repeated refusal, but still distinct, to comply with the law *(JCC no. 13 of 11.06.2013, §83).*

[...] The Court held that repeated punishment for failure to perform a legal obligation is not inconsistent with the *non bis in idem* principle, if a distinction is made between the two reference periods, by clearly specifying those time limits *(JCC no. 13 of 11.06.2013, §86).*

Therefore, after applying the first sanction, the authorities must record a new term for performance of the obligation, so that at the end of this new term, the person may be held liable again *(JCC no. 13 of 11.06.2013, §87).*

Therefore, if the mentioned conditions are met, the repeated sanctioning of a person for the failure to execute a final judgment does not concern one and the same continuous offense (deed), it is not incompatible with the non bis in idem principle and does not violate Articles 20, 21, 25 of the Constitution and hence Article 4 of Protocol no. 7 to the European Convention *(JCC no. 13 of 11.06.2013, §88).*

2.3.5 Insuring Measures Applied by Courts

[...] The suspension of the administrative act is a form of insuring, a procedural institution that provides a range of measures to ensure the possibility of settling claims if the suit is satisfied, having a real contribution to further enforcement of the court decision and being an effective means of protection of the subjective rights of trial participants *(JCC no. 31 of 01.10.2013[23], §59)*

The Court also held that, according to civil procedure rules, application of insuring measures is a procedure ordered by the court at the request of trial participants, and the guarantee provided to the applicant, including under art. 21 para.(1) and (2) of the Law on Administrative Litigation aims at removing the effects of the challenged administrative act, that might be impossible to redress *(JCC no. 31 of 01.10.2013, §60).*

The Court held that the right to request the court to suspend the administrative act is a true guarantee against the abuse of the administrative authority, the authority acts of which are enforceable *(JCC no. 31 of 01.10.2013, §66).*

At the same time, the Court held that, in order to avoid abuse by the applicant, the civil procedural law give judges the opportunity to appreciate the extent and the real, irreversible nature of the damage, which is invoked by the applicant *(JCC no. 31 of 01.10.2013, §70).*

In this context, the Court noted that the insuring measures applied in each case reviewed by the court separately, refer to the substance of the object of the lawsuit. The court will order the provisional measure that maintains the status quo pending the examination of the case in circumstances where there is a plausible risk of an irreparable damage *(JCC no. 31 of 01.10.2013, §72).*

The Court held that by the provisions of art. 21 para. (3) of the Law on Administrative Litigation, the Parliament applied a differentiated treatment of acts issued by the National Bank in relation to the acts issued by other public authorities, except those related to withdrawal of licenses and liquidation of the bank, which cannot be a reversible

[23] Judgment of the Constitutional Court no. 31 of 01.10.2013 on the control of constitutionality of some provisions of article 11 para. (4) of the Law no.548-XIII of July 21, 1995 on the National Bank of Moldova and articles 21 para. (3) and 23 para. (3) of the Law on Administrative Litigation

process following the loss of confidence by depositors, with the primary aim of protection of creditors' rights and ensuring proper administration of the bank subject to liquidation. Moreover, the Court noted that withdrawal of license is also a measure prior to initiation of the liquidation process, and according to Law on financial institutions, in examination of the dispute on withdrawal f license, the court can only acknowledge the fact that the actions of the National Bank towards the bank are illegal, while the withdrawal of license remains in force. In such case, the National Bank shall repair the material damage caused to the bank *(JCC no. 31 of 01.10.2013, §74).*

The Court also noted that, unlike the withdrawal of licenses and liquidation of banks, not all acts of the National Bank, according to the challenged provisions, result in an irreversible process. Moreover, in the light of the above over, the suspension of their enforcement is not a rule imposed by the court, but comes as an exceptional measure, after individual examination of each case submitted to the court for settlement *(JCC no. 31 of 01.10.2013, §75).*

The Court held that the court should act expeditiously when the act is suspended, taking into account the need to protect the interests of depositors, to keep the secrecy of deposits and to not admit excessive risks in the financial system *(JCC no. 31 of 01.10.2013, §76).*

The Court held that, since according to Article 114 of the Constitution, justice is carried out in the name of law only by the courts of law, the latter shall have the fullness of procedural powers for a fair settlement of the case, without establishing some unjustified limitations of the actions, which are to be taken for the achievement of the final purpose of the judgment that does not become just an illusory one *(JCC no. 31 of 01.10.2013, §77).*

[...] The Court found that some provisions derogating from those subject to constitutionality control are an unjustified restriction imposed by the legislature in terms of independence of courts and limiting the privilege granted to the applicant to ask the court to suspend the administrative act as an insuring measure until the judgment is delivered, makes it impossible to defend the individual against unfounded abuse of constitutional rights and freedoms and does not create additional safeguards to ensure the legality, contrary to Articles 6, 20 para. (1) and 114 of the Constitution *(JCC no. 31 of 01.10.2013, §78).*

2.4 Right to Freedom of Opinion and Expression

The Court noted that, regarding the social and political groups, such as political parties or social organizations, the freedom of expression stated by article 32 of the Constitution prevails over the right to associate in political parties, guaranteed by article 41 of the Constitution. Or, people associate in political parties in order to freely exercise their right to expression of opinions and political options. hence, restriction of the freedom of expression of the members of a political party also results in restriction of their right to association *(JCC no. 12 of 04.06.2013*[24]*, §90).*

The Constitution, by art.32, guarantees all citizens the right to free expression in public by words, image or other possible means. From this constitutional guarantee, in particular the phrase "by [...] image or any other possible means", it can be concluded that individuals and political parties in which they associate can freely express themselves, including by political symbols adopted by them *(JCC no. 12 of 04.06.2013, §91).*

The freedom of expression is a basic right in the constitutional system of Moldova. At the same time, it is a right that can substantially affect the rights of other people *(JCC no. 12 of 04.06.2013, §92).*

The Court held that the freedom of expression is not an absolute right, it may be subject to general restrictions admitted for most rights through the perspective of common restrictions regulated by art. 54 of the Constitution. Thus, the restrictions that might be imposed by the state shall be provided by law, pursue a legal purpose and shall not affect the existence of the freedom of expression. These measures can be applied by the state only if they are necessary in a democratic society and if proportional to the situation that caused them *(JCC no. 12 of 04.06.2013, §93).*

Article 32 para. (3) of the Constitution of the Republic of Moldova, reflecting Article 10 § 3 of the Convention [European Convention for the Protection of Human Rights and Fundamental Freedoms], lists the events in exercise of the right to freedom of opinion and expression, which are prohibited by law and sanctioned ("denying and slandering the state and the nation, any instigation to war of aggression, national, racial or re-

[24] Judgment of the Constitutional Court no. 12 of 04.06.2013 on the control of constitutionality of some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies.

ligious hatred, incitement to discrimination, territorial separatism, public violence and other actions threatening the constitutional order"). This provision requires legislative regulation in order to identify cases where the constitutional limitation can be applied when there is a real danger. The required or possible limits specified in art.32 expressly exclude the possibility to restrict the freedom of expression when the exercise thereof does not endanger the interests and values protected by the Constitution *(JCC no. 12 of 04.06.2013, §123).*

2.5 Freedom of Parties and Other Socio-Political Organizations

The Court found that liquidation of a party can take place in exceptional cases only. In this respect the Venice Commission Guidelines on prohibition and dissolution of political parties and analogous measures of 1999 underline: "The prohibition or dissolution of political parties, as a comprehensive measure, should be applied with maximum precaution". According to the Guidelines, a termination of existence of a party is justified only "where parties advocate for violence or use of violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the Constitution." *(JCC no. 12 of 04.06.2013, §117).*

Similarly, OSCE/BIDDO and the Venice Commission in the Guidelines on regulation of a political party mentioned: „[…] the possibility of dissolution of prohibition of formation of a political party should be applied with precaution and only in extreme cases. The Political parties should never be dissolved for minor violation of administrative or operational conduct. [...] Similarly, a political party should not be prohibited or dissolved only because its ideas are not favorable, popular or are offending. If the party concerned does not apply violence or threaten the civic peace and democratic constitutional order of the country, neither its prohibition nor dissolution is justified." *(JCC no. 12 of 04.06.2013, §118).*

The Court found that in Moldova, because of the use of the hammer and sickle symbol by the Party of Communists of Moldova since 1994, the link between the symbol and the totalitarian communist ideology promoted by the Communist Party of MSSR or CPSU (Communist Party of the Soviet Union) should be regarded as a remote one. In these circumstances, the Court notes that the hammer and sickle display cannot be

seen today in Moldova as exclusively representing support for the past totalitarian communist leadership of the CPSU *(JCC no. 12 of 04.06.2013, §121).*

The Court noted that after the fall of communism more than 20 years ago, invoking a future danger linked to the atrocities of the past totalitarian regime, as a preventive measure to protect democracy cannot be seen as a "pressing social need." *(JCC no. 12 of 04.06.2013, §122).*

Even if a pressing social need is admitted, the Court notes that it does not justify the imposition of an absolute prohibition, to which the automatic sanction of termination of the party is added: in any case, there must be a relationship of proportionality. The fact of pursue by a party of an unconstitutional goal that would result in termination of the activity of a political party should be established in each case individually by a decision taken by a judicial body in a procedure that provides guarantees of due process, of openness and fair trial, while automation is unacceptable. This opinion is also exposed in the Memorandum of the Venice Commission submitted in this case *(JCC no. 12 of 04.06.2013, §125).*

2.6 Right to Education

2.6.1. Age Limit for Admission to Masters and PhD Studies

The Court held that the right to education (education, training) is one of the fundamental human rights, also enshrined in the Supreme Law *(JCC no. 26 of 19.09.2013[25], §41).*

The Court also held that, by its contents and the large number of subjects involved in its achievement, the right to education is a complex right. The right to access to education institutions is one of the multitude of components of this right *(JCC no. 26 of 19.09.2013, §45).*

The Court noted that both the national and the international framework provided for equal access to higher education *(JCC no. 26 of 19.09.2013, §50).*

The Court also noted that, according to the judgments of the European Court, the right to education, enshrined in art. 2 of the Additional Protocol to the European Conven-

[25] Judgment of the Constitutional Court no. 26 of 09.19.2013 on the control of constitutionality of some provisions on the age limit for admission to master and PhD studies.

tion, was not limited to education of children and young people, as a social right, it could be conceived in the interest of other members of the society too *(JCC no. 26 of 19.09.2013, §51).*

In light of international regulations, the states have the negative obligation not to prevent a person from benefitting of the education system and a positive obligation to ensure equal access to education forms existing at a point in time, under the conditions regulated by them, according to the socio-economic needs and the development prospects of the state *(JCC no. 26 of 19.09.2013, §52).*

The Court noted that the legal provisions did not [...] set an age limit for admission to master's and PhD studies. At the same time, Government Decision no,. 173 of February 18, 2008 and Government Decision no. 962 of August 5, 2003 sets the age limit of 35 years for admission to PhD studies and 45 years for Master's studies in the Public Administration Academy *(JCC no. 26 of 19.09.2013, §55).*

In the light of the constitutional provisions, the Court recalled that the principle of equality implies equal rights and freedoms for all citizens, irrespective of the acts in which these rights and freedoms are stipulated: in the Constitution, organic laws, ordinary laws or other regulations *(JCC no. 26 of 19.09.2013, §57).*

The Court held that a distinction is discriminatory if it is not based on an objective and reasonable rationale, i.e., if it does not pursue a legitimate gal or there is no reasonable relation of proportionality between the means used and the purpose pursued *(JCC no. 26 of 19.09.2013, §59).*

Also, the Law no. 121 25, 2012 on ensuring equality provides in art. 9 that the education institutions ensure respecting the principle of non-discrimination by providing access to education institutions of any type and level *(JCC no. 26 of 19.09.2013, §60).*

At the same time, the Court underlined that the exercise of the right to education, as a relative right, can be subject to some limitations. The conditions that must be met in this case imply that the limitation should be defined by law, pursue a legitimate purpose and should be required in a democratic society for achieving a goal *(JCC no. 26 of 19.09.2013, §61).*

The Court noted that the states' margin of appreciation and its right of intervention in the education process is larger than in other areas and can be applied through various regulation instruments. The state can impose conditions for the right to education

by reducing the number of available places in case of optional education, by testing the skills that allow enrolment in a form of education etc., but these measures should be proportionate to the pursued goal *(JCC no. 26 of 19.09.2013, §68).*

In that case, the Court held that the State may establish certain conditions in the exercise of this right in order to further capitalize the intellectual potential of the official delegated by the public authority to increase professional qualifications or education is an investment in the future of the individual, which must produce measurable and tangible results, but these conditions should be in line with constitutional principles *(JCC no. 26 of 19.09.2013, §73).*

The Court held that, based on the constitutional provisions, the right of access to education institutions must provide equal opportunities to any person to access the different types or levels of education based on merit and any limitations must be proportionate to the aim pursued *(JCC no. 26 of 19.09.2013, §79).*

In conclusion, the Court notes that the provisions of section 16 of the Regulation for organization and carrying out of the PhD and post-PhD studies and section 4 of Government Resolution on the functioning of the Academy of Public Administration under the Presidency of the Republic of Moldova impose undue restriction of the right to education, contrary to Article 35 combined with Article 16 and 54 of the Constitution *(JCC no. 26 of 19.09.2013, §80).*

2.6.2. State and Private Higher Education Institutions

[...] Depending on the realities of the stage of development of society, the authorities have the right to engage in the educational process to ensure quality of the training of specialists. This power of the state is provided by article 35para. (5) of the Constitution, according to which the education institutions, including the private ones, are established and carry out their activities under the law. *(DCC no. 7 of 04.07.2013[26], §39).*

[26] Decision of the Constitutional Court no. 7 of 04.07.2013 on the termination of the control of constitutionality of some provisions of para.(3) Art 2 of the Law No. 1070-XIV of 22 July 2000 "On the approval of the List of specialties for the training of the staff for higher an secondary vocational education" and para.(2) Art. 3 of the Law No. 142-XVI of 7 July 2005 "On the approval of the List of the fields of professional training and of specialties for the training of the staff within higher education institution, cycle I".

The State has the right and the obligation to establish the means, the content and the standards required in order to ensure the optimal exercise of the right to education. Thus, regulation of the organizational and legal framework of the state and private higher education institutions and establishment of a special regime for their activity, as well as setting of restrictions is a prerogative of the legislator. *(DCC no. 7 of 04.07.2013, §41).*

In light of the exclusive competence of the legislature to regulate the establishment and conditions of work of state and non-state education institutions, the establishment by law of distinctions in their work cannot be the object of interpretation under the constitutional jurisdiction, or, this is a legislative option exercised in accordance with constitutional powers. *(DCC no. 16 of 07.11.2013[27], §28).*

[...] The Court held that the imposition by law of the Government's obligation to train health and pharmaceutical professionals exclusively in state education facilities is an option of the legislature, due to certain socio-economic realities. Therefore, depending on socio-economic factors, the legislature may consider appropriate to grant the right to train professional in different areas to private higher education institutions too. *(DCC no. 7 of 04.07.2013, §42).*

2.7 Right to Work and Labor Protection

2.7.1. Age Limit for Teaching Staff

The Court held that the freedom of work cannot be absolute and unlimited. The labor law establishes certain conditions for employment, as well as the situations when the employment shall cease *(JCC no.5 of 23.04.2013[28], §53).*

Establishing of some criteria for the exercise of some activities cannot be regarded a priori as a violation of the constitutional right to work or as a discrimination reported to the exercise of other activities. Such limitation may be necessary when it is determined by the specificity of a profession which, because of increased demands for the physi-

[27] Decision of the Constitutional Court no. 16 of 07.11.2013 on the denial of the complaint no. 37b/2013 on the interpretation of Art. 35 and 54 of the Constitution of the Republic of Moldova.

[28] Judgment of the Constitutional Court no.5 of 23.04.2013 on the control of constitutionality of article 301 para.cl (1) let. c) of the Labor Code of Moldova no. 154-XV of March 28, 2003, as amended by the Law no. 91 of April 26, 2012 to amend and complete some legal acts.

cal and mental qualities of the person, cannot be exercised by the elderly, or when they serve as a means of optimizing the use of labor in certain sectors of activity *(JCC no.5 of 23.04.2013, §58).*

[...] In terms of the existence of strict criteria necessary for the exercise of certain professions, the Court found that the legislature's decisions had been based on the fact that teaching was a complex intellectual activity, special by its particularities.*(JCC no.5 of 23.04.2013, §60).*

To exercise this activity, teachers must maintain their professional and personal qualities, intellectual skills and abilities to exercise the functional tasks at the highest level, the ability to communicate and to be dynamic, to meet the increased demands caused the changes occurring in the education system *(JCC no.5 of 23.04.2013, §61).*

The Court noted that the states' margin of appreciation in the regulation of the education area and the education process is larger than in other areas and can be applied through various tools, starting with the importance of this area for the development of the society *(JCC no.5 of 23.04.2013, §62).*

The Court held that [...] the legislature had limited the right to exercise the teaching profession due to the set old age pension. This limitation is justified by the specific nature of the field in which it is applied, as education is an area of public interest, governed by rules that ensure the smooth running of the training process *(JCC no.5 of 23.04.2013, §63).*

The Court held that the rule subject to constitutionality control is not a violation of the right to work, since the conditions for the exercise of this right are regulated by law *(JCC no.5 of 23.04.2013, §64).*

At the same time, the Court noted that in order to ensure the right to work of old age pensioners, the legislator had regulated in the Labor Code the conditions for the signing of the individual work contract of limited duration with this category of persons *(JCC no.5 of 23.04.2013, §65).*

The Court noted that the additional ground for the termination of the individual work contract with the teaching staff, stipulated by art. 301 para. (1) let. c) was a legal condition for the exercise of a profession, equally applicable to all people in identical situations, respectively to those falling in within the assumption provided by the legal rule.

Such a measure is not likely to violate the equality principle provided for by art. 16 of the Constitution *(JCC no.5 of 23.04.2013, §70).*

The Court also reiterated that the right to work, the choice of profession, trade or occupation, as well as the choice of the workplace concerns the possibility of any person to practice the desired profession in certain conditions set by the legislature, and does not target the state's obligation to ensure the access of all people to all professions. In other words, the choice of a profession is free as long as the conditions required for its exercise are met *(JCC no.5 of 23.04.2013, §76).*

The Court noted that the legal instruments of the European community assigned the state the right to set an age limit for carrying out some activities *(JCC no.5 of 23.04.2013, §81).*

The Court held that a differential treatment based on the age criterion was permissible when given the nature of a professional activity or the conditions for the exercise thereof, this criterion is an essential and determined professional requirement. A differentiated treatment on the grounds of age can be admitted and justified by a legitimate objective, in particular by the employment, labor market or professional training policy *(JCC no.5 of 23.04.2013, §83).*

2.8 Right to Private Property and Its Protection

2.8.1 Suspension and withdrawal of notary license

[...] The Court held that the right implied by holding the notary license to build own clientele in exercising the powers stipulated by law may be assimilated with the property right enshrined in Article 46 of the Constitution and Article 1 of Protocol No. 1 to the European Convention *(JCC no.15 of 20.06.2013[29], §54).*

The Court held that, despite the fact that according to the law, notary activity is not a business activity, holding the license gives rise to a "legitimate and reasonable expectation" about its enduring character and the possibility of obtaining the benefits arising of the exercise of activity that is its continuous object *(JCC no. 15 of 20.06.2013, §55).*

[29] Judgment of the Constitutional Court no. 15 of 20.06.2013 on the control of constitutionality of some provisions of the Law no. 1453-XIV of 8 November 2002 on notary.

According to the Court, license suspension is a measure regulating the use of property that falls within the scope of para.1 of art. 1 Protocol no. 1 to the Convention [...] *(JCC no. 15 of 20.06.2013, §57).*

In this context, according to interpretations operated by the European Court, to be consistent with the general rule stated in the first sentence of the first paragraph of Article 1 of Protocol No.1 to the European Convention, in the light of which the second paragraph should be interpreted, such interference must maintain a "fair balance" between the general interest of the community and the requirements related to the protection of the fundamental rights of the individual (see *Sporrong and Lönnroth vs. Sweden, Judgment of 23 September 1982, Series A No.52 pag. 26 paragraph 69).* Moreover, the question of maintaining a fair balance "becomes relevant only if it is established that the interference in question meets the requirement of lawfulness and was not arbitrary " (see *Iatridis vs Greece* , application no.31107/96, §58, ECHR 1999-II, and *Beyeler vs. Italy [MC,* application no.33202/96, §107, ECHR 2000-I) *(JCC no. 15 of 20.06.2013, §58).*

Therefore, the Court held that, according to the case law of the European Court, such interference is not a violation if it is prescribed by law, pursues a legitimate aim and is necessary in a democratic society to achieve this goal *(JCC no. 15 of 20.06.2013, §59)*

Thus, the Court notes that all grounds for suspension and termination of notary activity are stated in the Law on Notary (Articles 15, 16, 24), thus interference having a legal basis *(JCC no. 15 of 20.06.2013, §62).*

The grounds for suspension of notary activity, provided for under Article 15, para. (1) that can be reported in para. (3) are the following: incompatibility under Article 21 para. (1); non-payment of financial obligations related to his/her professional activity, established by the final court judgment, after 6 months of their maturity - until the debts have been paid; commitment, upon performing notary acts, of violations detected as a result of controls; repeated, unmotivated refusal to allow members of the Audit commission, approved by the Ministry of Justice, access to the notary office for checks and/or repeated, unmotivated refusal to submit documents requested by them; lack of liability insurance contract before conclusion of the contract; breach of obligations under the code of ethics of notaries *(JCC no. 15 of 20.06.2013, §68).*

The Court notes that these grounds reveal certain situations related to the incapacity of the notary to conduct his/her activity for a particular period of time. Similarly, they reflect aspects of organization of the notary work *(JCC no. 15 of 20.06.2013, §69).*

At the same time, art. 16 exhaustively specifies the grounds for termination of notary's work in the case of: a) application; b) failure to meet the conditions laid down in Article 9 [Article 9 provides that a notary can be the person who is a citizen of the Republic of Moldova residing in its territory; has full legal capacity; has a degree in law; had made 1 year internship with a notary and has passed the contest for filling vacancies announced by the Ministry of Justice; knows the Moldovan language, does not have criminal record; has an excellent reputation]; c) death; d) conviction by a court in a final judgment for intentionally committing a crime; e) declaration as disappeared or declaration as dead; f) withdrawal of the license; g) reaching the age of 65 years *(JCC no. 15 of 20.06.2013, §71).*

The Court noted that the rules subject to constitutionality control in relation to other legal provisions underline unequivocally the notary's conduct benchmarks, depending on which the activity of the notary can be suspended or terminated *(JCC no. 15 of 20.06.2013, §73).*

With regard to the legitimate aim pursued by the interference, the Court accepted the Government's argument that the restrictions imposed by the suspension and termination of the notary's activity pursue a goal that serves the public interest, namely, to prevent the commission of further violations by the notary *(JCC no. 15 of 20.06.2013, §76).*

Thus, the Court noted that the legislature, by law, has awarded a judicial and public status to notaries, which requires a broader scope of intervention of the state in exercising effective control over their work. This can also be derived from the provisions of art. (3) of the law cited above, according to which: "Based on the public character of the notary, the Ministry of Justice shall, in accordance with legislation, regulate and organize the notary's activity."*(JCC no. 15 of 20.06.2013, §79).*

The Court noted that under Article 16 of the Law, the notary's activity may be terminated only upon occurrence of certain circumstances [...] circumstances which are only found in principle by the order of the Minister of Justice and do not imply an appreciation by review on the merits. Moreover, given the role of the Ministry of Justice

to regulate and supervise the activities of notaries, cessation of the notary's activity by order of the Minister of Justice is also justified in the context in which the appointment is made in the same way *(JCC no. 15 of 20.06.2013, §82).*

At the same time, the Court noted that both the circumstances provided for by art. 15 para.(3) as well as those referred to in art.24 para. (2) the suspension and termination of the notary's activity is ordered by the Minister of Justice based on the decision of the disciplinary college, which is a professional body, which must ensure a thorough examination of cases derived by excluding arbitrary actions *(JCC no. 15 of 20.06.2013, §83).*

So, given the construction of legal rules, the Court notes that in the context of the challenged rules, in taking decisions on application of disciplinary sanctions to notaries, the primacy belongs to the Disciplinary Board *(JCC no. 15 of 20.06.2013, §84).*

In order to ensure fair conduct of disciplinary proceedings, the Court noted that the legislator stated in the law that, when examining disciplinary offense, the participation of the notary subject to disciplinary liability is mandatory. If the notary is unduly absent, the Disciplinary Board may decide to examine the disciplinary offense in his/her absence *(JCC no. 15 of 20.06.2013, §86).*

Thus, the Court held that the collegial professional body and not the Minister of Justice is the one that assesses individual violations committed by notaries in the exercise of their duties. At the same time, the Court noted that the suspension and revocation of the notary's license is the most drastic sanction and therefore the Disciplinary Board shall evaluate the degree of proportionality between the seriousness of the misconduct and the disciplinary sanction to be applied so as to exclude undue penalization of the notary *(JCC no. 15 of 20.06.2013, §87).*

The Court noted that, according to the law on notary services, the order on application of disciplinary sanction can be challenged in court *(JCC no. 15 of 20.06.2013, §89).*

The Court[...] revealed that, if there is a disagreement with the document issued by the minister of justice, it can be subject to judicial control, involving establishment of all procedural guarantees for the judiciary (ensuring the principle of contradictionality, equality, availability in the rights) and the effective judicial remedies against the challenged administrative act. In light of these guarantees, the Court noted that, under the Code of Civil Procedure and the Law on Administrative Litigation, the notary is entitled

to ask the court to impose the protective measure in the form of suspension of the challenged act *(JCC no. 15 of 20.06.2013, §91).*

[...] In spite of the scope of discretion enjoyed by the State in regulating the notary's activity, since the suspension and revocation of notary's license is entrusted to the Disciplinary Board, mandated by law, which decides in a procedure that ensures compliance with procedural safeguards, while the act of the Minister of Justice only follows the intervention of the professional body and is liable to challenging in court, the manner of exposing the challenged provisions leave no room for the abusive application and is not contrary to Article 46 taken together with Article 54 of the Constitution *(JCC no. 15 of 20.06.2013, §93).*

2.9 Right to Petition

2.9.1 Review of Anonymous Petitions

The Court notes that article 52 of the Constitution guarantees the right of the citizen to turn to public authorities through petitions, formulated on behalf of the signatory. The same right is also enjoyed by the legally established organizations, which can file petitions only on behalf of the groups they represent *(JCC no. 25 of 17.09.2013[30], §32).*

The provision on mandatory signing of petitions is enhanced by para.(2) of art.10 of the Law no. 190/1994, according to which petitions that do not meet the conditions listed in para. (1) shall be considered anonymous and shall not be reviewed *(JCC no. 25 of 17.09.2013, §36).*

At the same time, by exception from the established rule, paragraph (2) of art. 10 states that anonymous petitions containing information relating to national security or public order shall be submitted to the competent bodies for examination *(JCC no. 25 of 17.09.2013, §37).*

Analyzing the challenged rules based on the provisions of Article 52 para. (1) of the Constitution, the Court held that the Constitutional provision gives citizens the right to

[30] Judgment of the Constitutional Court no. 25 of 17.09.2013 on the control of constitutionality of some provisions concerning the review of anonymous petitions

enter into direct relationship with the state authorities at own initiative and the possibility to defend their violated rights *(JCC no. 25 of 17.09.2013, §39).*

The Court held that the wording of Article 52 of the Constitution states clearly that any petition shall be signed, and petitioners must be identifiable *(JCC no. 25 of 17.09.2013, §41).*

After the textual analysis of the provision of Article 52 para. (1) of the Constitution in conjunction with other constitutional provisions giving the Parliament the task of regulation of certain rights and freedoms (e.g. articles 17, 25, 45, 48, 50 etc.), the Court noted that the use of the adverb "only" indicates a restriction and excludes the possibility of examination of anonymous petitions.*(JCC no. 25 of 17.09.2013, §42).*

In respect of the protection of national security and public order raised by the authorities to justify the imposition of exception for examination of anonymous petitions, the Court held that under the provisions of criminal procedure, the manner in which the prosecution is required to repair a right violated by the offense or is informed of an offense consists of addressing a complaint and of the denunciation respectively *(JCC no. 25 of 17.09.2013, §44).*

Thus, art. 263 of the Criminal Procedure Code states that both complaints and denunciations shall include: full name, the capacity and the address of the petitioner, the description of the offense which is the subject of the complaint or denunciation, indicating the perpetrator, if known, and relevant evidence *(JCC no. 25 of 17.09.2013, §45).*

Therefore, the Court found that the legislature had provided for mandatory signing of the appeals in the criminal procedure too *(JCC no. 25 of 17.09.2013, §46).*

At the same time, in order to protect the rule of law, art. 263 para. (8) of the Code of Criminal Procedure provides that the prosecuting authorities may take action aimed to begin the prosecution, based on information obtained including from anonymous complaints and denunciations, which however cannot be regarded as examination of anonymous petitions (complaints and denunciations) *(JCC no. 25 of 17.09.2013, §48).*

The Court noted that by establishing by law the obligation of competent authorities to examine the anonymous complaints if they contain information relating to national security or public order, the legislator had exceeded the constitutional framework and thus altered in fact the contents of the constitutional provision without a review of the

Constitution. Or, the wording of Article 52 of the Constitution does not give the Parliament a discretion which would allow it to establish exceptions from the rule concerning the signing of petitions *(JCC no. 25 of 17.09.2013, §50).*

In light of the above, the Court held that the constitutional text does not establish nor legally protects the right to anonymous petitions and thus the legal provisions subject to constitutionality control are a violation of Article 52 of the Constitution *(JCC no. 25 of 17.09.2013, §51).*

3 PUBLIC AUTHORITIES

3.1 Organization and Functioning of the Parliament

The Court held that under Article 2 of the Constitution, national sovereignty belongs to the people of Moldova who exercise it directly and through its representative bodies in the forms set by the law. Thus, according to Article 60 of the Constitution, the Parliament is the supreme representative body of the people of Moldova *(JCC no. 30 of 01.10.2013[31]).*

As an expression of national sovereignty, the will of the people - the sole holder of political power, the Parliament has an important role in the state system. Therefore, its competences should reflect the need to create conditions for expressing the will of the people who elected it and that it represents directly and immediately *(JCC no. 30 of 01.10.2013).*

3.1.1. Parliament's Autonomy

The Court held that, after examining the Parliament's regulatory autonomy enshrined in art. 64 para. (1) of the Constitution in conjunction with other provisions, it cannot be interpreted as absolute, since the supremacy of the Constitution is a general principle, the compliance with which is mandatory, including for the legislative authority, which cannot adopt legislative and parliamentary acts nor approve procedural rules con-

[31] Judgment of the Constitutional Court no. 30 of 10.01.2013 on interpretation of art. 85 para. (1) and para. (2) of the Constitution,

trary to the provisions and principles of the Constitution. The Parliament's autonomy does not legitimate the establishment of other rules that violate the text and the spirit of the Supreme Law. Thus, the regulation contained in the Rules of the Parliament must be in line with the constitutional provisions *(JCC no. 9 of 21.05.2013[32], §54).*

At the same time, on matters and issues related to its internal organization and operation not covered by the Constitution, the Parliament had the freedom to decide autonomously, autonomy which is exercised by the will of the majority of members manifested by voting *(JCC no. 9 of 21.05.2013, §55).*

3.1.2 Interim Position of Speaker of the Parliament

The Court held that the adoption by the Parliament of rules which set the interim office of the Speaker of the Parliament itself is not contrary to constitutional norms *(JCC no. 9 of 21.05.2013, §68).*

The Court noted that the status of the Interim Speaker of the Parliament is different from the one of the ordinary Speaker. The interim speaker of the Parliament has a provisional status, the establishing of the interim office aiming to ensure the continuity of exercise of the tasks of the Parliament. The person holding the interim office of the Speaker of the Parliament does not undergo the appointment procedures inherent to the titular Speaker of the Parliament (secret ballot) and does not benefit from guarantees in office (revocation by secret vote of two thirds of the MPs). Thus, the constitutional provisions referred to exclude equal status of the office of the Speaker of the Parliament with the corresponding interim office, which ensures the continuity of the performance of duties of the Parliament, but does not imply the start of a full term as Speaker of the Parliament *(JCC no. 9 of 21.05.2013, §71).*

In this context, the person acting as the Speaker of the Parliament can only take the functional responsibilities of the ordinary holder of the office referring to the organiza-

[32] Judgment of the Constitutional Court no.9 of 21.05.2013 on the control of constitutionality of article 3 of the Parliament's Decision no. 96 of April 25, 2013 for revocation of the Speaker of the Parliament and the Law no. 101 of April 26, 2013 to complete article 14 of the Rules of the Parliament, adopted by the Law no. 797-XIII of April 2, 1996

tion of the Parliament's activity, provided for by the Rules of the Parliament, including signing of laws passed, convening and conducting meetings of the Parliament etc *(JCC no. 9 of 21.05.2013, §72).*

The exclusive competences of the Speaker of the Parliament established by the Constitution are *intuitu personae* and can be neither delegated nor assumed and exercised by the person holding the interim office. Subsequently, the person holding the interim office of the Speaker of the Parliament cannot call for the election of the Deputy-Speakers of the Parliament (Art. 64 para. (3) of the Constitution), cannot be devolved the interim office of the President of the Republic of Moldova (Art. 91 of the Constitution), cannot submit the proposal on the appointment or the removal of the General Prosecutor (Art. 125 of the Constitution) and cannot submit the proposal on the appointment or the removal of the President of the Court of Accounts (Art. 133 of the Constitution) *(JCC no. 9 of 21.05.2013, §73).*

The Court reiterated that the provisions and the spirit of the Constitution seek to assure the perpetuance in exercising the power by state institutions, established in line with the provisions of the Constitution. And provisional situations, as the interim office, aimed at avoiding instituting a power vacuum and at assuring the organization of mechanisms on forming functional plenipotentiary institutions, shall be eliminated the soonest *(JCC no. 9 of 21.05.2013, §77).*

Having regard to the broadening of granted competences, as well as in corroboration with the lack of imperative provisions on temporal limits, the Court reiterated the inadmissibility of permanentisation of interim situations, including the office of the Speaker of the Parliament *(JCC no. 9 of 21.05.2013, §78).*

In the same context, the Court noted that regardless of the circumstances determining the removal from office of the Speaker of the Parliament, MPs have the imperative obligation to subordinate themselves to the Constitution and, aiming at assuring the full functionality of state institutions, to carry out with no delay elections for the office of the titular Speaker of the Parliament, in line with the provisions of Article 64 para. (2) of the Constitution *(JCC no. 9 of 21.05.2013, §79).*

The Court held that, although on the date of Speaker's removal (25 April 2013), Parliament's Regulations did not contain provisions on Deputy-Speaker's possibility to per-

form Speaker's duties in the case of office vacancy, including the duty to sign the adopted laws, by the virtue of regulatory autonomy of the Parliament and related to the analogy of the law, the Deputy-Speaker of the Parliament was able to exercise this competence, vested in this regard with powers by the deputies majority vote, even there was lacking a clear legal provision in Parliament's Regulations *(JCC no. 9 of 21.05.2013, §92).*

3.1.3 Dissolution of the Parliament

3.1.3.1 Grounds for Dissolution of the Parliament

Article 85 of the Constitution states expressly and exhaustively the cases and the grounds on which the Parliament may be dissolved before the expiry of its term, namely the incapacity to form the Government or the blocking of the procedure of adoption of laws for 3 months. In the circumstances described above the Parliament is dissolved by the President of Moldova after consulting the parliamentary factions *(JCC no. 30 of 01.10.2013*[33]*).*

The Court held that the applicable constitutional sanction of the Parliament - dissolution is permitted according to the provisions of the Constitution, in situations where the supreme representative and legislative body cannot perform its functions and thus cannot express the opinion of voters. For these reasons, because of the dysfunction occurred, the dissolution of the Parliament and conducting of early elections give the voters the opportunity to constitutionally resolve the conflict between authorities *(JCC no. 30 of 01.10.2013).*

At the same time, the President's prerogative to dissolve the Parliament is a constitutional guarantee that allows the settlement of an institutional crisis (*JCC no. 30 of 01.10.2013).*

The Court reiterated that one of the grounds for dissolution of the Parliament stated in Article 85 of the Constitution is incapacity to form the Government (*JCC no. 30 of 01.10.2013).*

[33] Judgment of the Constitutional Court no. 30 of 10.01.2013 on interpretation of art. 85 para. (1) and para. (2) of the Constitution,

The Court noted that Article 85 includes several provisions on the incapacity to form the Government by the Parliament as reflected in both para. (1) and para. (2), provisions to be analyzed and interpreted cumulatively based on the will of the constituent legislator and in corroboration with other constitutional provisions relevant for the subject matter (*JCC no. 30 of 01.10.2013).*

The Court noted that the incapacity to form the Government should be interpreted as the situation occurring when the Parliament does not or cannot give a vote of confidence for Government's investment (*JCC no. 30 of 01.10.2013).*

The Court found that the legislative activity is essential to the activity of the executive power with full competence as otherwise the latter would be deprived of organization of enforcement of laws and the adopted legal framework would not have full legal effect. Also, those responsible for the act of governance may be lacking a Government Program (*JCC no. 30 of 01.10.2013).*

At the same time, the Court noted that the constitutional mechanism governed by Article 85 designed to prevent the triggering of a parliamentary crisis and a conflict between the legislative and executive powers would become ineffective without a certain period after which the Parliament will be dissolved *(JCC no. 30 of 01.10.2013).*

Based on the above rationale, the Court held that the three months term stipulated by para. (1) of Article 85 is the deadline for dissolution of the Parliament, common to both cases where a crisis or conflict occurs, namely the impossibility to form the Government or blocking of the laws adoption procedure (*JCC no. 30 of 01.10.2013).*

Thus, with reference to the formation of the Government, through the constitutional norms, the Court notes that this period begins to run from the date when the circumstances that led to the need to form a new Government occur *(JCC no. 30 of 01.10.2013).*

The Court held that the stipulation of the 3 months deadline for dissolution of the Parliament for blockage of the laws adoption procedure further justifies the need to apply that term if formation of the Government is not possible. Or, a government without a warrant, according to Article 103 para. (2) of the Constitution performs only the functions of administration of public affairs (*JCC no. 30 of 01.10.2013).*

At the same time, the Court held that in the absence of Parliament's confidence vote for the candidate for Prime Minister, the constitutional mechanism stipulated in Article

85 para. (2) of the Constitution intervenes, according to which: "The Parliament may be dissolved unless a vote of confidence to form a government had been accepted within 45 days of the first request and only after at least two requests for investiture." (*JCC no. 30 of 01.10.2013).*

The Court noted that under that rule, the President of the Republic of Moldova may dissolve the Parliament if it has not accepted the vote of confidence to form a Government only if two cumulative conditions are met, namely: 1) within 45 days after the first request, and 2) only after rejection of at least two requests for investiture (*JCC no. 30 of 01.10.2013).*

The Court noted that the 45 days period stated in Article 85 para. (2) is not distinct from the 3 months included in para. (1) thereof, the first being absorbed by the latter (*JCC no. 30 of 01.10.2013).*

Thus, the 3-month term is a general term for formation of the Government flowing irrespective of the initiation of proceedings for the formation of the new Government and/or the conducting of the proceedings described in paragraph (2) of Article 85 of the Constitution, includes the periods of consultation of parliamentary factions and other legal proceedings and is the deadline for forming the new Government (*JCC no. 30 of 01.10.2013).*

Also, the 45 days term is the period in which the President may dissolve the Parliament if at least one candidate has been rejected in addition to the first designated candidate (*JCC no. 30 of 01.10.2013).*

The Court held that the constitutional phrase *"at least two requests for investiture"* allows the President to nominate more than two candidates for Prime Minister, however, the terms for designation of candidates, and requests for the vote of confidence, regardless of their number cannot exceed the 3 months deadline stipulated by para. (1) of Article 85 of the Constitution *(JCC no. 30 of 01.10.2013).*

At the same time, the Court noted that given that the Constitution does not expressly state the period within which the President shall make the first appointment of the candidate for prime minister, within that general term of 3 months, the President shall take into account the constitutional deadline provided for the nominee for the Prime Minister to ask for the Parliament's vote of confidence (15 days - Article 98 para. (2) of the Constitution) (*JCC no. 30 of 01.10.2013).*

3.1.3.2 Obligation of the Head of state to dissolve the Parliament under the terms of Article 85 of the Constitution

The Court noted that in its entirety, Article 85 acts as a checks and balances mechanism, applied in order to avoid or overcome a parliamentary crisis or a conflict between the legislative and executive power (*JCC no. 30 of 01.10.2013).*

The Court noted that the President's discretionary right to dissolve or not to dissolve the Parliament if the vote of confidence for formation of the Government is not accepted occurs after the expiry of 45 days after the first request and rejection of at least two requests for investiture before the expiry of the three months deadline (*JCC no. 30 of 01.10.2013).*

If the Parliament fails to invest the Government within 3 months, the Head of State must dissolve the Parliament, as his/her discretionary right to dissolve the Parliament becomes a constitutional obligation imposed by the will of the constituent legislature. Or, from the content of cooperation and mutual control between the legislative and executive powers, the task of the head of state is to overcome the political crisis and the conflict triggered conflict between powers, and not to maintain the crisis for an indefinite term, as it is not in line with the general interests of citizens who hold national sovereignty (*JCC no. 30 of 01.10.2013).*

The Court reiterated that regardless of the circumstances that caused the absence of confidence vote, the failure to form a new government within three months inevitably leads to the dissolution of Parliament. An outgoing Government with an interim Prime Minister cannot be perpetual in time (*JCC no. 30 of 01.10.2013).*

The Court held that the provisions of Article 85 para. (1) and (2) of the Constitution seek to ensure the functionality of the constitutional bodies of the State, and the assigning of the right of the President to dissolve the Parliament helps prevent obstructing the activity of a state power (*JCC no. 30 of 01.10.2013).*

However, given the principle of unity of constitutional matter, the obligation of the President to dissolve the Parliament is required to be made in compliance with Article 85 para. (3) of the Constitution, according to which the Parliament may be dissolved only once in a year. Also, according to para. (4), the Parliament may not be dissolved in

the last six months of the term of the President of the Republic of Moldova, except as provided by art. 78 para. (5), nor during the state of emergency, martial law or war *(JCC no. 30 of 01.10.2013).*

3.1.3.3 Subjects with the right to submit complaint with the Constitutional Court on the circumstances justifying the dissolution of the Parliament

According to Article 135 of the Constitution, asserting the circumstances justifying the dissolution of the Parliament is an exclusive prerogative of the Constitutional Court *(JCC no. 30 of 01.10.2013).*

At the same time, in the context of Articles 78 and 85 of the Constitution, only the President of the Republic of Moldova has the right and at the same time, the obligation to dissolve the Parliament, if the relevant circumstances occur *(JCC no. 30 of 01.10.2013).*

The Court noted that the President based on the opinion of the Constitutional Court on confirmation of the circumstances justifying the dissolution of the Parliament, adopted on referral under Article 135 para. (1) letter f) of the Constitution, is required to issue a decree on the dissolution of the Parliament and set the date for early elections in the terms provided by Article 76 para.(3) of the Elections Code *(JCC no. 30 of 01.10.2013).*

Thus, since according to constitutional provisions the President of the Republic of Moldova is the only subject invested by the constituent legislature with the right to dissolve the Parliament, the apprehension of the Constitutional Court on appreciation of circumstances justifying the dissolution of the Parliament becomes an exclusive right thereof *(JCC no. 30 of 01.10.2013).*

3.1.4. Adoption of Decisions of the Parliament

The Court held that the adoption of a decision by the Parliament, where the Constitution or other special laws do not provide otherwise, requires the vote of the majority of MPs present at the meeting *(JCC no. 21 of 25.07.2013[34], §103).*

[34] Judgment of the Constitutional Court no.21 of 25.07.2013 on the control of constitutionality of the Decision of the Parliament no.314 of December 26, 2012 on dismissal of a judge of the Supreme Court of Justice.

The Court noted that the Rules of the Parliament do not provide for the presence of the Members of the Parliament during the hearing, but only their registration at the beginning of the meeting. In this context, the Court notes that the regulatory provisions do not include a mechanism for verifying the presence of Members of the Parliament at the meeting, which generates legal uncertainty [...] *(JCC no. 21 of 25.07.2013, §107).*

Thus, given the existing legal provisions, the Court held that since the procedure of inclusion in the lists is performed only at the beginning of the meeting, it is presumed that the number of Members of the Parliament present at the meeting to vote on a decision may vary over time, which is reflected on the number of qualified votes by the Parliament as expressing the majority *(JCC no. 21 of 25.07.2013, §108).*

3.1.5. Parliamentary Control

The supreme representative body of the people of Moldova and the sole legislative authority of the state is the Parliament (art. 60 of the Constitution) *(JCC no. 29 of 23.09.2013[35], §64).*

As a representative of the people, the Parliament is empowered to control and inform people about the manner of exercising the power of the people *(JCC no. 29 of 23.09.2013, §65).*

The parliamentary control is a pressing need which helps assess how policy option turns into a normative decision, which shall be applied immediately or gradually in social life *(JCC no. 29 of 23.09.2013, §66).*

As an expression of Parliament's function within the constitutional democracy, the parliamentary control is carried out by various means *(JCC no. 29 of 23.09.2013, §67).*

The goal of any parliamentary control is to check the documents and actions of the exponents of the executive power in terms of compliance with the law, respect for human rights and freedoms, as well as compliance with the general interest of the society (*JCC no. 29 of 23.09.2013, §68).*

[35] Judgment of the Constitutional Court no.29 of 23.09.2013 on the control of constitutionality of certain acts referring to the investigation committee in the case „Pădurea Domnească".

Court pointed out that Parliament does not have the right to set itself up to the court in the judgment on elements that are checked only during the judicial proceedings by an independent and impartial tribunal established by law, which will rule either on the violation of civil rights and obligations or on the merits of any criminal charge. Likewise, the politicians (MPs) must refrain from giving orders to the justice or creating impression that they can give orders to the justice, from criticizing the judges and disobeying the court judgments. They must protect the independence of justice and help enhance the public's confidence in justice. It is inadmissible for the politicians (MPS) to use justice as a stake in political conflicts *(JCC no. 29 of 23.09.2013, §86).*

The Court noted that any regulatory provision involving the possibility of summoning a judge, a prosecutor before a parliamentary commission of inquiry clearly violates the constitutional provisions which stipulate the separation of powers in the state, the independence of judges and prosecutors and their obedience only to the law (*JCC no. 29 of 23.09.2013, §91).*

The Court noted that it is a *discretionary right* of the exponents of the judiciary authority to submit statements to the investigating commission. In exceptional cases, they may attend as guests in parliamentary committees when clarification of some technical issues or of information of public interest which does not involve elucidation of procedural matters concerning the deployment of some pending cases is required (*JCC no. 29 of 23.09.2013, §92).*

Thus, according to their legal nature, the commissions of inquiry do not have a judicial nature, and in accordance with art 36 para. (4) of the Parliament's Regulation they cannot support the prosecution made under the law by prosecution bodies and courts, which excludes breach of Article 115 para (3) of the Constitution *(JCC no. 29 of 23.09.2013, §98).*

The Court found that based on the rules stipulated in art. 36 para. (1) - (2) of the Rules of the Parliament, it is inadmissible to cite persons suspected or accused in criminal cases and hear them in the commission of inquiry on the circumstances underlying criminal charge. Otherwise, there is the risk to affect the right to silence protected by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, and hence of the presumption of innocence provided by Article 21 of the Constitution (*JCC no. 29 of 23.09.2013, §117).*

The Court pointed out that in the context of *the above,* parliamentary committees of inquiry are designed to determine the existence or absence of facts, but without establishing (with certainty) the administrative, material, disciplinary or criminal liability of any person *(JCC no. 29 of 23.09.2013, §118).*

Thus, the parliamentary committees of inquiry do not have constitutional or statutory empowerment to decide on the guilt or innocence of a person, in their capacity as expression of parliamentary control. The conclusions of the commissions of inquiry cannot contain formulations from which the guilt of an individual in a criminal case might be deduced (*JCC no. 29 of 23.09.2013, §119).*

At the same time, the Court noted that any public statements (or made otherwise) that bring serious allegations to specific individuals, that are not substantiated in proceedings strictly regulated by law, are inadmissible (*JCC no. 29 of 23.09.2013, §121).*

3.2 Powers of the Government

3.2.1 Powers of the Resigned Government

According to constitutional procedures, the Government, as a representative of the executive power is the common work of the legislator, as the supreme representative authority, to which the people delegated highest value - sovereignty and power of the state (Article 2 of the Constitution) and of the Head of State, as guarantor of sovereignty (art.77 of the Constitution) *(JCC no. 7 of 05.18.2013,*[36]*§106).*

Thus, only with the mandate given by Parliament, the Government may exercise the powers of the executive power, which are ultimately reduced to the process of enforcement of the laws adopted by the same Parliament *(JCC no. 7 of 05.18.2013, §107).*

The Court certifies that the Government, as the central structure among executive authorities, is the work of the Parliament, its existence is based on three main components: government program, the procedure for investiture and the confidence expressed

[36] Judgment of the Constitutional Court No. 7 of 05.18.2013 on the control of constitutionality of some provisions of the Law No. 64-XII of 31 May 1990 on the Government, as amended by Laws no.107 and no.110 of May 3, 2013, and the Decrees of the President of the Republic of Moldova no. 635-VII and no. 635-VII of May 16, 2013 and the Government Decision no. 364 of May 16, 2013.

by the Parliament. In the absence of any of these components, legitimacy and weight of the governmental structure becomes uncertain *(JCC no. 7 of 05.18.2013, § 109).*

In this context, the Court held that an outgoing government continues to administer public affairs until a new, plenipotentiary government is formed. This means that the outgoing government exercises only a limited amount of power, it "administers", not "governs" *(JCC no. 7 of 18.05.2013, § 111).*

The administration of public affairs refers to the daily, current decisions of the Government, which are necessary for the uninterrupted functioning of the public service. This activity is reduced to avoiding the complete lack of executive power, which is an operational power and is vital for the vital needs of the society *(JCC no. 7 of 05.18.2013, § 112).*

In this regard, the administration of public affairs by a resigning government refers to three categories: (1) mundane, usual affairs, which allow the state to operate; (2) current affairs that were started when the Government was plenipotentiary and must be completed; (3) urgent affairs that must imperatively be addressed in order to avoid very serious dangers to the state and citizens, to economic and social life *(JCC no.7 of 18.05.2013, §113).*

The Government administering public affairs may not take major policy initiatives fortiori on issues that have caused problems before its dismissal or have ultimately caused this dismissal. In particular, decisions that could subsequently sustainably employ the policy line of the future Government policy line are excluded. In this context of ideas and in line with the practice of other countries in similar situations, for example, a resigning government can prepare the draft annual budget, but it can be submitted to the Parliament for adoption only by a plenipotentiary Government, which will have the responsibility for enforcing it. This is one of the pillars of constitutional law. The major problem is that the fundamental prerogative of a plenipotentiary Government is development of the budget *(JCC no. 7 of 18.05.2013, § 114).*

Granting excessive powers to a resigning government implies an obvious danger to the exercise of democracy *(JCC no. 7 of 18.05.2013, § 118).*

Reducing the powers of the resigning government in the administration of public affairs, that it can use freely in order to ensure continuity of public services, is at the same

time, a limit imposed to it - diminutio capitis, violation of which may lead to a judicial sanction.

This limitation of the powers of a resigning Government is a general principle of law *(JCC no. 7 of 18.05.2013, §119).*

For the same reasons, the scope of discretion of the resigning Government is limited in the appointment of officials, initiation of new reforms and other important actions that remain suspended when the Government is deprived of the full mandate. In this context, the spirit of the Constitution obliges political actors to conduct their activities in a way that ensures the reduction of the interim period to a minimum *(JCC no. 7 of 18.05.2013, § 120).*

3.2.2 Status of Interim Prime Minister

The Court found that the ad interim Prime Minister has a provisional status, established (1) "before new Government is formed" (final impossibility) or (2) until "the Prime Minister resumes the activity in the Government" (temporary impossibility) [art.101 of the Constitution], his/her basic position being as (deputy prime) minister or another member of the Government. To hold office as Prime Minister he/she does not have the Parliament's mandate. In this context the Court held that by establishing the interim office, the legislator sought to ensure the continuity in exercising the competences of a Prime Minister, which, due to their particular nature, do not permit intermittences. (*JCC no.7 of 18.05.2013, §59).*

For the person holding the interim office of the Prime Minister the Constitution has not regulated such conditions, which also underlines the different status of this position *(JCC no. 7 of 18.05.2013, § 62).*

Article 98 para. (5) of the Constitution provides that the Government enters into the execution of its powers on the very day when its members take the oath before the President Republic of Moldova. Thus, the mandate of the Prime Minister runs from the date of taking the oath, after the Government appointed proceedings as stipulated by Article 98 para. (1) - para (4) of the Constitution (*JCC no.7 of 18.05.2013, §64).*

The fact that the expression of confidence has a particular nature for the titular Prime-minister also results from the effects of termination of his/her mandate, as his/her resignation is followed by the resignation of the entire Government (art.101 para.(3) of the Constitution) *(JCC no.7 of 18.05.2013, §65).*

These procedures do not apply for the person acting as interim Prime minister. Thus, the office of Prime Minister is exercised as a result of the will of the Parliament, the supreme representative body of the people, while the interim office is exercised based on the constitutional provisions contained in Article 101 para. (2) of the Constitution correlated to Article 103 *(JCC no. 7 of 18.05.2013, § 66).*

The laid down constitutional provisions exclude equating the mandate of Prime Minister with the interim of the office, by which the continuity of exercising the competences of Prime Minister is ensured, in particular the leadership of the Government is ensured for the exercise of the task of administration of public affairs, but there is not set the beginning of a full mandate as Prime Minister (*JCC no.7 of 18.05.2013, §67).*

The Court held that the interim office is a transient situation designed to promptly ensure the continuity of Government's activity in administration of public affairs. Considering the overall competences of the President related to the executive power, but also taking into account that the Government is the result of the investiture vote of the Parliament, the President is not required to consult the Parliamentary factions for designation of the interim Prime Minister (*JCC no.4 of 22.04.2013*[37]*,§103).*

3.2.3 Competences of the Interim Prime Minister

The Court held that the vote of confidence is granted by the Parliament not only to the government team but also of to the Government's program of activity, developed for the entire term, and is tantamount to granting of mandate by the Parliament. Hence it is presumed that this program is the task and responsibility of the entire member-

[37] Judgment of the Constitutional Court no. 4 of 04.22.2013 on the control of constitutionality of Decrees of the President of the Republic of Moldova no.534-VII of March 8, 2013 on the resignation of the Government, as regards keeping the position of the Prime Minister dismissed by motion of censure (for suspected corruption) on March 8, 2013, before the new government is appointed, and no.584 VII of April 10, 2013 on the appointment of the candidate for the position of the Prime Minister.

ship of the Government and the Parliament, which approves it by a vote of confidence. Moreover, the provisions of Article 98 para. (2) and (3) of the Constitution stipulate the priority of the Program of Activity over the Government's list. Or, it is not the Activity program that is built according to the capacities of the Government's members, but the candidates from the Government's members are selected in line with the needs related to program's implementation. All these circumstances require an essential principle applicable to the Government - the principle of the integrity of the government team *(JCC No. 7 of 05.18.2013, § 80).*

The Court deduces the importance of maintaining government team throughout the mandate given by the Parliament. This conclusion is also crystallized in the provisions of art.103 para. (1) of the Constitution, according to which the termination of Parliament's mandate is followed by termination of the Government's mandate *(JCC No.7 of 18.05.2013, §82).*

Additionally, the Court noted that the rule is collective and solidary responsibility of the Ministers, while individual responsibility is exceptional. By its nature, the reshuffle is an individual act, which aims at operation of changes of staff that meet the requirement to keep the parliamentary control over the government, without overthrowing it, thus maintaining the governmental stability. Thus, the government's reshuffle provided for by article 98 para.(6) of the Constitution concerns the strict sense of the term of mandate, as follows from Article 98 para. (1) - (4) in conjunction with Article 103 of the Constitution. In this context, the dismissal of a minister who has already been dismissed is a legal nonsense *(JCC No.7 of 18.05.2013, §83).*

The Court noted that, given the fact that both the President of the country and the Government are the emanation of the Parliament, the President cannot undertake Government reshuffle upon the proposal of a person who was not appointed Prime Minister by the vote of confidence of the Parliament and which, therefore, did not form the list of the Government he seeks to modify *(JCC no.7 of 18.05.2013, §87).*

Furthermore, the Supreme Law provides for the prolongation of the Government's mandate only in the part which referrers to "the administration of public affairs". Therefore, in case of an outgoing Government, a fortiori, the mandate of the ad interim Prime Minister is included in the limited mandate of the outgoing Government to which he

belongs to. On the ground of these findings, the ad interim Prime Minister cannot be granted identical competences with those of a Prime Minister regarding governmental reshuffle *(JCC no. 7 of 05.18.2013, § 90).*

The Court noted that, unlike the titular Prime Minister, who holds responsibility in front of the Parliament for the entire governmental team that he actually formed, the ad interim Prime Minister of a dismissed Government does not hold this responsibility *(JCC no. 7 of 05.18.2013, § 91).*

In this context, the Constitutional Court emphasizes that in a State law it is inadmissible to adopt rules that would allow establishing a permanent government under interim conditions. On the contrary, all rules and actions of public authorities should be directed to the designation of titular members of the Government in the shortest possible period of time, dignitaries who would assume full responsibility for the governance act *(JCC no. 7 of 18.05.2013, § 94).*

In the same context, to elucidate the importance of the office and the high responsibilities of the Prime Minister for the Government Act, the Court notes that under constitutional norms, the Prime minister is the second in the succession order for the exercise of the interim office of the office of the President office becomes vacant, after the speaker of the Parliament . Due to the difference between the interim and the titular holder of the office, the interim Prime Minister is thus excluded from the settlement of any such exceptional circumstances *(JCC no. 7 of 18.05.2013, § 97).*

3.3 Appointment and Dismissal of Public Officials

The Court held that Article 135 para. (1) let. a) of the Constitution empowers the court of constitutional jurisdiction to review the constitutionality of all acts of the Parliament, without distinguishing between normative and individual acts *(JCC no. 28 of 20.09.2013[38], §38).*

The Court found that stipulation in Constitution of the procedure for appointing members of the Court of Accounts is a guarantee of their independence and of impartial

[38] Judgement of the Constitutional Court no.27 of 20.09.2013 on the control of constitutionality of the Decision of the Parliament no.183 of July 12, 2013 on dismissal of a member and deputy president of the Court of Accounts

exercise of duties incumbent according to the Law on the Court of Accounts *(JCC no.27 of 20.09.2013, §49).*

The Court also held that the members of the Court of Accounts are independent in the exercise of their office and irremovable for the duration of their office. They hold public offices by appointment. Once appointed, the members of the Court of Accounts become public auditors for the duration of their term of office *(JCC no.27 of 20.09.2013, § 50).*

Considering the role of the Court of Accounts, in general, and the functional responsibilities of the members, in particular, the Court considered it extremely necessary to ensure their independence and immovability during the term in order to avoid political subordination. The immovability, like the stability, is the institution foreseen by the law in the need to find an instrument to stop political interference in the administration *(JCC no.27 of 20.09.2013, § 60).*

In order to guarantee the independence of the person exercising a public office, constitutional and legal rules require the observance of the term of office. As a rule, dismissal requires a more complicated procedure than the appointment or at least an equivalent procedure.

The dismissal procedure is specifically prescribed by law for members of the Court of Accounts *(JCC no.27 of 20.09.2013, § 65).*

In this context, the Court held that dismissal of the member of the Court of Accounts had been conducted without following the legal rules in this regard, and had been adopted with the existence of a proposal of the President of the Court of Accounts, but without complying with legal requirements *(JCC no.27 of 20.09.2013, § 71).*

Article 22 para. (3) of the Law on the status of public officials stipulates that for an appointed dignitary early termination of the mandate takes place by revocation or, where appropriate, dismissal of the dignitary based on the administrative act of the authority that appointed him/her. And according to para. (4) of the same article, the provisions of para. (3) do not apply to officials for whom the special law regulating their activity provides for another procedure of early termination of the office *(JCC no. 28 of 20.09.2013[39], §61).*

[39] Judgment of the Constitutional Court no. 28 of 20.09.2013 on the control of constitutionality of some Resolutions of the Parliament on revocation and dismissal of the director General of the Board of the National Agency for Energy Regulation.

The Court held that the provisions of Article 22 of the Law on the status of public officials are not relevant for the dismissal of the Director General of the Board of the National Agency for Energy Regulation, as his activity, as well as the organization and functioning of the National Agency for Energy Regulation are regulated by a special law, which requires a different procedure for early termination of the mandate *(JCC no. 28 of 20.09.2013, §62).*

According to article 4^2 para. (6) of the Law on energy efficiency, the position of director of the Board is terminated by resignation or dismissal. The Director may be dismissed by Parliament in case of: loss of citizenship of the Republic of Moldova; the inability to exercise duties due to health reasons; election to another office; conviction for offenses committed intentionally and/or sentenced to imprisonment by final judgment of the court; issuing an irrevocable act that established the issuance/enactment by him/her of an administrative act or signing a legal act with violation of the legal provisions on conflict of interest; being in incompatibility, which was established by the final act of finding *(JCC no. 28 of 20.09.2013, §65).*

This rigidity results from ensuring the independence of the person towards those who voted for his/her election or appointment *(JCC no. 28 of 20.09.2013, §66).*

Based on the constitutional and legal provisions, the Court concluded that the challenged act, passed by the Parliament at the proposal of the Speaker of the Parliament, in a resolution, does not meet the requirements of Articles 66 letter j) of the Constitution and 42 of the Law on Energy. Or, according to the constitutional provision, the Parliament elects and appoints state officials in cases provided by law, which is to be understood as under conditions provided by law *(JCC no. 28 of 20.09.2013, §67).*

The Court held that the dismissal of the Director General of the National Energy Regulatory Agency may be ruled only by the appointing authority, namely the Parliament, and the cases and conditions of the dismissal are provided comprehensively by the Law on Energy. Therefore, the power given to the Parliament by law is not a discretionary one *(JCC no. 28 of 20.09.2013, §68).*

The Court found that the dismissal of the Director General of the Board of the National Energy Regulatory Agency was held without following constitutional norms, being taken at the proposal of the President of Parliament, but not according to the legal requirements *(JCC no. 28 of 20.09.2013, §69).*

3.4. Local Public Administration

3.4.1 Basic Principles of the Local Public Administration

[...] The local public administration is one of the basic components of the constitutional regime. Called upon to solve local problems, it plays an important role in the development of administrative units and in ensuring the activity of public services *(JCC no.19 of 09.07.2013[40], §39).*

The Court noted that the principle of local autonomy holds an important place among other founding principles of the local public administration. Its complex content is the quintessence of the whole activity of the public administration in administrative units *(JCC no.10 of 23.05.2013[41], §51).*

Local autonomy denotes the right and the effective capacity of local communities to resolve and administer an important part of public affairs under the law, under their own responsibility and in favor of the local population *(JCC no.10 of 23.05.2013, §52).*

The Court noted that the principle of local autonomy does not imply total independence and exclusive competence of the public authorities from the territorial-administrative units, these institutions being obliged to obey the legal regulations, generally accepted in the entire country and the legal provisions adopted for the purpose of protection of national interests *(JCC no.10 of 23.05.2013, §59).*

3.4.2 Status of Local Elected Officials

The Court held that the determination of a status for local elected officials results from the need for the effective performance of their duties under the execution of local power. The specific status of local elected officials must ensure, according to Article 7 of the European Charter, the free exercise of their mandate *(JCC no. 19 of 09.07.2013, §47).*

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[40] Judgment of the Constitutional Court no. 19 of 16.07. 2013 on the control of constitutionality of certain provisions of Article 7 of the Law no.768-XIV of 2 February 2000 on the status of local elected officials, as amended by Law No. 168 of July 11, 2012

[41] Judgment of the Constitutional Court no. 10 of 23.05.2013 on the control of constitutionality of Art. I p. 6, Articles III and IV of the Law no. 91 of April 26, 2012 to amend and complete some legal acts.

The Court also noted that, according to art. 7 para. (3) of the *European Charter of Local Self-Government,* the positions and activities incompatible with the office of local elected official shall be established by law *(JCC no. 19 of 09.07.2013, §48).*

In this context, the Court held that the concept of „local public administration" derives from the broader constitutional concept of the state power. Or, namely through the content, representatives of this administration are vested with the rights necessary to accomplish the tasks of their elective office *(JCC no. 19 of 09.07.2013, §51).*

Therefore, the Court notes that any exercise of state power through its representatives, including local elective institutions is achieved within mandatory principles outlined in the constitutional rules. *(JCC no. 19 of 09.07.2013, §52).*

In relation to the principle of separation of powers, the Court found that local public authorities (deliberative and executive) must operate in strict compliance with constitutional provisions, none has the right to commit interference or delegate its tasks to other powers *(JCC no. 19 of 09.07.2013, §62).*

In conclusion, the Court held that the prohibitions contained in the provisions of Article 7 let. c) and d) of the Law no.768-XIV of February 2, 2000 on the status of local elected officials do not violate the right to be elected and do not affect local autonomy, but regulate the conditions under which local representative may exercise their functions in order to ensure objectivity in the exercise of their mandate, and exclude abuses and conflicts of interest *(JCC no. 19 of 09.07.2013, §67).*

At the same time, the Court noted that the Law No. 168 of July 11, 2012 does not contain final and transitional provisions indicating the manner of entry into force and implementation of new regulations. Thus, the Court mentioned that taking into account art. 76 of the Constitution, in the absence of final provisions, the new provisions of art. 7 para. (l) let. c) and let. d) of the Law no.768-XIV of February 2, 2000 on the status of local elected officials enter into force after their publication in the Official Gazette of the Republic of Moldova (September 14, 2012) and are applicable to legal relations arising later *(JCC no. 19 of 09.07.2013, §70-71).*

In the context of the above, the Court held that the challenged legal provisions that establish the incompatibilities of the mandate of the local elected officials do not affect the rights of the local elected officials, who have obtained the mandate from local elections before the Law No. 168 of July 11, 2012 amending the Law no.768-XIV of Febru-

ary 2, 2000 on the status of local officials entered into force - September 14, 2012, as well as the rights of the alternate candidates, the provisions producing effect after the adoption of the law *(JCC no. 19 of 09.07.2013, §73).*

3.4.3 Obligations of Local Public Administration in Education Area

Education is established by the state. The state has the obligation to decide on the program and on how education activities are conducted, on the level to which education is compulsory and on the fact that education of a person depends on his/her qualities *(JCC no.10 of 23.05.2013, §67).*

Thus, the Court held that, as education is the exclusive competence of the state, it cannot be decentralized and transferred to the responsibility of the local public administration authorities.

Only certain competences can be delegated by law to the local public administration, while ensuring their proper financing *(JCC no.10 of 23.05.2013, §70).*

Thus, the State has the right and the obligation to establish the means, the content and the standards required in order to ensure the optimal exercise of the right to education *(JCC no.10 of 23.05.2013, §71).*

The Constitutional Court considered that assigning by law the right to decide, in coordination with the Minister of Education, issues on the establishment, reorganization and dissolution of the elementary, secondary and high schools and out-of-school institutions to second level public administration authorities, as well as providing proper financial coverage of these institutions is an act of state's competences delegation to these authorities *(JCC no.10 of 23.05.2013, §83).*

The Court points out, that coordination by the legislator of the work of local public authorities in some areas, in the general interests of the state, does not contradict the principle of local autonomy, as it is a necessary measure in a democratic society *(JCC no.10 of 23.05.2013, §87).*

The principle of consultation of citizens on local issues of particular interest confirms the construction and operation of local public administration based on democratic principles and the results of the consultation can be both mandatory and optional *(JCC no.10 of 23.05.2013, §94).*

3.5. Judicial Authority

3.5.1. Status of the Judge

3.5.1.1. Independence of the Judge

The Court held that the constitutional provisions on the separation of powers into legislative, executive and judiciary (art.6), on independence, impartiality and immovability of judges of the courts (art.116 para. (1)), on determining by organic law of the organization of the courts, their competence and the procedure of law (art. 115 para.(4)) define the legal status of judges in Moldova and establish justice as an independent and impartial branch of the state power *(JCC no. 21 of 25.07.2013[42], §60).*

Also, the provisions of articles 114 and 116 para. (1) of the Constitution enshrine the principle of judicial independence, without which there can be no genuine work of justice. The implementation of the principle of judicial independence, on which the autonomy of the judiciary relies, is ensured by the procedure of enforcement of justice, and by arrangements for appointment, suspension, resignation and dismissal of judges *(JCC no. 21 of 25.07.2013, §63).*

The proper functioning of judiciary authorities is a factor of primary importance in the state mechanism of protection of human rights and fundamental freedoms. Full and effective judicial protection can only be achieved with a true independence of the judiciary, particularly of judges - exponents of the judiciary. This requires autonomy and independence of judicial power, and constitutional regulation of the limits and principles of its activity *(JCC no. 22 of 05.09.2013[43], §45).*

Independence of justice is a compulsory condition for the existence of the state of law and a fundamental guarantee of a fair process. This independence shall be ensured by the state *(JCC no. 22 of 05.09.2013, §49).*

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[42] Judgment of the Constitutional Court no.21 of 25.07.2013 on the control of constitutionality of the Decision of the Parliament no.314 of December 26, 2012 on dismissal of a judge of the Supreme Court of Justice

[43] Judgment of the Constitutional Court no. 22 of 05.09.2013 on the control of constitutionality of some provisions on judge's immunity

[...] The independence of the judge is an essential element of the legal status and the main condition of the autonomy of the judicial authority. The link between the independence of justice and the principle of judge's independence determines in fact the fair and democratic nature of exercise of justice in a state of law *(JCC no. 22 of 05.09.2013, §51).*

The Court held that that judges should have unfettered freedom to decide on cases impartially, according to their beliefs and their own way of interpreting the facts and in accordance with legal provisions *(JCC no. 22 of 05.09.2013, §52).*

Judicial independence has both an objective component - an essential feature of the judiciary, and a subjective component, which concerns the right of the individual to have the rights and freedoms established by an independent judge. Without independent judges, Judges must make decisions independently and impartially and act without any restrictions, improper influences, pressures, threats or interferences, direct or indirect, from any authority, even judicial, as otherwise there can be no real guarantee of rights and freedoms. As a consequence, the independence of justice is not a purpose in itself. This is not a personal privilege of the judges, but it is justified by the need to allow judges to fulfill their role as guardians of the rights and freedoms of the people. Therefore, judicial independence is not a privilege or prerogative of the judge, but a guarantee against external pressures in decision making *(JCC no. 22 of 05.09.2013, §53).*

The principle of judicial independence implies that judges must make decisions and act freely without restrictions and without being subject to influences, pressures, threats or unlawful interference, direct or indirect, irrespective of the person from which such interference comes and the reasons for it. The judge, as holder of the judicial authority, must be able to exercise his/her duties in complete independence in relation to all constraints, the social, economic and political forces, and even in relation to other judges and the judicial administration *(JCC no. 22 of 05.09.2013, §54).*

Therefore, the independence of the judge imminently ensures the exercise of free access to justice - a fundamental right guaranteed by Article 20 of the Constitution *(JCC no. 22 of 05.09.2013, §58).*

The essence of independence of judges lies in his/her autonomy in adoption of judicial decisions. This means that the judge is to be protected and to be guaranteed that in trial of cases, a duty conferred by the Constitution, he/she will be subjected to persecution

and no prosecution can be initiated for how the judges has interpreted the law, assessed the facts and evidence, except "in cases of bad faith" (*JCC no. 22 of 05.09.2013, §59).*

[...] The external independence of judges is not a prerogative or privilege granted in their personal interest but in the interest of the rule of law and people who require and expect impartial justice. The independence of judges should be considered as a guarantee of freedom, respect for human rights and impartial enforcement of the law. The impartiality and independence of judges are essential to ensure equality of parties before the courts *(JCC no. 29 of 23.09.2013[44], §82).*

3.5.1.2. Immunity of the Judge

According to international practice, it is unanonimously recognized that immunity usually is granted judges to guarantee the execution of duties *(JCC no. 22 of 05.09.2013, §60).*

The Court also held that judicial independence does not exclude his/her responsibility by, which is enforced subject to caution due to the need to ensure full freedom of the judge against all induced pressures *(JCC no. 22 of 05.09.2013, §61).*

Thus, 20 of the 47 member States of the Council of Europe provide for criminal inviolability of judges of the Supreme Court, and 16 of 47 for judges of courts of lower level. In the European Union, these figures are 8 of 27 and 4 out of 27. "[...] Many of the officials protected by immunity, are part of the judiciary system, which is the phenomenon of Eastern European countries, members of the Council of Europe and of the European Union"[45]. (The European Commission for Democracy through Law (Venice Commission) Amicus curiae CDL-AD (2013) 008 for the Constitutional Court of the Republic of Moldova on judges immunity *(JCC no. 22 of 05.09.2013, §65).*

The Court found that the constituent legislator, stating that *"the court judges are independent, impartial, and irremovable under the law,"* enshrined the independence of the

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[44] Judgment of the Constitutional Court no.29 of 23.09.2013 on the control of constitutionality of certain acts referring to the investigation committee in the case „Pădurea Domnească".

[45] The European Commission for Democracy through Law (Venice Commission) Amicus curiae CDL-AD (2013) 008 for the Constitutional Court of the Republic of Moldova on judges immunity

judge to ensure the exclusion of any influence from other authorities. However, this guarantee cannot be interpreted as likely to cause the lack of responsibility of the judge *(JCC no. 22 of 05.09.2013, §68).*

The Court held that according to criminal procedure rules, the initiation of criminal prosecution under applicable law, when there is a reasonable suspicion that a crime has been committed and there are no circumstances which exclude criminal prosecution and the offense was committed by a judge, the criminal liability for the offense is not an act of interference in the work and independence of judges, but a process of making subject to liability for the committed illegality *(JCC no. 22 of 05.09.2013, §75).*

The good reputation of the judge is a condition of public confidence in the justice and its efficiency, without which we the quality of justice and the full implementation of constitutional and legal provisions governing its implementation cannot be conceived. The corruption does not undermine the confidence in judges only, but also the act of justice as such *(JCC no. 22 of 05.09.2013, §76).*

The Court held that immunity should not obstruct the main functions and duties of justice or to prevent the operation of democratic principles in operating based on the rule of law *(JCC no. 22 of 05.09.2013, §84).*

At the same time, the Court found that the fact that the right to prosecute the judge belongs only to the Prosecutor General reduces the influence of representatives of other authorities on the judge. Moreover, given that the Prosecutor General is a member of the Superior Council of Magistracy, it cannot be considered that the Superior Council of Magistracy is completely excluded from this procedure of punishing the judge *(JCC no. 22 of 05.09.2013, §85).*

[...] It is the task of the Parliament to establish, by law, the guarantees of independence of judges, including of those ensuring his/her inviolability, aiming to achieve the necessary balance between independence and accountability of judges and ensuring the society's confidence in the judiciary *(JCC no. 22 of 05.09.2013, §88).*

[...] The constitutional principle of independence of judges implies the principle of *responsibility*. Independence of the judge does not constitute and cannot be construed as a discretionary power or an obstacle to his criminal and disciplinary liability established by law *(JCC no. 22 of 05.09.2013, §89).*

The Court also found that investing Attorney General with the power to prosecute on a judge without the prior consent of the Superior Council of Magistracy is justified by the peculiarities of investigation of corruption cases, which requires promptness and privacy procedural actions *(JCC no. 22 of 05.09.2013, §90).*

3.5.2. Co-decision in appointment and dismissal of judges

[...] In its previous case law, the Court held that the appointment and dismissal of judges and chairmen of courts is made with the participation of at least two authorities: on the one hand, the Superior Council of Magistracy and, on the other hand, the President or the Parliament, as appropriate *(JCC no.21 of 25.07.2013*[46]*, §76).*

The Court underlined as regards the President of the Supreme Court that in case of committing a breach incompatible with the position held, he/she shall be dismissed by the Parliament under the same process by which he/she was appointed, i.e. at the proposal of the Superior Council of Magistracy *(JCC no. 21 of 25.07.2013, §79).*

The Court held that the same rule is applied, mutatis mutandis, for dismissal of the judges of any court *(JCC no. 21 of 25.07.2013, §80).*

By ensuring the appointment of the judge, as provided by the Constitution and the Law no. 947-XIII of July 19, 1996 on the Superior Council of Magistracy, the Superior Council of Magistracy selects candidates for the position of judge with the best highest professional and moral characteristics prescribed by law, and submits proposals to the President of the Republic of Moldova or the Parliament, as appropriate, on appointment, promotion, transfer and dismissal of judges, presidents and vice presidents of courts, and accepts the oath of judges *(JCC no. 21 of 25.07.2013, §81).*

The Court notes that, taking into account the constitutional provisions on the organization and functioning of the Superior Council of Magistracy, noting that all legal provisions in force in the matter of these proceedings had been complied with, the Parliament or the President of the Republic of Moldova have a constitutional duty to

[46] Judgment of the Constitutional Court no.21 of 25.07.2013 on the control of constitutionality of some Resolutions of the Parliament no. 314 of December 26, 2012 on dismissal of a judge of the Supreme Court of Justice.

proceed with the appointment of candidates for the position of judge, president, vice president of the courts designated by the Superior Council of Magistracy *(JCC no. 21 of 25.07.2013, §84).*

As these authorities share the task of appointing judges, they have the obligation to cooperate *(JCC no. 21 of 25.07.2013, §82).*

In the vision of the Court, only in such a case, by application of Article 116 of the Constitution, the competence of the Parliament or the President of the Republic of Moldova in appointment of judges, presidents and vice presidents of courts can be exercised, to comply with the constitutional principle of separation and collaboration of state powers. An approach contrary to significance of the intervention of the Parliament or President of the Republic of Moldova in the appointment of judges, presidents, vice-presidents of courts would undermine the values, rules and constitutional principles on the separation of powers and judicial independence *(JCC no. 21 of 25.07.2013,§85).*

Applying the same reasoning, the Court held that dismissal of judges, presidents and vice presidents of courts, for whatever reason, must be examined by the Parliament or the President of the Republic of Moldova under the conditions and time limits provided for their appointment [...] *(JCC no. 21 of 25.07.2013,§86).*

[...] In the event of dismissal, the Parliament or the President shall validate the decision of the Superior Council of Magistracy, which cannot be either censored or rejected, and its legality is the exclusive competence of the courts *(JCC no. 21 of 25.07.2013, §87).*

At the same time, considering the principle of separation and cooperation of state powers and independence of the judiciary, the Court held that the Parliament would take into account the fact that, if it is not proceeded to formal dismissal of a judge at this proposal of the Superior Council of Magistracy, since the adoption of the judgment of the Superior Council of Magistracy, the dismissed judge does not hold the mandate of the authority with the primary role as party to the mechanism of co-decision and therefore does not have powers to adjudicate cases. Consequently, the act of the Parliament or the President has a formal character, so any potential procedural flaw committed by those authorities does not restore the judge dismissed by the Superior Council of Magistracy *(JCC no. 21 of 25.07.2013, §89).*

3.5.3. Transfer of the Judges of the Supreme Court to Other Courts

Article 116 of the Constitution provides that the court judges are independent, impartial, and irremovable, according to the law. The immovability is ensured by the manner of appointing judges, the main conditions for appointment to these positions and guarantees in the exercise of the mandate. The promotion or transfer of the judge under the mandate requires his/her consent *(JCC no. 17 of 02.07.2013[47], §62).*

The provisions of art. 114 and art. 116 para. (1) of the Constitution and art. 17 of the Law on the status of the judge enshrine the principle of judicial independence, without which there can be no genuine work of justice. The implementation of the principle of judicial independence, on which the autonomy of the judiciary relies, is ensured by the procedure of enforcement of justice, and by arrangements for appointment, suspension, resignation and dismissal of judges *(JCC no.17 of 02.07.2013, §63).*

Based on the legal and constitutional status of the judge, his/her capacity as representative of the judiciary, given that judicial independence requires the ability to enforce the law correctly and to be characterized by high moral qualities, the Parliament conditioned the selection, promotion, transfer, appointment of judges through a series of objective requirements for qualification, honesty, competence and life experience (*JCC no.17 of 07.02.2013, §64*).

According to Article 123 of the Constitution, the Superior Council of Magistracy ensures the appointment, transfer, posting, promotion and application of disciplinary measures against the judges *(JCC no.17 of 02.07.2013, §72).*

The Superior Council of Magistracy is an independent established for the purpose of ensuring the formation and functioning of the judiciary and safeguards the independence of the judicial authority and ensures judicial self-administration (art. 24 of the Law on judicial organization) *(JCC no. 17 of 02.07.2013, §73).*

The Court held that by the provisions of art. 2 of the Law no. 154, the Parliament established the basic criteria to be taken into account when transferring a judge to a

[47] Judgment of the Constitutional Court no.17 of 02.07.2013 on the control of constitutionality of some provisions of art. t 25 of the Law no. 947-XIII of July 19, 1996 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts and art. VIII para. (6) of the Law no. 153 of July 5, 2002 to amend and complete some legal acts.

court of the same level or a lower level court. At the same time, the Parliament empowered the Superior Council of Magistracy with the right to develop and refine the criteria established by the Organic Law No. 154 *(JCC no. 17 of 02.07.2013, §75).*

The Court held that the establishment by the Superior Council of Magistracy of the procedure and criteria for the selection of judges for the purpose of their transfer to other courts of law is not only constitutional and legal, but also normal for the nature and work of this body of judicial self-administration (*JCC no. 17 of 02.07.2013, §78).*

3.5.4 Remuneration of Court Employees

The Court noted that the judicial independence could not be achieved without institutional and structural independence. *(JCC no. 24 of 10.09.2013[48], §50).*

The Court held that the administration of justice was achieved with the involvement of several supporting components, subsequent to judges who directly represented this power *(JCC no. 24 of 10.09.2013, §51).*

The Court held that the equal level of the Parliament, the Government and the Supreme Court in the hierarchy of state power authorities cannot be denied, adding that the wage level of the heads of these authorities is the same *(JCC no. 24 of 10.09.2013, §58).*

At the same time, the discrepancy between the salary of the employees of the Supreme Court and the wages of the employees of the Secretariat of the Parliament of the State Chancellery is a discriminatory factor, and ultimately a factor of imbalance between the state powers *(JCC no. 24 of 10.09.2013, §59).*

The analysis of the hierarchical positioning of the state power authorities shows a discrepancy between the levels of pay of officials of the Courts of Appeal in relation to those of ministries. Furthermore, although a large volume of work is concentrated in the courts, which are responsible for the first instance examination of all disputes, civil servants within them have a lower salary level even compared with second level government officials *(JCC no. 24 of 10.09.2013, §60).*

[48] Judgment of the Constitutional Court no. 24 of 09.10.2013 on the control of constitutionality of Annex 2 of the Law No. 48 of 22 March 2012 on the System of wages of public servants.

The Court reiterated that, to ensure an equivalent judiciary by status with the other two branches of the state power, an equivalent treatment must be maintained for the supporting components of this power, including creating conditions for providing skilled and competitive staff *(JCC no. 24 of 10.09.2013, §63).*

At the same time, considering all international regulations establishing the principle of ensuring the independence of judges and their role in the process of reviewing the legality of administrative acts issued by the authorities, the Court rules that need to maintain a balance between civil servants salary levels that contribute and assist those who exercise the state power does not preclude the establishment of higher salaries for judges in relation to the salaries of legislative and executive powers. This conclusion is based on prohibitions and restrictions involved in the status of judges *(JCC no. 24 of 10.09.2013, §68).*

The court underlines that the judicial power solves the legal disputes emerging in the society as result of the actions made by the two powers. For these reasons, the quality of justice, as an act emanating from the judiciary, is directly proportional to the level of independence and to the support provided to it by both the legislative and the executive power *(JCC no. 24 of 10.09.2013, §69).*

At the same time, the Court held that the quality and the purpose of justice are directly proportional not only to the professional competence of the judge, but also to the competences of the staff that help him/her to conduct his/her activity. For these reasons, investment and proportional stimulation is required for the work done by the staff of courts also based on the responsibilities assigned to them by the law *(JCC no. 24 of 10.09.2013, §70).*

The Court held that the different remuneration for the exercise of tasks that are identical or similar in complexity between authorities placed on the same scale in the institutional hierarchy of state powers is to be regarded as discriminatory treatment *(JCC no. 24 of 10.09.2013, §75).*

The Court held that setting of differentiated salary grades for "Secretariat of the Constitutional Court", "Superior Council of Magistracy, the Supreme Court, the Prosecutor General", "Courts of appeal" and "Courts, including military, territorial and specialized prosecution office" in Annex no. 2 to the Law no. 48 compared to the compart-

ments of the authority of the legislative power and the authorities of executive power affect the principles enshrined by articles 6 and 16 of the Constitution *(JCC no. 24 of 10.09.2013, §85).*

3.5.5 Appointment and dismissal of the General Prosecutor

The Court found that stipulation in Constitution of the procedure for appointing the Prosecutor General is a guarantee of his/her independence and of impartial exercise of duties incumbent according to the Law on the Prosecutor's Office *(JCC no. 8 of 20.05.2013[49], §53).*

The Court also held that the office of the Prosecutor General is of the highest rank in prosecution. The important role of this office is derived from the tasks of the Prosecution to represent the general interests of the society and to protect the rule of law and the rights and freedoms of citizens, to conduct and exercise criminal prosecution, to represent the prosecution in court, as provided by the law *(JCC no. 8 of 20.05.2013, §54).*

The Court found that, in accordance with Articles 32 and 33 of the Rules of the Parliament, e Parliament is entitled to establish special committees to examine draft legislation for the development of complex legislative projects or for other purposes specified in the decision establishing such committee (*JCC no. 8 of 20.05.2013, §64).*

In this respect, the Court found that the Parliament was entitled to establish a special commission to examine the circumstances of passing the Parliament Decision No. 81 (*JCC no. 8 of 20.05.2013, §65).*

As regards the Decision no. 104 repealing the Decision no. 81, the Court noted that once consumed, the vote cannot be revised. The reviewing procedure of the vote is not and cannot be foreseen, because it would block the legislative process and it would compromise the legislative authority of the state, it would affect the security of the legal relationship and even the national security, if the possibility of coming-back, after a period of time, would be granted for the votes expressed in passing certain deci-

[49] Judgment of the Constitutional Court no. 8 of 20.05.2013 on the control of constitutionality of Parliament's decision on the appointment and dismissal of the Prosecutor General.

sions or laws, emerging from momentary political or personal interests (*JCC no. 8 of 20.05.2013, §70).*

Moreover, the Court noted that the Decision on the appointment of the Prosecutor General shall be passed with the majority vote of the Parliament members present at the sitting. According to the verbatim report, at the sitting of the Parliament was registered the presence of 95 MPs. In this context, the majority of the members present at the sitting constituted 48 MPs. Thus, even in case that two votes, out of those 51, are annulled, it will remain 49 pro votes, which represents more than the majority of the Parliament members present at the sitting, necessary for passing the decision *(JCC no 8 of 20.05.2013, §71).*

In this context, the Court notes that the abrogation of the appointment act had the effect of terminating the mandate of the Prosecutor General. Aiming at guaranteeing the independence of the person that exercises a public office, the constitutional and legal norms are imposing respect for the term of the mandate. As a rule, dismissal requires a more complicated procedure than the appointment or at least an equivalent procedure. The dismissal procedure is expressly stipulated in the Law on the Prosecutor General (*JCC no. 8 of 20.05.2013, §74).*

In this context, the Court found that the removal from office of the Prosecutor General took place obviating the legal norms on this matter, and it was adopted without the proposal of the Speaker of the Parliament and without obeying other legal requirements *(JCC no. 8 of 20.05.2013, §78).*

[...] Decision of the Parliament no. 104 of May 3, 2013 to repeal the Decision of the Parliament no. 81 of April 18, 2013 to appoint the Prosecutor General contradicts the provisions [**...**] of the Constitution of the Republic of Moldova, as well as the provisions of other legal acts aiming to develop the constitutional rules *(JCC no. 8 of 20.05.2013, §79).*

Based on the analysis of this regulatory framework and the analysis of the record of the Parliament's meeting of April 18, 2013, the Court held that in passing the Decision no. 81 to appoint the Prosecutor General, the constitutional provisions had been complied with *(JCC no. 8 of 20.05.2013, §80).*

3.5.6 Constitutional Court

3.5.6.1 Statute of the Constitutional Court Independence of Constitutional Judges

The structure of the Constitutional Court of the Republic of Moldova is regulated by article 136 of the Constitution. According to these provisions, the Constitutional Court of Moldova comprises 6 judges, appointed for a term of 6 years. Two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy. This manner of appointment of judges of the Constitutional Court of the Republic of Moldova is likely to provide a more representative and democratic composition, since it expresses the options of public authorities from all three branches of government: legislative, executive and judicial. Separation of powers confers significant guarantees for institutional independence and impartiality of judges of the Constitutional Court *(JCC no.6 of 16.05.2013*[50]*, §47).*

Both the Constitution and the Law on the Constitutional Court regulate the main principles and guarantees of independence and neutrality of judges of the Constitutional Court, which would enable them to objectively exercise judgment, while the Court itself is, according to Article 134 para.(2) of the Constitution, "independent from any other public authority", governed by the Constitution only. In conjunction with this constitutional provision, Article 137 of the Constitution expressly provides that judges of the Constitutional Court shall be independent in the exercise of their office and irremovable during this time [...] *(JCC no.6 of 16.05.2013, §48).*

In this respect, the Constitutional Court has the exclusive right to decide on its jurisdiction [art.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 [art.4 para. (2) of the Law]; the Constitutional Court judges cannot be held accountable for their votes and opinions expressed on duty, even after the expiry of the mandate [art. 8 para. (3) of the Code and art.13 para. (2) of the Law]; among other duties, the Constitutional Court judges are obliged "to fulfill their duties impartially

[50] Judgment of the Constitutional Court no.6 of 16.05.2013 on the control of constitutionality of paragraph (4) of article 23 of the Law no. 317-XIII of December 13, 1994 on the Constitutional Court

and in line with the Constitution" [art.17 para.(1) let. a) of the Law]; judges must "inform the President of the Constitutional Court about any activity incompatible with the duties they perform" [art. 17, para. (1) let. d) of the Law]; judges must refrain from any action contrary to the status of a judge [art. 17 para.(1) let. f) of the Law]; establishing the misbehavior of judges, of the sanctions and the arrangements for their enforcement is the exclusive competence of the Plenum of the Constitutional Court [art.84 of the Code]; the Constitutional Court has its own budget, which is approved by the Parliament at the proposal of the Constitutional Court Plenum [art.37 of the Law] *(JCC no.6 of 16.05.2013, §49).*

Given the complexity and the nature of the powers of the Constitutional Court and the procedures by which these powers are exercised, it can be considered a political - jurisdictional public authority. The political character follows from the manner of appointment of the members of the Constitutional Court and from the nature of some duties. The jurisdictional nature arises from the principles of organization and operation (independence and immovability of judges) and from other functions and procedures. In this regard, the President of the Constitutional Court is treated as the President of the Supreme Court and the Constitutional Court judges are treated similarly to the Vice President of the Supreme Court [art. 21 para. (2) and (3) of the Law]. The jurisdictional character of the Constitutional Court makes applicable the principles of judicial independence, despite the fact that the authority of constitutional jurisdiction is not part of the judiciary *(JCC no.6 of 16.05.2013, §50).*

At the same time, there is no and there cannot be any possibility of revoking judges of the Constitutional Court by the authorities that appointed them, as judges are irremovable, which is a guarantee of their independence in the exercise of their duties *(JCC no.6 of 16.05.2013, §51).*

This principle protects judges first of all from external influences in fulfilling their jurisdictional duties. The fundamental idea lies in the fact that constitutional judges, in the exercise of their duties, are not employees of authorities that appointed them. After taking the oath, judges are independent and irremovable, and their judgments are subject to Constitution only *(JCC no.6 of 16.05.2013, §52).*

The Court held that the purpose of the provision contained in art.72 para. (3) let.c) of the Constitution, to regulate the organization and functioning of the Constitutional Court, is to allow the legislator to enhance, expand the functionality and the mechanisms of the Court of Constitutional Jurisdiction *(JCC no.6 of 16.05.2013, §57).*

The interpretation of this fundamental rule, in terms of that the legislators should be able to limit, remove or reduce the conferred powers is equivalent to emptying its contents, respectively to waiver of improvement of constitutional democracy, pursued by the constituent legislator for the purpose of revision, which is absolutely unacceptable *(JCC no.6 of 16.05.2013, §58).*

Any legal rule or legislative amendment adopted under Article 72, paragraph 3 let. c) of the Basic Law, which would have the effect of blocking any form of functionality of the Court, is deemed unconstitutional *ab initio (JCC no.6 of 16.05.2013, §59).*

According to the rules applicable in a state of law, the Constitutional Court, the authority which ensures supremacy of the Constitution, ensures the principle of separation of state power into legislative, executive and judicial power and guarantees the responsibility of the state to the citizen and the responsibility of the citizen to the state. The Constitutional Court *eo ipso* cannot be unfunctional *(JCC no.6 of 16.05.2013, §61).*

Under the proper organization of the state authority, the role of Constitutional Courts is essential and defining, representing a true pillar of state and democracy support, guaranteeing equality before the law, the fundamental freedoms and human rights. At the same time, the Constitutional Courts contribute to the proper functioning of the public authorities under the constitutional relations of separation, collaboration and mutual control of the state powers *(JCC no.6 of 16.05.2013, §64).*

The Constitutionality Control, in its totality, is not only a fundamental legal guarantee of the supremacy of the Constitution. It is a means to assign the Constitutional Court a competence that will efficiently ensure separation and balance of powers in a democratic state *(JCC no.6 of 16.05.2013, §65).*

In light of the above, without challenging the rights of the three powers (legislative, executive and judicial) to appoint judges of the Court, the Court held that the imposition of the condition to appoint judges by all authorities to convene the plenary, where there is a quorum in the Court as provided by the law, affects the functionality of the

Court and violates the principle of its independence and of its judges [Articles 134 para. (2), 135 and 137 of the Constitution]. As a consequence, the provisions of paragraph (4) of article 23 of the Law on the Constitutional Court are unconstitutional *(JCC no.6 of 16.05.2013, §70).*

3.5.6.2. Binding nature of the judges of the Constitutional Court

The judgment of the Constitutional Court itself is a generally binding legal finding based on the elucidation of the essence of the constitutional issue after the official interpretation of the relevant rules of the Constitution and explanation of the rationale of their content in relation to the challenged rules *(JCC no.33 of 10.10.2013*[51]*, §42).*

This effect of the judgments of the Constitutional Court and its consistent action to give effectiveness to the constitutional justice justify that by revealing the content of constitutional norms and developing rules derived from their interpretation, the acts of the Constitutional Court guide the development of the entire legal system, and the interpretation and enforcement of the law. Only such a position ensures indeed the enforcement of the principle of supremacy of the Constitution *(JCC no.33 of 10.10.2013, §43).*

The dissemination of constitutional provisions in the legal system as a whole is characterized by impregnating branches of law with constitutional norms. The constitutional jurisdiction is a consequence of the direct applicability of the Constitution embodied in the mandatory application of acts of the Constitutional Court *(JCC no.33 of 10.10.2013, §44).*

This interpretation of constitutional provisions is official and binding on all subjects of legal relations. Judgments by which a constitutional provision is interpreted have the power of a law and are binding by considerations underpinning it for all constitutional bodies of the Republic of Moldova. This is applied directly, without any other condition of the form *(JCC no.33 of 10.10.2013, §47).*

Whatever the judgments of the Court, whether they concern the interpretation of the Supreme Law or subsequent constitutionality control review of the constitutionality

[51] Judgment of the Constitutional Court no. 33 of 10.10.2013 on interpretation of art. 140 of the Constitution.

of the normative framework, they shall take effect on the Constitution and the law gives them, in relation to task by the Court, their strength legal and cannot be challenged or confirmed by anyone *(JCC no.33 of 10.10.2013, §49).*

The judgment on finding unconstitutionality is part of normative legal order, by its effect the unconstitutional provision ceasing to exist in the future *(JCC no.33 of 10.10.2013, §53).*

The Parliament or the Government, as applicable, are required to repeal or amend such normative acts, thus bringing them in line with the Constitution. The intervention of the Parliament or the Government, within the period laid down in Article 28[1] of the Law on the Constitutional Court, as established by the Constitutional Court, is an expression of the final and binding character of the constitutional court judgments *(JCC no.33 of 10.10.2013, §54).*

The Court emphasized that legal, and not political factors, must determine the reactions to the Court's decisions, especially if they involve specific obligations for the relevant subjects *(JCC no.33 of 10.10.2013, §55).*

The Judgment of the Court shall apply to all legal relations that were still in force at the date of delivery of the judgment, i.e. to all situations which are still subject to legal provisions declared unconstitutional, as well as by review *(JCC no.33 of 10.10.2013, §56).*

Moreover, the Constitutional Court, as the sole authority empowered by law to exercise constitutionality control, has full competence in this area. Accepting interpretation of the effects of its decisions in the application of law by other state institutions would mean curtailment of the competence of the Court *(JCC no.33 of 10.10.2013, §59).*

The *erga omnes* enforceability of judgments of the Constitutional Court involves the constitutional duty of all authorities to strictly enforce the Court's judgments in specific situations to which the rules declared unconstitutional apply *(JCC no.33 of 10.10.2013, §60).*

In this context, the Court held, as a principle, that the legal provisions repealed by the legal text declared unconstitutional reenters the active fund of the law, continuing to have legal effect before the entry into force of the new regulations, as this is a specific effect of the loss of constitutional legitimacy, the sanctions differ and much more serious than simply repealing a legislative text *(JCC no.33 of 10.10.2013, §63).*

Thus, if unconstitutionality of some amending/repealing rules is declared, before the necessary modifications are made by the Parliament, the provisions that were in force before the amendment/repealing will apply, in a manner consistent with its considerations to the case deduced under its examination *(JCC no.33 of 10.10.2013, §64).*

By the same date, an appropriate statement shall be operated in the text of the basic document, with restoration of the text foregoing the amendment/repeal *(JCC no.33 of 10.10.2013, §65).*

The Court held that based on the provisions of article 135 para. (1) of the Constitution, repealing legal provisions are not exempted from constitutionality control. Moreover, the Court held that if a repealing law (legal provision) is declared unconstitutional, the legal provisions that have been repealed re-enter the active fund of the law, continuing to produce legal effect until the entry into force of new regulations, which is a specific effect of loss of constitutional legitimacy, a different and much more severe sanction than a mere repeal of a legal text *(JCC no. 22 of 05.09.2013, §110).*

4 NATIONAL ECONOMY

4.1. Regulation of State's Financial Resources

The Court held that in order to guarantee the constitutional principle of legality, any fees and charges should be regulated by representative bodies within the limits set by the law *(JCC no.23 of 06.09.2013*[52]*, §56).*

The Court referred to Article 132 para. (1) of the Constitution, which provides that taxes, fees and other revenue in the state budget and the state social insurance budget, the budgets of districts, towns and villages are established, under the law, by the corresponding representative bodies *(JCC no.23 of 06.09.2013, §57).*

This guarantee protects the right to private property and the removal of abuses which might be committed in the public institutions of the executive in determining the

[52] Judgment of the Constitutional Court no. 23 of 09.06.2013 on the exception of unconstitutionality of Section 18 of the Regulation on the purchase of medicines and other health products for the needs of the health system, approved by Government Decision no.568 of September 10, 2009

financial contributions that affect the assets of individuals and legal entities *(JCC no.23 of 06.09.2013, §58).*

The Court held that in establishing any fee to be charged by public authorities is within the competence of the Parliament. The law shall cover the amount and the criteria for establishing it by delegating the competence of establishing the specific amount to the Government *(JCC no.23 of 06.09.2013, §61).*

In line with Article 132 of the Constitution, the Court refers to the constitutional provision contained in para. (1) of article 130, according to which the formation, management, use and control of the financial resources of the State, of administrative units and public institutions are regulated by law *(JCC no.23 of 06.09.2013, §63).*

The Court held that the state's financial mechanism, an integral part of the economic mechanism, consists of all structures, forms, methods, principles and economic and financial levers through which the public financial funds of the state, which are required for the fulfillment of the functions and the tasks thereof are established, administered and used, targeted especially for sustainable economic development and, on this basis, for ensuring an adequate standard of living *(JCC no.23 of 06.09.2013, §64).*

Public finances of the state generate a whole system of economic relations, expressed in cash, through which meeting of the general needs of the society is ensured. Creation, distribution and use of public funds is conducted by specific methods and techniques, based on the principle of repayability or not-repayability, which subsequently acquires various destinations *(JCC no.23 of 06.09.2013, §65).*

The totality of methods and techniques through which state institutions are specifically designed and use public resources, create a coherent system of financial relations, called "budgetary and financial system." *(JCC no.23 of 06.09.2013, §66)*

The Court noted that the administration of financial resources in this system is achieved by a complex of financial plans (budgets), which together form the budget system. It is a unified system of budgets and funds, which form the national public budget, including the State budget; the state social insurance budget; the budgets of administrative-territorial units; compulsory health insurance funds *(JCC no.23 of 06.09.2013, §67).*

The relations caused by the formation of public funds take the form mainly of taxes, other charges specified by law and by the state domestic and foreign loans. Subsequently,

social relations created between the state and its members in the distribution and use of public funds, take the form of public and semi-public utilities and services that the state provides to them and to the society in general *(JCC no.23 of 06.09.2013, §68).*

At the same time, the whole budget system relies on what is generically designated as "the state budget", which includes all revenues and expenditures necessary to implement strategies and economic, social and other objectives of the Government *(JCC no.23 of 06.09.2013, §69).*

The Court held that the state budget is the most important tool of the state for the implementation of its fiscal and budgetary policy in the economy. The state budget contributes to the balance between collective needs and the means of financing them *(JCC no.23 of 06.09.2013, §70).*

At the same time, in order to ensure sound management of public finances, the creation and execution of public budgets requires complying with a number of rules and conditions, later transformed into true principles, such as the principles of universality, unity, non-assignment of income, annuality, specialization, monetary unity, publicity *(JCC no.23 of 06.09.2013, §71).*

The principle of unity implies registration in a single document of budget revenues and expenditures, in order to ensure efficient use of public funds and monitoring of financial flows. The unity rule aims to avoid dispersal of the financial operations of the state in multiple documents, in order to facilitate the control exercised by the Parliament. All state revenues and expenditures must be included in a single document, in order to ensure clarity and accuracy of the budgeting *(JCC no.23 of 06.09.2013, §72).*

By setting up special funds budgets, especially of budgets from extra-budgetary resources, the "de-budgeting" phenomenon occurs, which makes it possible to ignore the rules and principles enshrined in the management and administration of public finances *(JCC no.23 of 06.09.2013, §73).*

The Court held that budgets built from extra-budgetary (special) funds also violate the rule of parliamentary scrutiny, as the public resources built through this system of budgets are approved by the higher level credit superiors, the context in which they are by themselves a real exception to the rule of budget unity *(JCC no.23 of 06.09.2013, §74).*

Similarly, the de-budgeting practice disguises the real amount of the budget deficit, it also becomes possible to finance the less public actions and spending *(JCC no.23 of 06.09.2013, §75).*

[...] The Court noted the particular importance of the establishment and implementation of sound rules for the public budgets, especially for the state budget, rules to be followed strictly. The budgets should reflect the real possibilities of the country's economy, the volume of public expenditure that can be financed, while the practices of disguising public funds and of taking them out of the parliamentary control are not admissible. Thus, all funds used by public authorities must be reflected in the national public budget *(JCC no.23 of 06.09.2013, §76).*

4.2 State Monopoly - Part of the Market Economy

The Court considered competition a sine qua non element of the existence of a market economy, its real regulatory power. It can be defined as the confrontation between businesses with the same or similar activities carried on in areas open for the market for winning and preserving customers, for the purpose of increasing cost effectiveness of their businesses. The freedom of competition is a prerequisite for the development of trade relations and a guarantee of progress *(JCC no. 11 of 28.05.2013*[53]*, §31).*

The Court also noted that the structure of any market economy, in addition to competition, also includes monopoly created by the state. The Court held that the state has the right to establish a monopoly on certain activities or areas *(JCC no. 11 of 28.05.2013, §33).*

From the point of view of the legal concept, state monopolies can be qualified as economic activities that the state reserves and carries out through the state economic agents. The main purposes of establishing state monopoly are, first of all, to establish a rigorous control directly on a task and getting the necessary revenue in the budget. The basic requirement for state monopoly is for it to be established by law. In this sense, state monopolies can be qualified as economic activities which, through special laws, are de-

[53] Judgment of the Constitutional Court no. 11 of 28.05.2013 on the control of constitutionality of a provision of art. 8 para. (1) let. a) item 5) of the Law No. 451-XV of July 30, 2001 on licensing of entrepreneurial activity.

clared exclusively within the jurisdiction of the state and can only be subject to business of companies authorized by it *(JCC no. 11 of 28.05.2013, §34).*

[...] The Court held that the establishment of state monopoly does not contradict the constitutional provisions regulating the market economy *(JCC no. 11 of 28.05.2013, §50).*

The Court revealed that the state, through legal provisions and clearly determined conditions, can establish its monopoly in a certain area of activity. Monopoly is an exception from the principle of ensuring free competition *(JCC no. 11 of 28.05.2013, §51).*

The Court held that the licensing of a type of activity is a way to limit and effectively control a socially sensitive area, affecting both morals and public order *(JCC no. 11 of 28.05.2013, §65).*

In this context, the Court notes that the national lottery, as a state monopoly, is entirely subordinated to the state policy, both through administrative bodies, as well as through state-owned shares, which excludes the need for intervention of the Licensing Chamber for control of this area by issuance of the license *(JCC no. 11 of 28.05.2013, §66).*

At the same time, the Court deduces that the state monopoly is the exclusive right to dispose of and to carry out certain economic activities *(JCC no. 11 of 28.05.2013, §69).*

Alternatively, the Court noted that, based on the Law on gambling, the activities of the national and regional lottery may overlap in the same territory, but they cannot be treated on equal terms, because the first is subject to state monopoly and the second is related to the private sector, and, ultimately, there can be no unfair competition *(JCC no. 11 of 28.05.2013, §74).*

The Court distinguishes between state monopoly undertakings with significant market share or natural monopoly, a situation caused by natural, economic or technological causes, but not established by law as a state monopoly *(JCC no. 11 of 28.05.2013, §75).*

In conclusion, the Court held that the exemption of national lotteries from licensing requirements does not violate the provisions of Articles 9 and 126 of the Constitution, which guarantee free competition in the market economy, and does not affect the substance of the guaranteed right *(JCC no. 11 of 28.05.2013, §76).*

5 QUALITY AND CLARITY OF LAWS

The Court held that according to article 23 para. (2) of the Constitution, the state must ensure the free access to all laws and regulations. Although Article 23 of the Constitution expressly provides only the criterion for accessibility and clarity of the law, the European Court, in its case law, requires that rules adopted by public authorities should be sufficiently precise, predictable and comply with the principles of specification. The Court noted that the requirements imposed by art. 23 para. (2) of the Constitution, such as the State's obligation to ensure the right of every person to know his/her rights and to make the legal acts available, include the principles of the European Convention and the case law of the European Court to ensure accuracy, predictability of law and specification *(JCC no. 12 of 04.06.2013*[54]*, §99).*

The Court found that the sequence of symbols of totalitarian communist regime prohibited by the challenged law is exhaustive: "hammer and sickle and any support with these symbols." Also, the fact that these symbols are prohibited only if they are associated with the totalitarian communist regime and communism leads to the conclusion that the rules are not ambiguous and are compatible with the principle of clear and predictable regulation [...] *(JCC no. 12 of 04.06.2013, §101).*

At the same time, the Court considers that the reference to "promoting totalitarian ideologies" implies difficulties of clarity, because the rules do not specify what ideologies are considered "totalitarian". Since the text uses the plural form of the word ("ideologies"), it is suggested that communist ideology is not the only totalitarian ideology covered by this phrase. It is not clear what other ideologies, if any, fall within the incidence of the provisions of the law *(JCC no. 12 of 04.06.2013, §102).*

Neither the challenged law nor other regulations in force specify what ideas, concepts and principles are included in the totalitarian ideologies that should not be promoted. Ideologies, defined as "the system of ideas, concepts, theories, political, moral, legal concepts etc. reflecting in a generalized form the interests of a class or a social category determined by objective historical conditions of existence and, which, in turn,

[54] Judgment of the Constitutional Court no. 12 of 04.06.2013 on the control of constitutionality of some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies

exert an active influence on the development of society," tend to be complex and extensive, comprising a number of intermediary ideas. They may have several branches and flow, which can have significant differences. Ideologies may overlap, sharing some ideas and principles that are susceptible to interpretation by politicians, scientists and philosophers, which would be excessively rigid to be required from ordinary citizens, which could cause lawsuits with philosophical and doctrinal aspects *(JCC no. 12 of 04.06.2013, §103).*

Thus, the Court noted that the term "totalitarian ideologies" is not explicit enough in the challenged legal provisions *(JCC no. 12 of 04.06.2013, §104).*

The Court noted that in respect of the accessibility, clarity and predictability of the law, the term "totalitarian ideology" in art. 4 para. (5) of the Law no. 294-XVI of December 21, 2007 on political parties; art.67[1] of the Code of Offences no. 218-XVI of October 24, 2008 and art.3 para. (41) of the Law no. 64 of April 23, 2010 on the freedom of expression cause situations of uncertainty regarding the compliance with the principle of specification, which does not meet the requirement of clarity of the law and is thus a violation of Article 23 para. (2) of the Constitution *(JCC no. 12 of 04.06.2013, §107).*

B COURT FINDINGS

I PROVISIONS RECOGNIZED CONSTITUTIONAL

The Court recognized as constitutional:

- the wording *"with the proposal to voluntary execute the enforceable document within 15 days"* in paragraph (3) and the provisions of paragraph (3[1]) of Article 60 of the Enforcement Code of the Republic of Moldova No. 443-XV of December 24, 2004 *(JCC No. 1 of 15.01.2013, complaint no. 27a/2012);*
- Decree of the President of the Republic of Moldova no. 534-VII of March 8, 2013 on Government's dismissal *(JCC no.4 of 22.04.2013, complaint no. 10b/2013);*
- provision of Article 301 para. (1) let. c) of the Labor Code of the Republic of Moldova no.154-XV of March 28, 2003, as amended by the Law no. 91 of April 26, 2012 to amend and complete some legal acts *(JCC no.5 of 23.04.2013, complaint 31a/2012);*

- Decision of the Parliament no. 81 of April 18, 2013 to appoint the Prosecutor General *(JCC no.8 of 20.05.2013, complaint no.15a/2013);*
- – Article 3 of the Resolution of the Parliament no. 96 of April 25, 2013 for revocation of the Speaker of the Parliament;
  – Law no. 101 of April 26, 2013 to complete article 14 of the Rules of the Parliament, adopted by the Law no. 797-XIII of April 2, 1996 *(JCC no.9 of 21.05.2013, complaint no. 12a/2013);*
- provisions of Article I para. 6, articles III and IV of the Law no. 91 of April 26, 2012 to amend and complete some legal acts *(JCC no.10 of 23.05.2013, complaint 37a/2012);*
- the wording *"(except the state monopoly exercises according to the conditions of the Law no. 285-XIV of February 18, 1999 on gambling)"* of art. 8 para. (1) let. a) item 5) of the Law No. 451-XV of July 30, 2001 on licensing of entrepreneurial activity, as amended by the Law no. 267 of April 23, 2011 to amend and complete some legal acts *(JCC no.11 of 28.05.2013, complaint 26a/2012);*
- the phrases *"if it was committed after the application of the contravention sanction"* in paragraph (1) and *"if these facts were committed after the contravention sanction has been applied"* in paragraph (2) of Article 320 of the Criminal Code of the Republic of Moldova no. 985-XV of April 18, 2002 *(JCC no.13 of 11.06.2013, complaint no.1g/2013);*
- some provisions of the Law no. 1453-XIV of November 8, 2002 on notary services:
  – the phrase *„order of the Minister of Justice"* of article 15 paragraph (3);
  – the phrase *„order of the Minister of Justice"* of article 16 paragraph (2) concerning the grounds stipulated by paragraph (1) let. b) and let. f);
  – the provisions of article 16 paragraph (4) concerning the grounds stipulated by paragraph (1) let. b) and let. f);
  – the provisions of article 24 paragraph (2) and paragraph (5) concerning the disciplinary sanctions stipulated by paragraph (1) let. c) and let. d) of the Law no. 1453-XIV of November 8, 2002 on notary services (*JCC no. 15 of 20.06.2013, complaint no.7a/2013*);

– the words *„of the Emergency Department, Information and Security Service, State Protection and Security Service"* in item 1) and provisions of para. 2) of article 37 of the Criminal Procedure Code of the Republic of Moldova no.122-XV of March 14, 2003 *(JCC no. 20 of July 16, 2013, complaint no. 39a/2012);*

- – the phrase *„only the part that refers to the procedure of issuing/adoption "* in art.25 of the Law no. 947-XIII of July 19, 1996 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts;

– the words *„according to criteria approved by the Superior Council of Magistracy"* in Art. VIII para. (6) of the Law no. 153 of July 5, 2002 to amend and complete some legal acts (*JCC no. 17 of July 2, 2013, complaint no. 36a/2012);*

- the words "*to have employed in the subdivisions of local public authorities (apparatus of the president of the rayon, municipalities, town hall and municipal district of authorities of Chisinau, divisions, sections and other subdivisions), including the People's Assembly of Gagauzia and the Executive Committee of Găgăuzia;*" in letter c) and provisions of letter d) of article 7 para. (l) of the Law no. 768-XIV of February 2, 2000 on the status of local officials, as amended by the Law no. 168 of July 11, 2012, as interpreted by the Law no.263 of November 16, 2012, to the extent to which they apply to local elected officials, who have obtained their mandate following the local elections conducted before the Law no.168 of July 11, 2012 to amend the Law no. 76IV of February 2, 2000 on the status of local elected officials entered into force - September 14, 2012, as well as the alternate candidates *(JCC no. 19 of July 16, 2013, complaint no. 6a/2013);*
- Resolution of the Parliament no. 314 of December 26, 2012 on dismissal of a judge of the Supreme Court of Justice *(JCC no. 21 of 25.07.2013, complaint no.2a/2013);*
- text *„If the judge has committed the offences stipulated in art. 324 and art. 326 of the Criminal Code of the Republic of Moldova, the consent of the Superior Council of Magistracy to initiate the criminal action is not necessary "* in Article 19 para. (4) of the Law no. 544-XIII of July 20, 1995 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts *(JCC no. 22 of 05.09.2013, complaint no.32a/2013);*

- – paragraphs (1) and (2) of article 36 of the Law no. 797-XIII of April 2, 1996 to approve the Rules of the Parliament, to the extent to which these do not apply to representatives of judicial authorities and to the extent that parliamentary committees of inquiry do not pronounce on the guilt or innocence of a person *(JCC no. 29 of 23.09.2013, complaint no.5a/2013 of 21.03.2013);*
  – articles 4 and 5 of the Resolution of the Parliament no. 3 of February 15, 2013 on the report of the Committee to investigate the administration by the competent bodies of the incident of December 23, 2012 which took place in the nature reserve "Padurea Domneasca" to the extent that the criminal-procedural and disciplinary provisions are not binding on the Prosecutor General, the Superior Council of Magistracy and the Superior Council of Prosecutors *(JCC no. 29 of 23.09.2013, complaint no.5a/2013 of 21.03.2013).*

II PROVISIONS RECOGNIZED AS PARTIALLY CONSTITUTIONAL

The Court recognized as partially constitutional:

- article 7^1 of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Law no. 107 of May 3, 2013, except:

– in paragraph three:

item 2) fully, as follows: *„endorses the legislative initiatives;";*

in item 3), the phrases *„and submits them to the Parliament for approval" „proposes legislative initiatives to the Parliament for:*

a) meeting the obligations arising from the content of the laws and their final provisions within the primary legal framework;

b) ensuring internal and external security of the State, maintaining the lawfulness, social, economic, financial and political stability, and avoiding the effects of natural phenomena and unpredictable factors that are public danger; ";

item 5), as follows: *„Issues individual acts on changes in the structure of personnel";*

– paragraph four fully, as follows: *"During the period when the Government is outgoing, it is only limited in its right to ensure the achievement of foreign policy and legislative initiatives involving the development and approval of new programs of activity"* (*JCC No. 7 of 18.05.2013, complaint 16a/2013).*

III PROVISIONS RECOGNIZED AS UNCONSTITUTIONAL

The Court declared unconstitutional the following provisions:

- Decree of the President of the Republic of Moldova no. 584-VII of April 10, 2013 on the appointment of the candidate for the office of the Prime Minister *(JCC no.4 of 22.04.2013, complaint no.10a/2013)*;
- – paragraph (4) of article 23 of the Law no.317-XIII of December 13, 1994 on the Constitutional Court;
  – the words *"President of the Republic of Moldova"* in paragraph (2) of article 6 on appointed by the President of the judges of the Constitutional Court, the Law no.317-XIII of December 13, 1994 on the Constitutional Court *(JCC no.6 of 16.05.2013, complaint no.17a/2013);*
- – article 27^1 of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Law no. 110 of May 3, 2013;
  – Decree of the President of the Republic of Moldova no. 634-VII of May 16, 2013 on the dismissal of Mr. Mihail Moldovanu from the position of the Deputy Prime Minister;
  – Decree of the President of the Republic of Moldova no. 635-VII of May 16, 2013 on the dismissal of Mr. Anatolie Salaru from the position of Minister of transport and road infrastructure;
  – Government Decision no. 364 of May 16, 2013 on dismissal of Mr. Ion Cebanu *(JCC no.7 of 18.05.2013, complaint no.16a/2013);*
- Decision of the Parliament no. 104 of May 3, 2013 to repeal the Resolution of the Parliament no. 81 of April 18, 2013 to appoint the Prosecutor General *(JCC no.8 of 20.05.2013, complaint no.15a/2013);*
- – articles 4 para. (5) and 22 para. (1) let. e) of the Law no. 294-XVI of December 21, 2007 on political parties, as amended by the Law no. 192 of July 12, 2012 to complete some legal acts;
  – article 3 para. (4^1) of the Law no. 64 of April 23, 2010 on the freedom of expression, as amended by the Law no. 192 of July 12, 2012 to complete some legal acts;

– article 67[1] of the Code of Administrative Offences no. 218-XVI of October 24, 2008 as amended by the Law no. 192 of July 12, 2012 to complete some legal acts *(JCC no. 12 of 04.06. 2013, complaint no. 33a/2012);*

- Art. XI para.16 of the Law no. 29 of March 6, 2002 to amend and complete some legal acts (*JCC no. 16 of 25.06. 2013, complaint no. 4a/2013*);
- article 98 paragraph (2) letter b[1]), article 104[1]m of the Criminal Code no. 985-XV of April 18, 2002, article 175 para. (3[1]) and article 291[1]i of the Enforcement Code no. 443-XV of December 24, 2004, as amended by the Law no. 34 of May 24, 2012 to complete some legal acts (JCC *no. 18 of July 4, 2013, complaint no. 11a/2013*);
- – the words *"and in the case of offences specified under art.324 and art.326 of the Criminal Code of the Republic of Moldova"* of article 19 para. (5) of the Law no. 544-XIII of July 20, 1995 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts;

– Art. II para. 13 paragraph three of the Law no. 153 of July 5, 2002 to amend and complete some legal acts, repealing the paragraph (6) of article 19 of the Law no. 544-XIII of July 20, 1995 on the status of the judge *(JCC no. 22 of 05.09.2013, complaint no.32a/2013);*

- provisions of section 18 of the Regulation on the purchase of medicines and other health products for the needs of the health system, approved by Government Decision no.568 of September 10, 2009 (*JCC no. 23 of 06.09.2013, complaint no.24g/2013);*
- sections "Secretariat of the Constitutional Court", "Superior Council of Magistracy, the Supreme Court, the Prosecutor General", "Courts of appeal" and "Courts, including military, territorial and specialized prosecution office" in Annex no. 2 to the Law no.48 of March 22, 2012 on the wage system of public officials *(JCC no. 24 of 10.09.2013, complaint no. 13a/2013);*
- – the sentence *"An exception are the petitions containing information relating to national security or public order, which shall be submitted to the competent bodies for examination."* in article 10 para. (2) of the Law no. 190-XIII of July 19, 1994 on petitions, as amended by the Law no. 73 of May 4, 2010 to amend some legal acts;

– the sentence *"An exception are the petitions containing information relating to national security or public order, which shall be submitted to the competent bodies for examina-*

tion" in section 22 of Annex no. 1 to the Regulations of the Human Rights Center, the structure, the list of positions and the financing arrangements, approved by Decision of the Parliament no. 57-XVI of March 20, 2008, as amended by the Law no. 73 of May 4, 2010 to amend some legal acts *(JCC no. 25 of 17.09.2013, complaint no. 14a/ 2013);*

- – point 16 of the Regulation for organization and carrying out of the PhD and post-PhD studies, approved by Decision of the Government no. 173 of February 18, 2008;
  – the words *„ aged usually under 45 years,"* in paragraph 4 of Government Decision no. 962 of August 5, 2003 on ensuring the functioning of the Public Administration Academy of the President of the Republic of Moldova *(JCC no. 26 of 19.09.2013, complaint no. 25a/2013);*
- Decision of the Parliament no. 183 of July 12, 2013 on dismissal of a member and deputy president of the Court of Accounts *(JCC no.27 of 20.09.2013, complaint 33a/2013);*
- – Decision of the Parliament no. 180 of July 12, 2013 on dismissal of the director General of the Board of the National Agency for Energy Regulation;
  – Decision of the Parliament no. 181 of July 12, 2013 on dismissal of the director General of the Board of the National Agency for Energy Regulation *(JCC no.28 of 20.09.2013, complaint no.34a/2013);*
- provisions of article 11 paragraph (4) of the Law no.548-XIII of July 21, 1995 on the National Bank of Moldova and article 21 paragraph (3) of the Law on Administrative Litigations no.793-XIV of February 10, 2000, except the provisions regarding the withdrawal of bank license and the acts imposed by the National Bank of Moldova in the process of bank's liquidation *(JCC no.31 of 01.10.2013, complaint no. 26a/2013).*

IV INTERPRETATION OF CONSTITUTIONAL PROVISIONS

- In the meaning of articles 1 para. (3), 101 para. (2) and 103 para. (2) of the Constitution:
  – The Prime Minister of a Government dismissed by vote of no confidence for suspected corruption is unable to continue exercising the mandate;

– If the Government is dismissed by motion of censure on suspicion of corruption, the *President of the Republic of Moldova has the constitutional obligation to appoint an interim Prime minister from among the Members of the Government*, whose integrity has not been affected;
– The President of the Republic of Moldova *is not required* to consult the Parliamentary factions for designation of the interim Prime Minister (*JCC No.4 of 22.04.2013, complaint no.10a/2013);*

- Under Article 140 of the Constitution in conjunction with Articles 7 and 134 para. (3) of the Constitution:
  – the judgment by which some rules/acts are declared unconstitutional not only has the power of a law, but is also binding by considerations underpinning it for all constitutional bodies of the Republic of Moldova, so that the new rules/acts with the same content cannot be adopted again;
  – if some rules/acts are declared unconstitutional, before relevant changes are made by the issuing authority, the rules/acts that were in force before declaration of unconstitutionality will apply, in a manner consistent with the considerations included in the judgments of the Constitutional Court *(JCC 33 of 10.10.2013, complaint no. 45b/2013);*
- Under paragraph (1) of article 85 of the Constitution:
  – the three months term for dissolution of the Parliament refers to blocking of the procedure of passing laws and the impossibility to form the Government;
  – the 3-month term starts from the day when the circumstances determining formation of the new Government emerge, and flows irrespective of the initiation of proceedings for the formation of the new Government and/or the conducting of the proceedings described in paragraph (2) of Article 85 of the Constitution, includes the periods of consultation of parliamentary factions and other legal proceedings and is the deadline for forming the new Government.
  – The 45 days period stated in Article 85 para. (2) of the Constitution is included into the 3 months period stated in Article 85 para. (1) of the Constitution.
  – Under paragraphs (1) and (2) of article 85 of the Constitution: the right of the President of the Republic of Moldova to dissolve the Parliament if the vote of

confidence for formation of the Government is not accepted occurs after the expiry of 45 days after the first request and rejection of at least two requests for investiture before the expiry of the three months deadline;

– after the expiry of three months, the President of the Republic of Moldova must dissolve the Parliament if the Government could not be formed, including if the vote of confidence to form a Government has not been accepted.

– Under article 85 of the Constitution, the right to refer to the Constitutional Court for judgment of circumstances justifying the Parliament's dissolution is an exclusive right of the President of the Republic of Moldova. *(JCC no. 30 of 20.09.2013, complaint no. 22b/2013*);

- – For the purposes of the Preamble to the Constitution, the Declaration of Independence of the Republic of Moldova is integral part of the Constitution, the primary and immutable constitutional text of the block of constitutionality.

– In case of differences between the text of the Declaration of Independence and the Constitution's text, the primary constitutional text of the Declaration of Independence prevails *(JCC no. 36 of 05.12.2013, complaint no. 8b/2013 and 41b/2013).*

V VALIDATION OF THE MANDATES OF MEMBERS OF PARLIAMENT

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

- Mr. Vadim Vacarciuc, born in 1972, home town Bălți, teacher, trainer, alternated candidate on the list of the Liberal Party *(JCC no.3 of 11.04.2013, complaint no.9e/2013);*
- Mister Mihail Solcan, born in 1963, home town Chisinau, economist, doctor in Economy, senior lecturer at the Academy of Economic Studies of Moldova, alternate candidate on the list of the Democratic Party of Moldova *(JCC no.14 of 19.06.2013, complaint no.29e/2013);*
- Mr. Mihail Barbulat, born in 1971, home town Chisinau, teacher, philologist, head of European Integration and International Cooperation Department of the Academy of Science of Moldova, alternate candidate on the list of the Communist Party of the Republic of Moldova *(JCC no.32 of 07.10.2013, complaint no. 43 e/2013);*

- Mr. Ion Stratulat, born in 1946, home town Orhei, engineer - economist, alternate candidate on the list of the Democratic Party of Moldova *(JCC no.35 of 07.11.2013, complaint no.50e/2013.)*

VI SUSPENDED PROCEEDINGS

The Court has suspended the following proceedings:

- for constitutionality control of article 52 paragraph (6) of the Law no.10-XVI of February 3, 2009 on state surveillance of public health *(DCC no.1 of 22.01.2013, complaint no.28a/2012);*
- for constitutionality control of Resolution of the Parliament no. 98 of April 25, 2013 to establish a special commission to examine the circumstances of passing the Parliament Decision No. 81 of April 18, 2013 to appoint the Prosecutor General.- for constitutionality control of the Resolution of the Parliament no. 103 of May 3, 2013 on the Report of the special commission to examine the circumstances of passing the Parliament Decision No.81 of April 18, 2013 on appointment of the Prosecutor General (*JCC no. 8 of 20.05.2013, complaint no. 15a/2013);*
- for constitutionality control of the Law no. 106 of May 3, 2013 to amend and complete some legal acts (DCC *no.5 of 22.05.2013, complaint no.19a/2013);*
- for constitutionality control of the words *„medical and pharmaceutical"* in paragraph three of article 2 of the Law no. 1070-XIV of June 22, 2000 *„To approve the Nomenclature of specialties for teaching in higher education and specialized secondary education institutions" and* the phrases *"Medicine", "Pharmacy"* in the second paragraph of Article 3 of the Law no. 142-XVI of July 7, 2005 „To approve the Nomenclature of professional training area sand specialties for training staff in higher education institutions, cycle I" *(DCC no. 7 of 04.07.2013, complaint no. 20a/2013);*
- on exception of unconstitutionality of the text *"If the judge authorized the special investigative measures, the prosecutor can defer up to 6 months, by reasoned order, disclosure of the procedural document for recognition as a suspect "* in article 64 para. (2) para. 5) of the Criminal Procedure Code, as amended by the Law no. 66 of April 5, 2012 to amend and complete the Criminal Procedure Code *(DCC no. 8 of 25.07.2013, complaint no. 3g/2013);*

- on constitutionality control of paragraphs 3.1.1, 3.1.4 – 3.1.9, 3.1.11, 3.1.20 and 3.2 let. c) and let. d) of the report of the Committee to investigate the administration by the competent bodies of the incident of December 23, 2012 which took place in the nature reserve "Padurea Domneasca" *(JCC no. 29 of 23.09.2013, complaint no.5a/2013 of 21.03.2013)*;
- for constitutionality control of article 23 paragraph (3) of the Law on Administrative Litigation no.793-XIV of February 10, 2000 *(JCC no.31 of 01.10.2013, complaint no. 26a/2013).*

VII DENIED COMPLAINTS

In the process of exercising constitutional jurisdiction in 2013 the Court reviewed 14 complaints, which were declared inadmissible for the following reasons:

- the complaint does not contain any argument that would justify the purpose of the challenged provision subject to constitutionality control *(DCC no. 2 of 12.04.2013, §23; DCC no.14 of 8.10.2013, §37)* or the need to interpret a constitutional provision *(DCC no. 16 of 07.11.2013, §18)*;
- the complaint does not contain relevant arguments proving how the challenged rights, guaranteed by the Constitution and other relevant international documents are violated (*DCC no. 2 of 12.04.2013, §27; DCC no. 16 of 07.11.2013, §26);*
- The Court has already issued a judgment on the issue raised in the complaint (*DCC no. 2 of 12.04.2013, §29; DCC no. 4 of 15.05.2013, §37; DCC no. 6 of 25.05.2013, §27; DCC no. 10 of 25.07.2013, §25);*
- the complaint addresses litigious situations, while the Court is not competent to analyze the application of a legal provision for a specific situation, since settlement of specific disputes between specific persons is the exclusion power of courts *(DCC no.3 of 12.04.2013, §§36-37);*
- by the complaint, the Court is asked to rule on the interpretation of certain provisions laid down by laws, which would imply exceeding the limits of own competence, or the interpretation of laws and ensuring the unity of legal regulations throughout the country is the basic task of the Parliament, the only legislative au-

thority of the state. *(DCC no. 3 of 12.04.2013, §46; DCC no.5 of 22.05.2013, §25; DCC no. 14 of 8.10.2013, §38);*

- the constitutional provisions the interpretation of which is requested do not contain ambiguities or uncertainties, which are explicit and detailed by subsequent regulatory framework, therefore they do not need to be interpreted by the Constitutional Court (*DCC no. 3 of 12.04.2013, §45; DCC no. 6 of 25.05.2013, §31; DCC no. 16 of 07.11.2013, §32);*
- the subject of the complaint exceeds its area of competence, as the issue approached in the complaint is an opportunity issue and not a constitutionality issue *(DCC no.5 of 22. 05. 2013, §28; DCC no. 7 of 04.07.2013, §44);*
- the complaint does not show a direct causal link between the challenged rules and the challenged constitutional provisions (*DCC no. 14 of 8.10.2013, §41);*

Thus, the following complaints have not been accepted for review on the merits:

- complaint for constitutionality control of art. 9 para.(1) let.h), let.l) and let.o), art.21 para. (2); art. 22 para. (2) and para. (3) and the last sentence in art. 23 of the Law no. 192-XIV of November 12r, 1998 on the National Commission of the Financial Market *(DCC no.2 of 12.04.2013, complaint no.35a/2012);*
- complaint on interpretation of article 46 para.(5) of the Constitution of the Republic of Moldova *(DCC no.3 of 12.04.2013, complaint no. 41b/2012);*
- complaint for constitutionality control of the Law no. 108 of May 3, 2013 to amend and complete some legal acts (Elections Code and the Law on the status of MPs (*DCC no.4 of 14.05.2013, complaint no.18a/2013).*
- complaint for interpretation of articles 16 para. (2), 38 and 72 para. (3) let. a) of the Constitution of the Republic of Moldova. *(DCC no.6 of 23.05,2013, complaint no.21b/2013);*
- complaint on constitutionality control of Government Decision no. 293 of May 16, 2013 on appointment of Mr. Ion GOLOVATII and Government Decision no. 294 of May 16, 2013 on appointment of Mr. Veaceslav CEBAN *(DCC no.9 of July 25, 2013, complaint no. 23a/2013);*

- complaint on constitutionality control of provisions of the Law no. 546-XV of December 19, 2003 to approve the Concept of the national policy of the Republic of Moldova *(DCC no. 10 of July 25, 2013, complaint no. 30a/2013);*
- complaint for constitutionality control of some provisions of the Law no. 121 of May 25, 2012 on ensuring equality *(DCC no.14 of 8.10.2013, complaint no.27a/2013);*
- complaint for the interpretation of articles 35 and 54 of the Constitution of the Republic of Moldova (*DCC nr. 16 of 7.11.2013, complaint no. 37b/2013);*
- complaint for constitutionality control of items 123 and 124 in Annex no. 2 to Government Decision no. 945 of August 20, 2007 on the measures to enforce the Law no. 121-XVI of May 4, 2007 on administration and privatization of public property *(DCC no. 18 of 06.12.2013, complaint no. 49a/2013).*

VIII DECISIONS TO SUSPEND THE CHALLENGED REGULATORY PROVISIONS

The Court has decided

- to suspend the action of the Government Decision no. 715 of September 12, 2013 to approve the Report on the progress and the results of the concessionaire of assets of the SE „Aeroportul Internațional Chisinau", as long as the settlement on the merits has not taken place, followed by issue of a final decision or judgment *(DCC no. 12 of 19.09.2013, complaint no. 39a/2013) and to prohibit* conduct of any actions for enforcement of Government Decision no. 321 of May 30, 2013 to approve the concession of the assets of SE „Aeroportul Internațional Chisinau" and of the conditions for its concession and of Government Decision no. 715 of September 12, 2013 to approve the Report on the progress and the results of the concessionaire of assets of the SE „Aeroportul Internațional Chisinau". *(DCC no. 12 of 19.09.2013, complaint no. 39a/2013);*
- *to suspend* the action of the Government Decision no. 321 of May 30, 2013 to approve the concession of the assets of SE „Aeroportul Internațional Chisinau" and of its concession as long as the settlement on the merits has not taken place, followed by issue of a final decision or judgment. *(DCC no.11 of 10.09.2013, complaint no. nr.39a/2013).*

C | ADDRESSES

The Court has prepared the following addresses to the Parliament:

Address PCC-01/27a of 15.01.2013, JCC no.1 of 15.01.2013, complaint no.27a/2012

The Court has found a contradiction and inconsistency between some provisions of the Enforcement Code. Thus, on the one hand, according to art.70 para. (2) of the Enforcement Code, the executing bailiff will immediately take all necessary steps to enforce the judgment, and on the other hand, shall provide the debtor 15 days for voluntary execution of the enforcement document in the already instituted enforcement proceedings.

The Court held that the rule contained in Article 60. (3) of the Enforcement Code is a general rule to the effect that the bailiff grants a period for voluntary execution of all enforceable documents. At the same time, according to art.16 para.(3) of the Enforcement Code, the court decisions within the administrative litigation procedure shall be submitted for enforcement after the expiry of the voluntary execution term established by the law or by the court.

Thus, the Court considered it appropriate to establish an obligation of the creditor to notify the debtor of the voluntary execution of the enforceable document before the initiation of enforcement proceedings. Also, provision by law of a term for voluntary execution of a court judgment before institution of forced execution will not allow mutual exclusion of these two forms of execution, an exclusion which currently exists, if we consider the legal provisions referred to above.

Address PCC-01/39a of 16.07.2013, JCC no. 20 of 16.07.2013, complaint no.39a/2012

The Court noted an inconsistency in art. 37 para.1) of the Criminal Procedure Code. Thus, following the adoption of the Law no. 93-XVI of April 5, 2007 on the Civil Protection and Emergency Situations Service, the institution „Emergency Situations De-

partment", provided for in the text of art. 37 para. 1) of the Criminal Procedure Code was assigned the name „Civil Protection and Emergency Situations Service". In this context, the Court considered it appropriate to introduce changes in para. 1) of art. 37 of the Criminal Procedure Code of the Republic of Moldova in accordance with the special law.

Address no. PCC-01/2a of 25.07.2013, JCC no.21 of 25.07.2013, complaint no.2a of 20.02.2013

The Court considered it necessary to warn on the issue of the vote of Members of Parliament in order to improve parliamentary mechanisms that would ensure the exclusion of practices prone to raise doubts on the correctness of the vote in the country's supreme representative body and would ensure compliance with the principle of legal certainty.

Address no. PCC-01/32a of 05.09.2013, JCC no.22 of 05.09.2013, complaint no.32a of 07.09.2013

The Court found that there was no difference in principle between initiation of criminal proceedings and initiation of criminal prosecution, as in both cases a criminal charge was present.

Therefore, no procedural actions can be performed and no procedural measures can be applied against a judge before the initiation of criminal prosecution. Article 19 para. (5) of the Law on the Status of Judge does not state clearly who can apply procedural measures against a judge (arrest, search and forced presentation) since the beginning of criminal proceedings before the criminal prosecution is initiated.

Accordingly, the Court certifies an inconsistency between the mentioned provisions and considered appropriate liquidation of contradictions between legal norms and establishment by law of procedural safeguards for containment actions, forced presentation, search of the judge, which can be performed only after initiation of criminal prosecution by the Attorney General.

Address PCC-01/5a of 23.09.2013, JCC no. 29 of 23.09.2013, complaint no.5a/2013 of 21.03.2013)

The Court notes that any regulatory provision involving the possibility of summoning a judge, a prosecutor before a parliamentary commission of inquiry clearly violates the constitutional provisions which stipulate the separation of powers in the state, the independence of judges and prosecutors and their obedience only to the law. They may attend as guests in parliamentary committees when clarification of some technical issues or of information of public interest which does not involve elucidation of procedural matters concerning the deployment of some pending cases.

The Court held that the parliamentary committees of inquiry do not have constitutional or statutory empowerment to decide on the guilt or innocence of a person.

The Court noted that, while under article 36 para. (1) and (2) of the Regulations, the inquiry committee may summon as witness any person or request any evidence, under article 36 para. (4), it cannot examine material or procedural issues which are the object of criminal files, as it shows a contradiction between these regulations.

Also, in the examination of the case, the Court concluded that the provisions of the Rules of the Parliament on organization and functioning of the inquiry committee, the activity of which differs from the activity of the standing committee, are not fully regulated.

The lack of regulations concerning the specific tasks of the inquiry committee generates the risk of violation of constitutional provisions by the members of the inquiry committee.

The Court considers it necessary to regulate the organization and functioning of committees of inquiry, including the procedure for establishing the committee, the powers of the committee, participation in the meetings of the committee, including attendance and examination of persons, the proceedings before the commission of inquiry, the legal force of the report of the inquiry committee.

Address PCC-01/26a of 01.10.2013, JCC no. 31 of 01.10.2013, complaint no.26a/2013

Regarding the challenged provisions of Article 23 paragraph (3) of the Law on Administrative Litigation, according to which claims against the National Bank shall be examined within 3 months from the date of filing, the Court found that these are opportunity issues and do not affect the constitutional provisions.

In this context, the Court held that, due to their complexity, disputes relating to the financial sector involve extensive examination of all the circumstances and relevant facts of the case; which is why in some cases, the 3 months period may be insufficient.

In the light of the above, the Court considered appropriate to review the term prescribed by law, taking into account the criteria that determine the reasonable period, so that the parties to the proceedings have sufficient time to prepare their defense, and the judge - the ability to scrutinize the cause, in order to ensure a fair trial.

D | DISSENTING OPINIONS

Separate opinions have been delivered by the following judges:

Victor Puşcaş:

– on some provisions of article 60 para. (3^1) of the Enforcement Code of the Republic of Moldova no. 443-XV of December 24, 2004 *(JCC no.1 of 15.01.2013, complaint no.27a/2012).*

Alexandru Tănase:

– on some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies *(JCC no.12 of 04.06.2013, complaint no. 33a/2012).*

Igor Dolea:

– on some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies *(JCC no.12 of 04.06.2013, complaint no. 33a/2012);*

– on provisions of article 320 of the Criminal Code of Moldova no. 985-XV of April 18, 2002, as amended by the Law no. 173 of July 9, 2010 to amend some legal acts *(JCC no.13 of 11.06.2013, complaint no.1g/2013).*

Aurel Băieşu:

– on provisions of Art. XI para.16 of the Law no. 29 of March 6, 2002 to amend and complete some legal acts (*JCC no.16 of 25.06.2013, complaint no.4a/2013);*
– on some issues concerning the correlation between the Preamble to the Constitution and the Declaration of Independence *(JCC no.36 of 05.12.2013, complaint no. 8b/2013 and 41b/2013).*

Tudor Panţîru:

– on some provisions of art. 8 para. (1) let. a) item 5) of the Law No. 451-XV of July 30, 2001 on licensing of entrepreneurial activity *(JCC no.11 of 28.05.2013, complaint 26a/2012).*

TITLE III

ENFORCEMENT OF JUDGEMENTS AND DECISIONS OF THE CONSTITUTIONAL COURT

TITLE III

ENFORCEMENT OF JUDGEMENTS AND DECISIONS OF THE CONSTITUTIONAL COURT

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 declared unconstitutional shall be removed according to the current legislation.

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

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

The analysis of Court judgments shows that they target the rights and fundamental freedoms enshrined in the supreme law and some rules of international treaties, such as: access to justice, right to defense, right of the person aggrieved by a public authority, right to property; the principle of separation and collaboration of powers; right to local autonomy; protection of fair competition, etc.

The judgments of the Constitutional Court are intended primarily for the legislature, and other subjects participating in the legislative process. The result of their work is appreciated in a process of constitutional justice, moreover, the judgment of the Constitutional Court often imposes to undertake appropriate legislative measures. The judgments of the Constitutional Court are final, cannot be appealed upon by the legislator, and are binding. For this reason, the legal, and not political factors, must determine the reactions to the Court's decisions, especially if they involve specific obligations for the relevant subjects.

Stating a legislative inaction, i.e. the gap in the law or other legal act contrary to the Constitution, inevitably causes legal consequences. The judgment of the Constitutional Court involves the obligation to fill this gap in the law 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 actions of the legislator are simply indispensable for correcting the legal loopholes. The unconstitutional "gap" of a legal regulation or inheritance of a law or other "unfinished" legal act means that the Parliament, which is the political institution which has been given the power to legislate, does not properly or fully exercise the constitutional mission conferred on it. The legislator's obligation to remove the legal regulation gap is set based on the principles of the rule of law and separation of powers.[55]

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 required to perform in a specific area, particularly when such requirement is imposed by a judgment of the Constitutional Court.

The lack of legal intervention of the Parliament in the execution of constitutional court acts is equal to failure to exercise its basic competence, namely *to legislate,* duty assigned by the Constitution.

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[55] 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

In Judgment no. 33 of 10.10.2013[56], §33, the Court held that some judgments of the Constitutional Court, declaring a legal provision or an act unconstitutional, can generate legal gaps and existence of some gaps and ambiguities in the process of enforcement 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, shall submit 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.

The judgment of the Constitutional Court itself is a generally binding legal finding based on the elucidation of the essence of the constitutional issue after the official interpretation of the relevant rules 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.

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.

In order to boost the process of executing its judgments, and to regularize the situation of the legal vacuum created after declaring the provisions of regulatory acts the constitutionality control of which was requested by complaints as unconstitutional, the Constitutional Court has resorted to issuing decisions on how the judgments of the Court should be executed. The Explanatory Judgment no. 34 of 11.10.2013 on enforcement of the Judgment of the Constitutional Court no. 27 of December 20, 2011 on constitutionality control of some laws to amend the conditions for provision of retirement allowances and other social benefits for certain categories of employees can be presented as an example.

[56] Judgment of the Constitutional Court no. 33 of 10.10.2013 on interpretation of article 140 of the Constitution

Another way to explain how the judgment of the Court should be executed is regulation of these issues in the introductive part of the judgments. Thus, the Judgment no. 24 of 09.10.2013 on constitutionality control of some provisions on the wage of public officials working in courts, declaring unconstitutional some parts of Annex no. 2 to the Law no. 48 of March 22, 2012 on the wage system of public officials, the Court has reiterated the provisions of art. 28[1] of the Law no. 317-XIII of December 13, 1994 on the Constitutional Court and explained how the legislation in force should be applied before new regulatory provisions in this area are adopted.

A | LEVEL OF ENFORCEMENT OF JUDGMENTS OF THE CONSTITUTIONAL COURT

During 2013, 11 judgments were delivered, 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 only 2 have been executed until the date of approving this Report *(see Table 1).*

Following a comparative dynamic analysis of the 12 judgments of the Court delivered in 2012, in which at least one of the challenged provision was declared unconstitutional, 5 remained unenforced, of which about 3 judgments the procedure of adoption of draft legal acts amending and supplementing some laws is to be finalized in the Parliament. *(See Chart No. 16)*

With a view to advance the process of amending legislation which provisions were declared unconstitutional based on the judgments of the Constitutional Court in the period 2012-2013, the Court asked the Government and the Parliament to submit an information on 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 responsible for fulfilling the tasks assigned according to art. 28[1] of the Law no. 317-XIII of December 13, 1994.

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

B | 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 current legislation or on the need to operate changes in legal regulations that have been subject to constitutionality control.

The activity of the Constitutional Court is mainly oriented towards the review of the complaints submitted and exercise of constitutional competences in respect of these complaints . Finding the compliance with the Constitution or declaring the acts subject to constitutionality control unconstitutional, interpretation of constitutional provisions, explaining 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 acts as a passive legislator. In 2013 the Court issued 6 addresses and was informed, upon request, on their enforcement, as well as on the enforcement of the addresses issued in the previous years. Thus, according to the information submitted by the Parliament and the Government, out of all the addresses issued in the reference year, only 1 has been enforced (Address no.PCC-01/26a of 01.10.2013, JCC 31 of 10.01.2013 for constitutionality control of Article 11 para. (4) of the Law No. 548-XIII of July 21, 1995 on the National Bank of Moldova and Articles 21 para. (3) and 23 para. (3) of the Law on Administrative Litigation No. 793-XIV of February 10, 2000), 3 were within the period of execution and 2 remain not enforced, even

though the period of three months specified in para. (4) art. 28[1] of the Law on Constitutional Court has been exceeded. For comparison, in 2012 there were issued 7 addresses, of which 3 were executed, 4 are in process of enforcement; in 2011 9 addresses were sent: 2 enforced, 2 in the process of enforcement, 5 - not enforced; in 2010 0 6 addresses, of which 2 in the process of enforcement, 4 - not enforced. *(See Chart No. 17)*

Table 1. **Enforcement of Judgments of the Constitutional Court in 2013**

No. judgment of the Constitutional Court	Provision declared unconstitutional	Comments on execution/ non-execution
JCC no. 6 of 16.05.2013 for constitutionality control of paragraph (4) of article 23 of the Law no. 317-XIII of December 13, 1994 on the Constitutional Court (Complaint 17a/2013-05-14,) *Official Gazette no. 119-121, 12 of 31.05.2013*	– paragraph (4) of article 23 of the Law no.317-XIII of December 13, 1994 on the Constitutional Court. – the words *"President of the Republic of Moldova"* in paragraph (2) of article 6 on appointed by the President of the judges of the Constitutional Court, the Law no.317-XIII of December 13, 1994 on the Constitutional Court	***Not enforced***
JCC no. 7 of 18.05.2013 on constitutionality control of some provisions of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Laws no. 107 and no. 110 of May 3, 2013, as well as of the Decrees of the President of the Republic of Moldova no. 634-VII and 635-VII of May 16, 2013 and Government Decision no. 364 of May 16, 2013	The following provisions were declared unconstitutional: – In article 7[1] of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Law no. 107 of May 3, 2013, – in paragraph (3): item 2) fully, as follows: *„endorses the legislative initiatives;"* in item 3), the phrases *„and submits them to the Parliament for approval" „proposes legislative initiatives to the*	***Not enforced***

(Complaint 16a/2013) *Official Gazette no. 122-124, art. 13 of 07.06.2013*	*Parliament for*: *a) meeting the obligations arising from the content of the laws and their final provisions within the primary legal framework;* *b) ensuring internal and external security of the State, maintaining the lawfulness, social, economic, financial and political stability, and avoiding the effects of natural phenomena and unpredictable factors that are public danger; "* item 5), as follows: *„Issues individual acts on changes in the structure of personnel";* – paragraph four fully, as follows: *"During the period when the Government is outgoing, it is only limited in its right to ensure the achievement of foreign policy and legislative initiatives involving the development and approval of new programs of activity."* – article 27^1 of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Law no. 110 of May 3, 2013.	
JCC no. 12 of 04.06. 2013 c of 04.06.2013 for constitutionality control of some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies	– articles 4 para. (5) and 22 para. (1) let. e) of the Law no. 294-XVI of December 21, 2007 on political parties, as amended by the Law no. 192 of July 12, 2012 to complete some legal acts	***Not enforced***

(Complaint no. 33a/2012) *Official Gazette no. 167-172, art. 22 of 02.08.2013*	– article 3 para. (4[1]) of the Law no. 64 of April 23, 2010 on the freedom of expression, as amended by the Law no. 192 of July 12, 2012 to complete some legal acts. – article 67[1] of the Code of Administrative Offences no. 218-XVI of October 24, 2008 as amended by the Law no. 29 of March 6, 2012 to amend and complete some legal acts	
JCC no. 16 of 25.06. 2013 for constitutionality control of Art.XI section 2013 of the Law no.29 of March 6, 2012 to amend and complete some legal acts (Complaint no. 4a/2013 *Official Gazette no. 177-181, art.24 of 16.08.2013*	Art. XI para.16 of the Law no. 29 of March 6, 2012 to amend and complete some legal acts 443-XV of December 24, 2004, as amended by the Law no. 34 of May 24, 2012 to complete some legal acts.	***Not enforced***
JCC no. 18 of 04.07.2013 on the constitutionality of provisions of the Criminal Code No. 985-XV of April 18, 2002 and Enforcement Code no.443-XV of December 24, 2004, amended by Law No. 34 of May 24, 2012 for completion of certain legal acts (Complaint no. 11a/2013) *(Chemical castration)* *Official Gazette no. 182-185, art.27 of 23.08.2013*	– article 98 paragraph (2) letter b[1]), article 104[1] of the Criminal Code no. 985-XV of April 18, 2002, – article 174 para. (3[1]) and article 291[1] of the Enforcement Code no. 443-XV of December 24, 2012 to complete some legal acts	***Executed***

JCC no. 22 of 05.09.2013 for constitutionality control of some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies (Complaint no.*32a/2012*) *Official Gazette no.276-280, art. 43, of 29.11.2013*	The words *"and in the case of offences specified under art.324 and art.326 of the Criminal Code of the Republic of Moldova"* of article 19 para. (5) of the Law no. 544-XIII of July 5, 1995 on the status of the judge, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts. – art. II para. 13 paragraph three of the Law no. 153 of July 5, 2002 to amend and complete some legal acts, repealing the paragraph (6) of article 19 of the Law no. 544-XIII of July 20, 1995 on the status of the judge.	***Not enforced***
JCC no. 23 of 06.09.2013 on the exception of unconstitutionality of Section 18 of the Regulation on the purchase of medicines and other health products for the needs of the health system, approved by Government Decision no.568 of September 10, 2009 (Complaint 24g/2013) *Official Gazette no. 258-261, art.39 of 15.11.2013*	– provisions of section 18 of the Regulation on the purchase of medicines and other health products for the needs of the health system, approved by Government Decision no.568 of September 10, 2009	***Not enforced***

JCC no. 24 of 10.09.2013 for constitutionality control of some provisions of Annex no. 48 to the Law no. 48 of March 22, 2012 on the wage system of public officials (Complaint no. 13a/2013) *Official Gazette no. 291-296, art. 47 of 13.12.2013*	– sections "*Secretariat of the Constitutional Court", "Superior Council of Magistracy, the Supreme Court, the Prosecutor General", "Courts of appeal" and "Courts, including military, territorial and specialized prosecution office*" in Annex no. 2 to the Law no.48 of March 22, 2012 on the wage system of public officials.	***Not enforced***
JCC no. 25 of 17.09.2013 for constitutionality control of some provisions regarding the examination of anonymous petitions (Complaint no.14a*/2013*) *Official Gazette no. 276-280, art. 44 of 29.11.2013*	– the sentence "*An exception are the petitions containing information relating to national security or public order, which shall be submitted to the competent bodies for examination.*" in article 10 para.(2) of the Law no. 190-XIII of July 19, 1994 on petitions, as amended by the Law no. 73 of May 4, 2010 to amend some legal acts. – the sentence "*An exception are the petitions containing information relating to national security or public order, which shall be submitted to the competent bodies for examination*" in section 22 of Annex no. 1 to the Regulations of the Human Rights Center, the structure, the list of positions and the financing arrangements, approved by Decision of the Parliament no. 57-XVI of March 20, 2008, as amended by the Law no.73 of May 4, 2010, to amend some legal acts.	***Not enforced***

JCC no. 26 of 09.19.2013 on constitutionality control of some provisions on the age limit for admission to master and PhD studies (Complaint no. 25a/2013) *Official Gazette no. 297-303, art.49 of 20.12.2013*	– line 16 of the Regulation for organization and carrying out of the PhD and post-PhD studies, approved by Decision of the Government no.173 of February 18, 2008. – the words *„usually aged under 45 years,"* in paragraph 4 of Government Decision no.962 of August 5, 2003 to ensure the functioning of the Public Administration Academy under the President of the Republic of Moldova.	***Not enforced***
JCC no. 31 of 01.10.2013 for constitutionality control of the provisions of article 11 para. (4) of the Law no.548-XIII of July 21, 1995 on the National Bank of Moldova and articles 21 para. 3) and 23 para. (3) of the Law on Administrative Litigation no.793-XIV of February 10, 2000 (Complaint no. 26a/2013). *Official Gazette no.252-257/38 of 08.11.2013*	- provisions of article 11 paragraph (4) of the Law no.548-XIII of July 21, 1995 on the National Bank of Moldova and - article 21 paragraph (3) of the Law on Administrative Litigations no.793-XIV of February 10, 2000, except the provisions regarding the withdrawal of bank license and the acts imposed by the National Bank of Moldova in the process of bank's liquidation	***Executed*** **Law no. 343 of 23.12.2013 to amend and complete some legal acts.** *Official Gazette no. 17-23, art. 54 of 24.01.2014*

TITLE IV

EXTERNAL RELATIONSHIPS

TITLE IV
EXTERNAL RELATIONSHIPS

A | COLLABORATIONS

The year 2013 was characterized by a constant concern of the Constitutional Court of the Republic of Moldova to intensify the exchange of experience on issues of constitutional justice with other comparable institutions in Central and Eastern Europe and European bodies the goal of which is to promote constitutional values and to strengthen the position of constitutional courts in their capacity as guarantor of constitutional rights and the rule of the Constitution. The renewed Constitutional Court continued to strengthen and diversify relations with the institutions of constitutional jurisdiction of other states.

International bodies, of which the Constitutional Court is a full-fledged member, such as the European Commission for Democracy through Law of the Council of Europe (Venice Commission), the Association of Constitutional Courts using the French language (ACCPUF), the Conference of European Constitutional Courts (CCCE) and the World Conference of Constitutional Justice, continue to expand through accession of new members, so that at the end of 2013 the European Commission for Democracy through Law of the Council of Europe (Venice Commission) counts 59 members (in April 2013 the U.S. got the status of full member), and the World Conference on Constitutional Justice brings together 80 members.

In terms of bilateral relations, the Constitutional Court has hosted the delegation of the European Court of Human Rights, which visited Chisinau on June 6-9, 2013. Visit of the judges of the European Court Ineta Ziemele, Khanlar Hajiyev and Mark Villinger follows the joint invitation of the Constitutional Court, the Supreme Court and the Association of Judges of Moldova. During the discussions the judges shared their experience in the case law of the European Court, noting the importance of these meetings to ensure uniform application of the ECHR case law in judicial proceedings in Moldova.

In the context of close cooperation of the President of the Constitutional Court Mr. Alexandru Tănase with the academia in Romania, on October 10-12, 2013 Dr. Ioan Gânfălean, Dean of the Law and Social Sciences Department, University „1 decembrie 1918" in Alba-Iulia and Dr. Augustin Lazăr, Prosecutor General at the Court of Appeal Alba-Iulia, made an official visit to Chisinau. The distinguished guests had a constructive and substantive dialogue with the constitutional judges, challenging various issues and aspects of the justice system in both countries.

The program of the visit also included a meeting with the dean and the students of the Faculty of Law of the State University of Moldova. In the bilateral cooperation between the Constitutional Court of the Republic of Moldova and the Polish Constitutional Tribunal, a delegation consisting of the Secretary General and 5 representatives of the Sections of legal expertise; research and analysis; External Relations of the Secretariat of the Constitutional Court conducted a study and experience exchange visit to Warsaw between June 12-16, 2013. The complex agenda included meetings with Mr. Andrzej Rzeplinski, President of the Tribunal, Mr. Maciej Graniecki, Head of the Office, Mr. Adam Jankiewicz, Director of Cabinet of the President, with assistant judges, as well as with the officials of Case law and education departments; registry; preliminary examination of constitutional complaints and referrals, Editorial Office and Department of electronic data processing. The discussions focused in particular the organizational structure of the Court, the referral procedure, the stages of examination of complaints, preparing of draft decisions and other aspects of judicial activity of the institution. At the end of the meeting, the Secretary General of the Constitutional Court reiterated the particular interest for the permanent development of relations between the two authorities of constitutional jurisdiction.

Thus, it was agreed with the Polish colleagues that cooperation between both courts would expand and strengthen through the organization of regular official and working visits. At the multilateral level, the Constitutional Court of the Republic of Moldova was present at the events of real interest for development of relations in international bodies and exchange of experience on specific areas with other constitutional courts and equivalent institutions.

B | PARTICIPATIONS

Participation in Conferences, Seminars, Meetings of Judges of CC in 2013				
Date	**Name of the person**	**Type of the meeting**	**Place of the meeting**	**Subject theme**
January 25	Alexandru TĂNASE, President of CC, and Rodica SECRIERU, Secretary General of CC	Inauguration of the Judicial year of the European Court of Human Rights, solemn meeting and thematic seminar	Strasbourg, France	*„Implementation of the European Convention on Human Rights during the economic crisis"*
March 14-16	Alexandru TĂNASE, President of CC, Igor DOLEA, judge, Rodica SECRIERU, Secretary General of CC	Participation in the VIIIth Congress of Lawyers, organized by Consiglio Nazionale Forense of the Ministry of Justice, meetings with the President of the Constitutional Court of Italy and the First President of the Supreme Court of Cassation	Rome, Italy	*„Right to Defense and New Democracies: the Role of the Lawyer"*

May 31 - June 2	Alexandru TĂNASE, President of CC, Igor DOLEA, Victor POPA, judges	15th International Congress dedicated to Comparative and European Constitutional Law	Regensburg Germany	*„Constitutional Law and Financial Crisis. Recent Developments in the European Constitutionalism in the light of the Constitutional Justice"*
June 20-22	Alexandru TĂNASE, President of CC, Tudor PANȚÎRU, judge, Rodica SECRIERU, Secretary General of CC	International Conference organized by the Constitutional Court on the occasion of the Constitution Day of Ukraine	Yalta, Ukraine	*"Protection of human and civil rights by the authorities of constitutional jurisdiction in the present social context"*
June 26-27	Alexandru TĂNASE, President of CC	The 10th edition of the European Conference of electoral authorities, organized by the Venice Commission in partnership with the Central Election Commission of Moldova	Chisinau, RM	*"Code of Good Practice in Electoral Matters: strengths and possible developments"*
June 29-30	Alexandru TĂNASE, President of CC, Rodica SECRIERU, Secretary General, Ion MISCHEVCA, consultant, Foreign Relations Department	3rd Regional Conference of the States of the Black Sea Basin, organized by the Constitutional Court of Georgia	Batumi, Georgia	*"Theoretical and practical aspects of constitutionality control of constitutional provisions"*

July 3-5	Victor POPA, judge and Emil GAITUR, senior consultant, Foreign Relations department	Pan-European Conference, organized by the Constitutional Court of Armenia	Erevan, Armenia	*"European standards of rule of law and the margin of freedom of power in the member states of the Council of Europe"*
July 10-14	Alexandru TĂNASE, President of CC, Tudor PANȚÎRU, judge, Rodica SECRIERU, Secretary General of CC, Lilia RUSU, head, Judicial Expertise Unit, Mihaela BESCHIERU, head, Foreign Relations Unit	International Conference on the occasion of the 15-th anniversary of the Constitutional Court of Azerbaidjan	Baku, Azerbaidjan	*„Constitutional Justice in the XXIst century: particularities and Developments"*
August 29-30	Petru RAILEAN, judge	International Scientific-Practical Conference dedicated to the Constitution's Day of the Republic of Kazakhstan	Astana, Kazahstan	*"The Constitution - the Cornerstone of the Development Strategy of the Society and the State"*
September 16-17	Alexandru TĂNASE, President of CC	International Scientific Conference organized by "1 decembrie" University, Alba Iulia	Alba Iulia, Romania	*"The Law and its Challenges"*

September 25-28	Alexandru TĂNASE, President of CC, Aurel BĂIEŞU, judge, Rodica SECRIERU, Secretary General of CC	International Conference organized by the Constitutional Court of Latvia and the Venice Commission	Riga, Latvia	*"The jurisdiction of the Constitutional Court - the limits and possibilities for expansion"*
September 26	Igor DOLEA, judge	The conference to launch the book "Selected Decisions of the German Federal Constitutional Court", organized by the Constitutional Court of Romania in collaboration with the Rule of Law Program for the South Eastern Europe of the German Konrad Adenauer Foundation	Bucharest Romania	*Presentation of the publication with the translation of the main decisions in the over 60 years history of the German Federal Constitutional Court*
October 2-3	Alexandru TĂNASE, President of CC, Tudor PANȚÎRU, judge, Rodica SECRIERU, Secretary General of CC	International Conference organized by the Constitutional Court of Romania, with the support of the German IRZ Foundation	Bucharest, Romania	*„Constitutional Jurisdiction after 20 Years from the Fall of the Communist Curtain"*

October 8-9	Lilia RUSU, Head of Judicial Expertise Unit	12th Meeting of the Joint Council of Constitutional Justice, the Venice Commission	Venice, Italy	*Cooperation of the Constitutional Courts with the Venice Forum, opinions and advice of the Venice Commission, cooperative activities, CODICES database, contributions for the Constitutional Case law Newsletter, mini-conference "Children's Rights"*
November 7-8	Rodica SECRIERU, Secretary General of CC, Mihaela BESCHIERU, head, Foreign Relations Unit	The 8-th Seminar of the National ACCPUF Correspondents	Paris, France	*"Computerization and Dematerialization of Procedures within the Constitutional Courts"*

In 2013, the President of the Constitutional Court, Alexandru Tănase, received courtesy visits of ambassadors accredited in Moldova: H.E. Mehmet Selim Kartal, Ambassafor of Turkey, H.E. Matyas Szilagyi, Ambassafor of Hungary, H.E. Matthias Meyer, Ambassador of the Federal Republic of Germany, H.E. Jaromil Kvapil, Ambassador of the Czech Republic, H.E. Gérard Guillonneau, Ambassador of the French Republic, H.E. Marius Gabriel Lazurcă, Ambassador of Romania, H.E. Dirk Schuebel, Head of EU Delegation to Moldova (April 23, 2013), H.E. Jennifer Brush, Head of the OSCE Mission to Moldova, H.E. Serghii Pyrozhkov, Ambassador of Ukraine and H.E. Pirkka Tapiola, Head of EU Delegation to Moldova (as of November 5, 2013, after taking over the office).

During the year, the President of the Constitutional Court met with the judge of the Constitutional Court of the Republic of Lithuania, Prof. Danius Zalimas; with the members of the Supreme Judicial Council of the Republic of Bulgaria, on a visit to Moldova at the invitation of the Superior Council of Magistracy; Dr. Alexei Kartsov, adviser to the Constitutional Court of the Russian Federation; Mr. Erik Svanidze, team leader of the EU Project "Support to the coordination of justice sector reform"; with representatives of partner NGOs - IRZ Foundation, Hanns Seidel and Konrad Adenauer Foundation, the American Bar Association for Rule of Law Initiative (ABA ROLI) in the context of finding new joint projects.

Meetings were held with students and teachers from the Faculty of Law, University of European Studies of Moldova; Faculty of International Relations, Political and Administrative Science of the State University of Moldova, with a group of students from the University of St. John in the United States of America.

TITLE V

ACTIVITY OF THE CONSTITUTIONAL COURT IN 2013 IN FIGURES

TITLE V

ACTIVITY OF THE CONSTITUTIONAL COURT IN 2013 IN FIGURES

In 2013, 53 complaints were filed with the Constitutional Court, other 12 complaints were taken over from 2012, so that the task of the Court for 2013 implied 65 pending complaints *(see Charts No.1, No. 2, No.4 and No.6)*

Of the total of 65 pending complaints, in 2013, 58 complaints were examined, namely: 35 complaints followed by 34 judgments (*2 files were joined*); 7 complaints by adopting 6 decision on cessation (*3 files were joined*); 15 complaints were dismissed by decision and a complaint was returned to the author by letter. 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 2014 (*see Chart No.* 3).

Concerning the authors of complaints submitted to the Court in 2013, their ranking is the following:

- MPs and parliamentary factions - 38 complaints (*9 complaints were transferred from 2012,*
- the Supreme Court - 7 complaints (*1 complaint transferred from 2012*);
- Ombudsmen - 9 complaints (*1 complaint transferred from 2012, 7 complaints filed in 2013, of which 2 transferred for 2014*
- Central Elections Committee - 4 complaints;
- General Prosecutor – 1 complaint *(taken over from 2012);*
- People's Assembly of Găgăuzia - 1 complaint (*see Charts No. 5, No.9 and No.10).*

Of the 38 complaints filed by MPs and parliamentary factions, 23 complaints were reviewed on the merits, concerning 1 complaint, the decision to suspend the examination process was taken, and 14 complaints were rejected. Of the 7 complaints filed by the Supreme Court of Justice, 7 complaints were reviewed on the merits, concerning 1 complaint, the decision to suspend the examination process was taken. Of the 7 complaints filed by the Ombudsmen, 4 complaints were reviewed on the merits, concerning 2 complaints, the decision to suspend the examination process was taken, 1 decision was rejected. The complaint filed by the People's Assembly of Gagauzia was rejected (*see Charts No.5, No.12, No. 14 and No. 15).*

Of the 36 judgments delivered by the Court in 2013:

- 3 judgments concerned interpretation of Constitutional provisions (one judgment on the interpretation was included in a judgment on constitutionality control);
- 25 judgments concerned the constitutionality of laws, and decisions of the Parliament, 2 judgments were related to exception of unconstitutionality;
- 4 judgments concerned the validation of MP mandate;
- 1 judgment concerned the explanation of the manner of execution of Constitutional Court judgments;
- 1 judgment concerned the approval of the Report for 2012 *(see Charts No.9, No. 11 and No.12).*

Following settlement of pending complaints in 2013, in *28 judgments* the Court ruled on the constitutionality or unconstitutionality of legal provisions, as follows:

- in *13 judgments* at least one legal provision of the total of challenged provisions was recognized as constitutional;
- in *15 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 2013

Chart No.1

Jurisdiction of the Constitutional Court in 2013

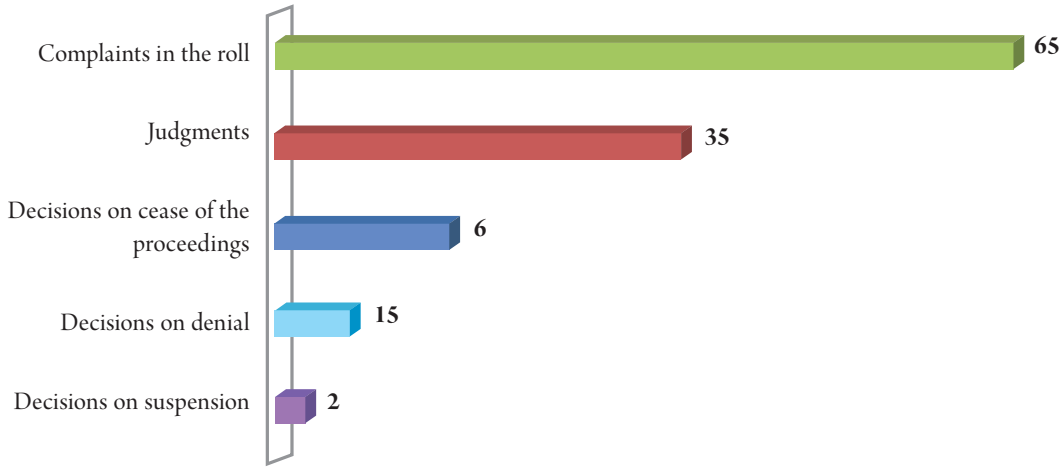
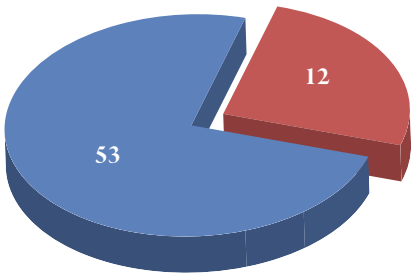


Chart No.2

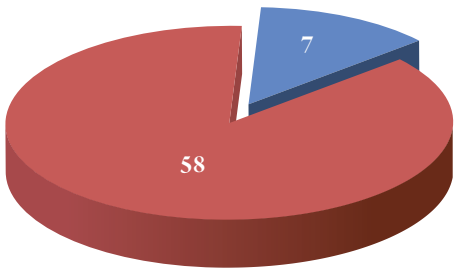
Complaints examined in 2013



Complaints transferred from 2012
Complaints submitted in 2013

Chart No.3

Complaints settled in 2013 and transferred in 2014



Complaints examined in 2013
Complaints transferred for 2014

Chart No.4

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

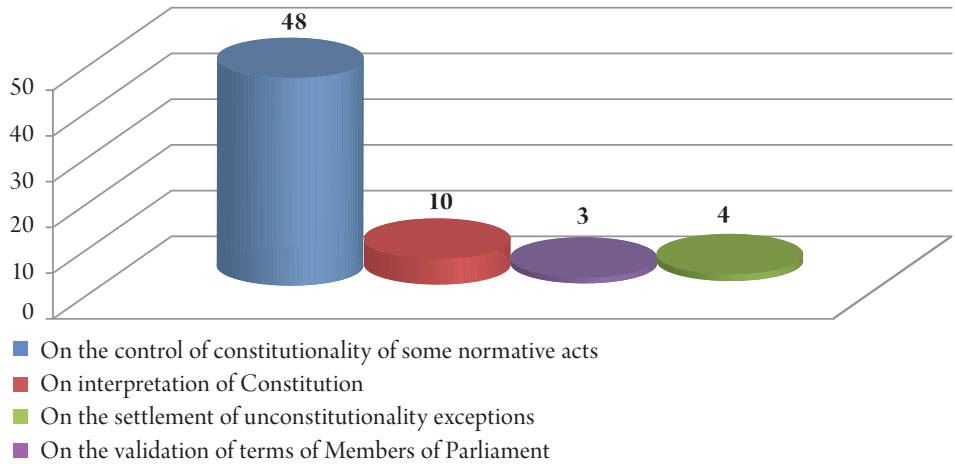


Chart No.5

Subjects having submitted complaints to the Constitutional Court in 2013

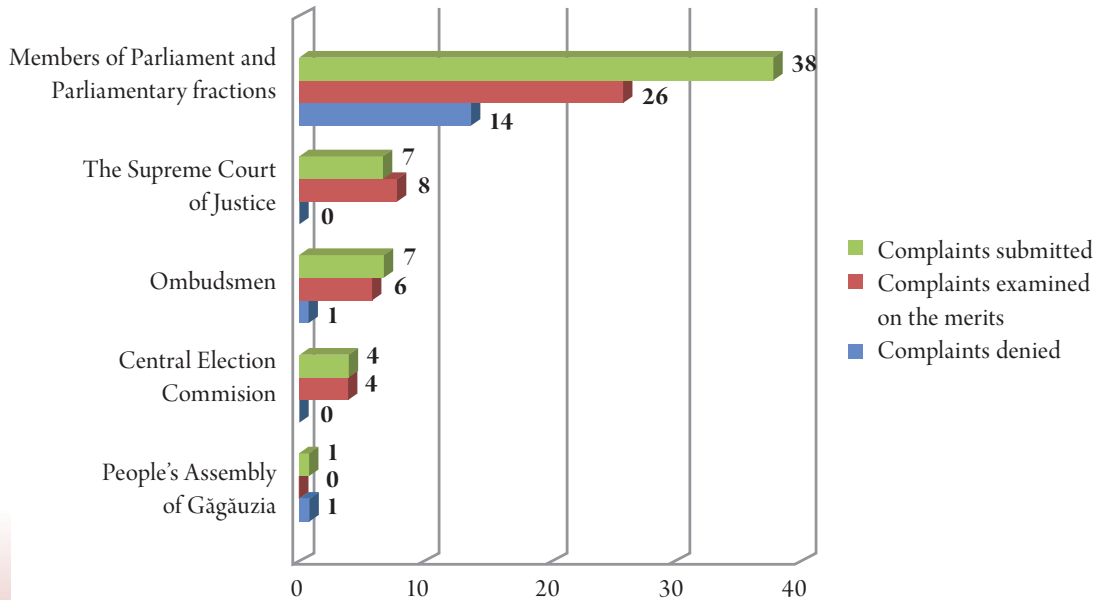


Chart No.6

Complaints settled by the Constitutional Court in 2103, including those undertook from 2012 and those transfered for 2014 *(per subject)*

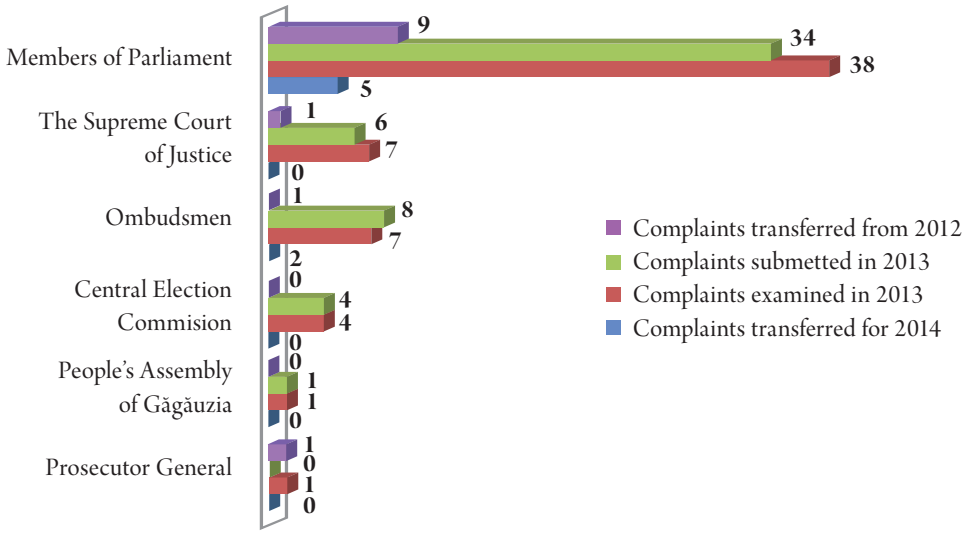


Chart No.7

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

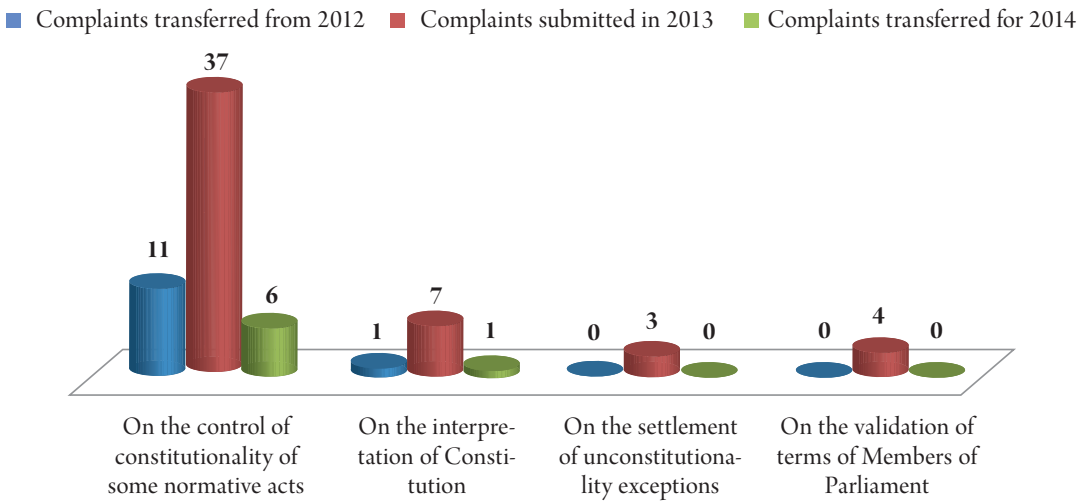


Chart No.8

Complaints settled by the Constitutional Court in 2013 by judgments *(by object)*

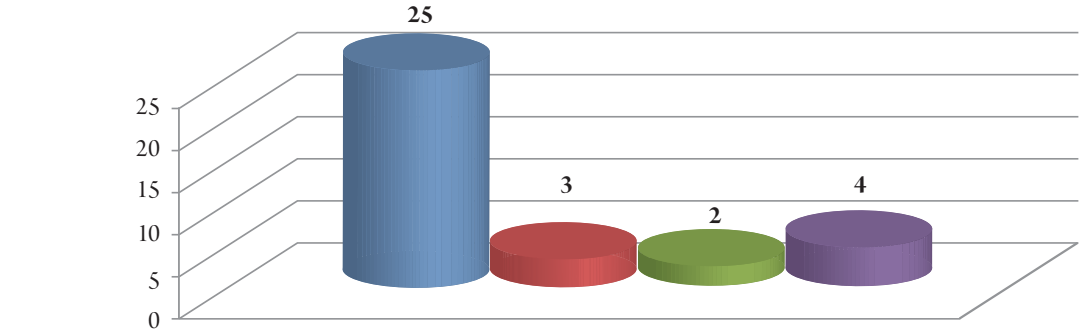


Chart No.9

Complaints submitted by Members of Parliament and Parliamentary fractions

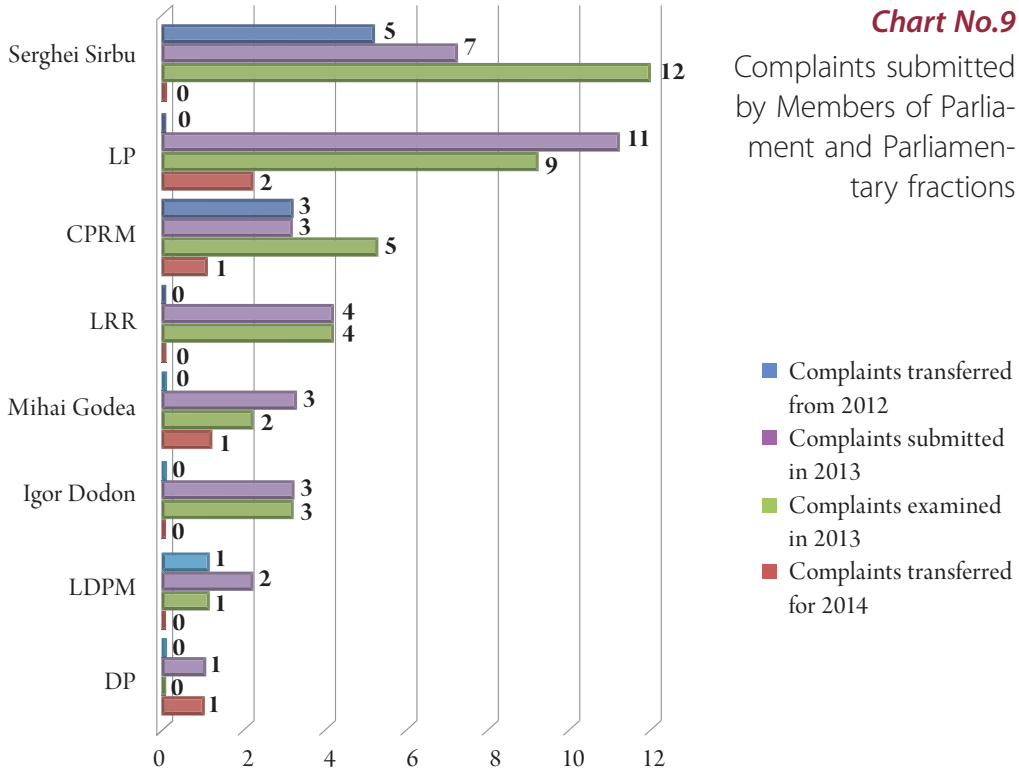


Chart No.10

Complaints submitted by members of Parliament and Parliamentary fractions, denied or reviewed on the merits

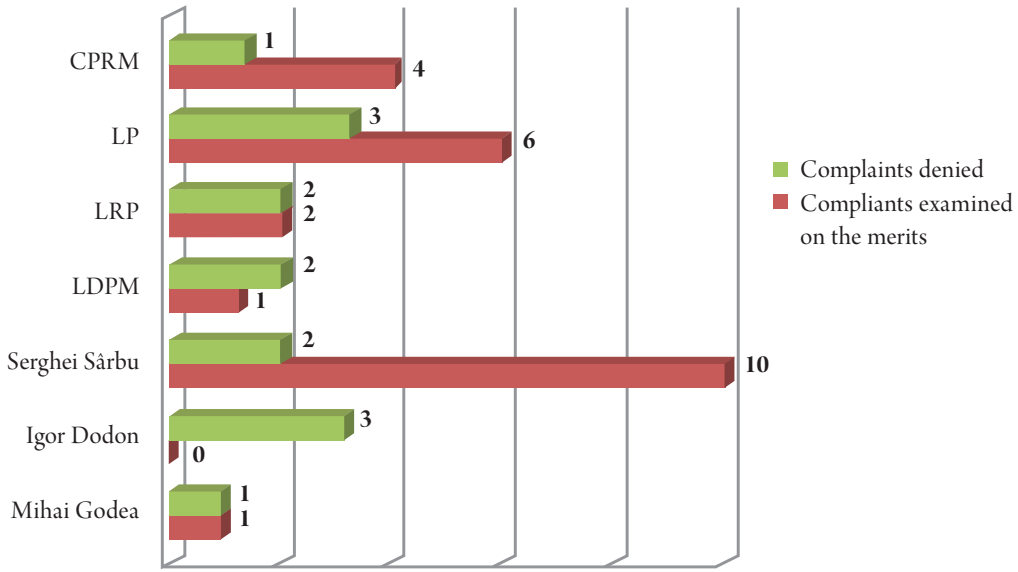


Chart No.11

Acts rendered by the Constitutional Court in 2013

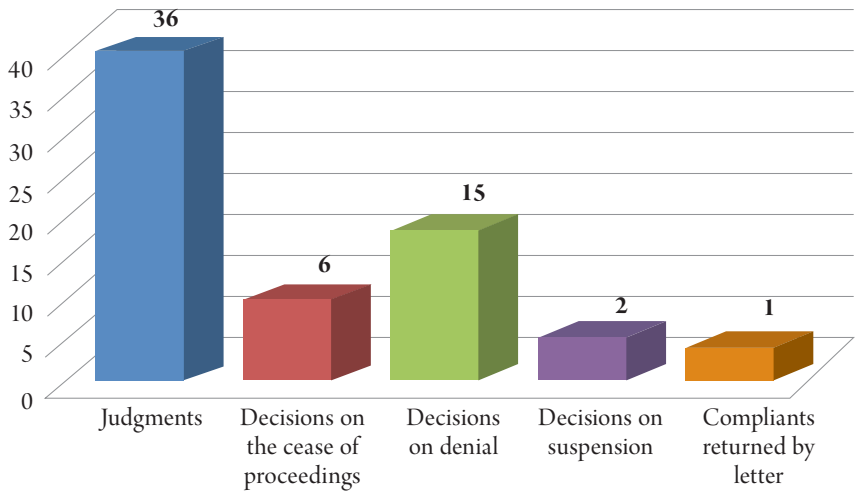
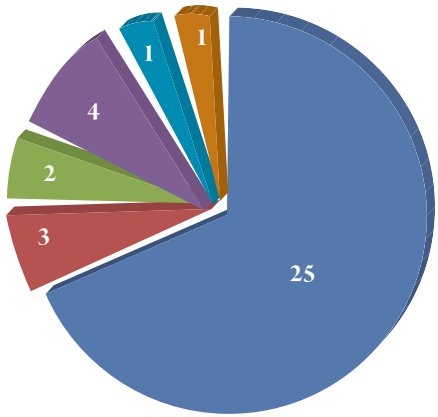


Chart No.12

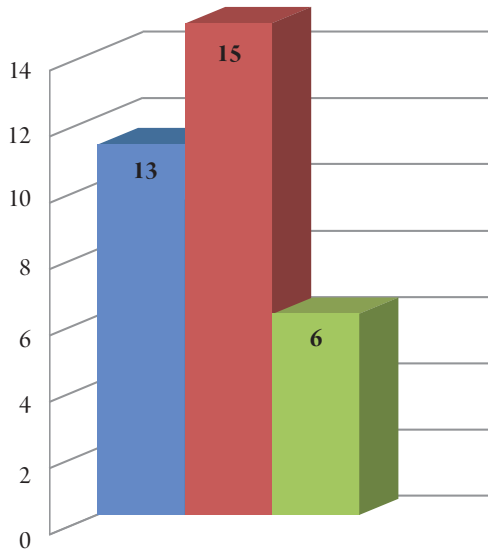
Judgements rendered by the Constitutional Court in 2013 *(by object)*



- On the control of constitutionality of laws and decisions of the Parliament
- On the interpretation of Constitution
- On the settlement of unconstitutionality exceptions
- On validation of the term of Members of Parliament
- On the interpretation of the way to enforce the Judgment of the Constitutional Court
- On the approval of the Report of the Constitutional Court for 2012

Chart No.13

Ascertainments of the Constitutional Court in the decisions delivered



- Judgments in which at least one legal provision of those challenged has been recognized constitutional
- Judgments in which at least one legal provision of those challenged has been recognized unconstitutional
- Judgments in which simultaniously some legal provisions have been recognized constitutional and other legal provisions have been recognised unconstitutional

Chart No.14

Solutions delivered on the interpretation of Constitution and on the control of constitutionality of the challenged norms

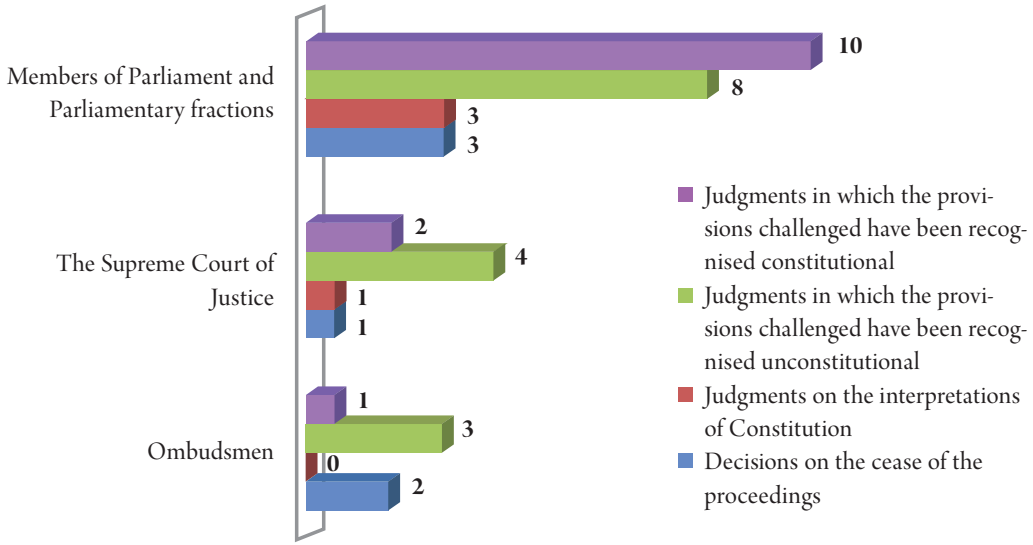


Chart No.15

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

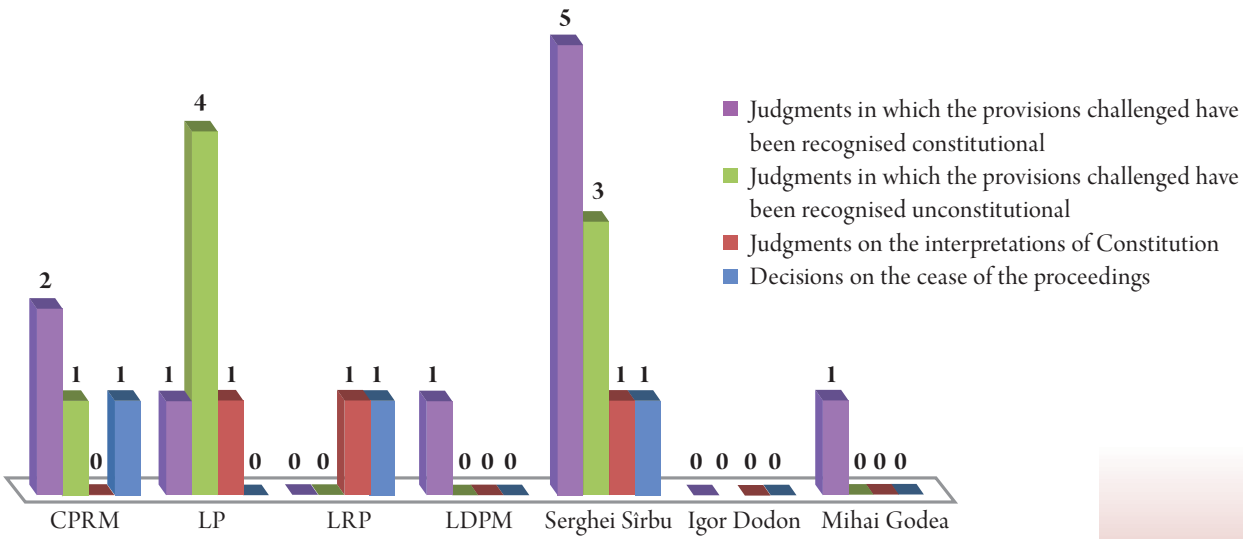


Chart No.16

Enforcement of Judgments of the Constitutional Court in the years 2010-2013

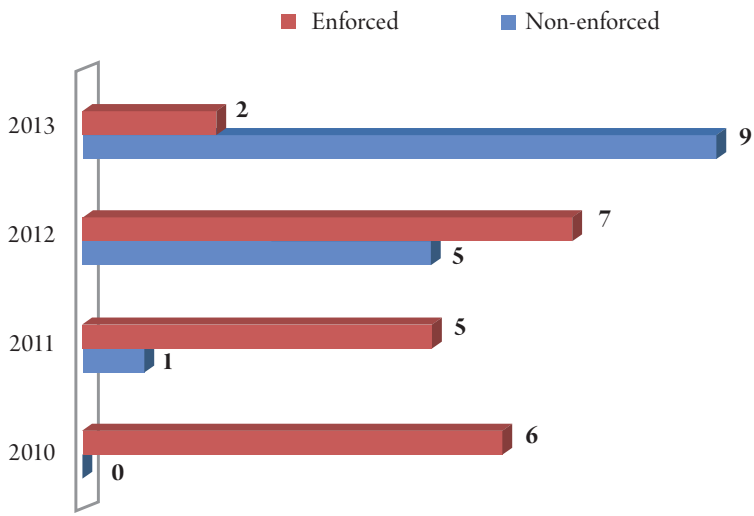
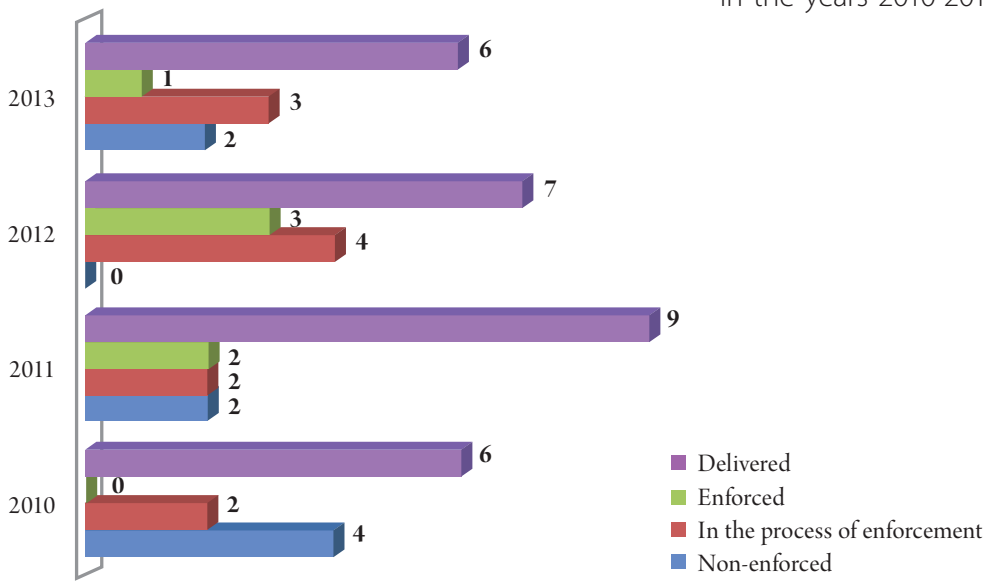


Chart No.17

Enforcement of the addresses issued by the Constitutional Court in the years 2010-2013



B | EVOLUTION OF THE ACTIVITY OF THE COURT IN THE PERIOD 1995-2013

Chart No.18

Exercise of Constitutional Jurisdiction within the period 1995-2013

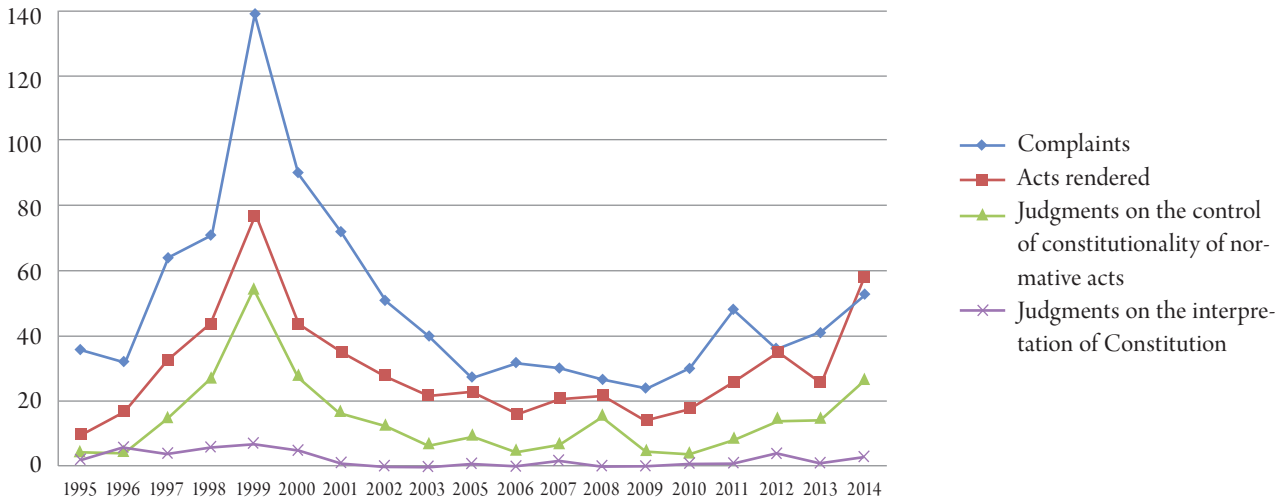


Chart No.19

Complaints submitted in 1995-2013

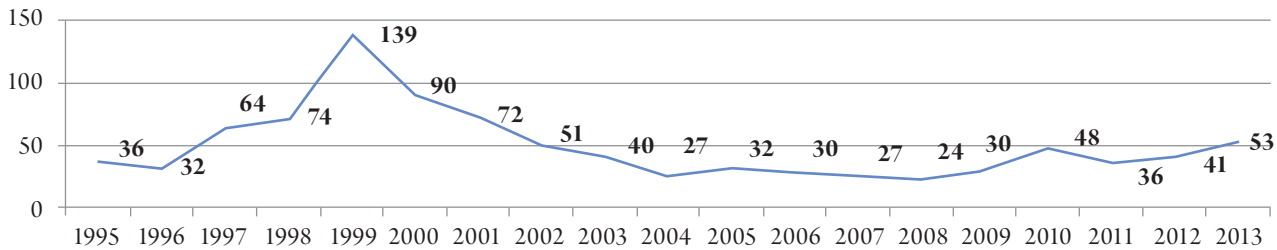


Chart No.20

Acts adopted in 1995-2013

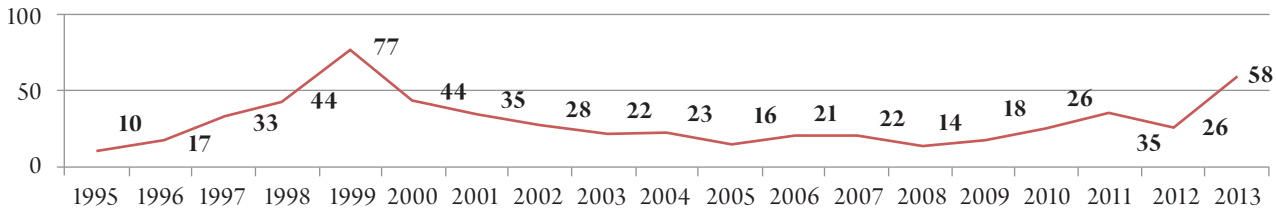


Chart No.21

Judgments on the control of constitutionality of normative acts in 1995-2013

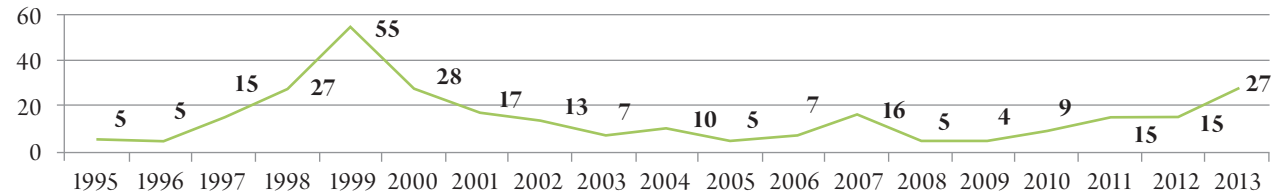
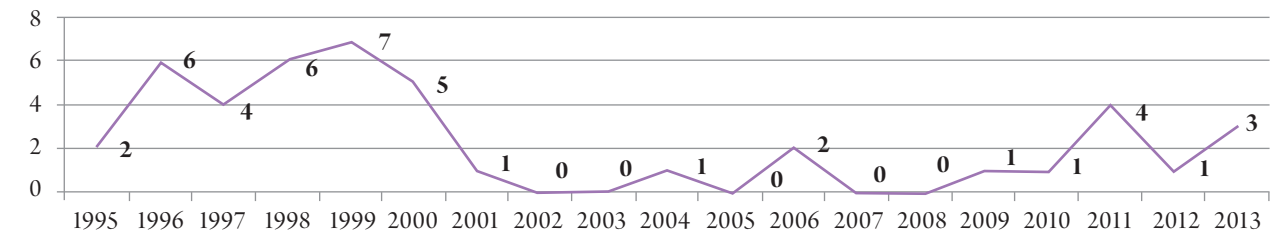


Chart No.22

Judgments on the interpretation of Constitution in 1995-2013



Judgments of the Constitutional Court in 2013

No.	Number and Title of the Judgment	No. of complaint
1.	Judgment No. 1 of 15.01.2013 on the control of constitutionality of some provisions of article 60 para. (3) and para. (3^1) of the Enforcement Code of the Republic of Moldova no. 443-XV of December 24, 2004	Complaint no. 27a/2012
2.	Judgment No.2 of 31 January 2013 on the approval of the Report on constitutional jurisdiction of 2012	
3.	Judgment No.3 of 11 April 2013 on the validation of the mandate of the Member of Parliament of the Republic of Moldova	Complaint no. 9e/2013
4.	Judgment No. 4 of 04.22.2013 on the control of constitutionality of Decrees of the President of Republic of Moldova no.534-VII of March 8, 2013 on the resignation of the Government, as regards keeping the position of the Prime Minister dismissed by motion of censure (for suspected corruption) on March 8, 2013, before the new government is appointed, and no.584 VII of April 10, 2013 on the appointment of the candidate for the office of the Prime Minister	Complaint no. 10b/2013
5.	Judgment No. 5 of 23.04.2013 on the control of constitutionality of article 301 para.cl (1) let. c) of the Labor Code of the Republic of Moldova no. 154-XV of March 28, 2003, as amended by the Law no. 91 of April 26, 2012 to amend and complete some legal acts.	Complaint no. 31a/2012
6.	Judgment No. 6 of 16.05.2013 on the control of constitutionality of paragraph (4) of article 23 of the Law no. 317-XIII of December 13, 1994 on the Constitutional Court	Complaint no. 17a/2013
7.	Judgment No. 7 of 05.18.2013 on the control of constitutionality of some provisions of the Law No. 64-XII of 31 May 1990 on the Government, as amended by Laws no.107 and no.110 of May 3, 2013, and the Decrees of the President of the Republic of Moldova no. 635-VII and no. 635-VII of May 16, 2013 and the Government Decision no. 364 of May 16, 2013.	Complaint no. 16a/2013

8.	Judgment No.8 of 20 May 2013 on the control of constitutionality of certain Parliaments' decisions on the appointment and recalling of the General Prosecutor.	Complaint no. 15a/2013
9.	Judgment No. 9 of 21.05.2013 on the control of constitutionality of article 3 of the Parliament's Decision no. 96 of April 25, 2013 for revocation of the Speaker of the Parliament and the Law no. 101 of April 26, 2013 to complete article 14 of the Rules of the Parliament, adopted by the Law no. 797-XIII of April 2, 1996	Complaint no. 12a/2013
10.	Judgment No. 10 of 23.05.2013 on the control of constitutionality of Art. I p. 6, Articles III and IV of the Law no. 91 of April 26, 2012 to amend and complete some legal acts.	Complaint no. 37a/2012
11.	Judgment No. 11 of 28.05.2013 on the control of constitutionality of a provision of art. 8 para. (1) let. a) item 5) of the Law No. 451-XV of July 30, 2001 on licensing of entrepreneurial activity.	Complaint no. 26a/2012
12.	Judgment No. 12 of 04.06.2013 on the control of constitutionality of some provisions regarding the prohibition of Communist symbols and promotion of totalitarian ideologies.	Complaint no. 33a/2012
13.	Judgment No. 13 of 11.06.2013i on exception of unconstitutionality of some provisions of article 320 of the Criminal Code of Moldova no. 985-XV of April 18, 2002, as amended by the Law no. 173 of July 9, 2010 to amend some legal acts.	Complaint no. 1g/2013
14.	Judgment No.14 of 19 June 2013 on the validation of the mandate of the Member of Parliament of the Republic of Moldova	Complaint no. 29e/2013
15.	Judgment No. 15 of 20.06.2013 on the control of constitutionality of some provisions of the Law no. 1453-XIV of November 8 , 2002 on notary services.	Complaint no. 7a/2013
16.	Judgment No. 16 of 25.06.2013 on the control of constitutionality of Art.XI section 16 of the Law no.29 of March 6, 2012 to amend and complete some legal acts	Complaint no. 4a/2013

17.	Judgment No. 17 of 02.07.2013 on the control of constitutionality of some provisions of art. 25 of the Law no. 947-XIII of July 19, 1996 on the Superior Council of Magistracy, as amended by the Law no. 153 of July 5, 2002 to amend and complete some legal acts and art. VIII para. (6) of the Law no. 153 of July 5, 2002 to amend and complete some legal acts	Complaint no. 36a/2012
18.	Judgment No. 18 of 04.07.2013 on the control of constitutionality of some provisions of the Criminal Code no. 985-XV of April 18, 2002 and the Enforcement Code no. 443-XV of December 24, 2004, as amended by the Law no. 34 of May 24, 2012 to complete some legal acts	Complaint no. 11/2013
19.	Judgment No. 19 of 16.07. 2013 on the control of constitutionality of certain provisions of Article 7 of the Law no.768-XIV of 2 February 2000 on the status of local elected officials, as amended by Law No. 168 of July 11, 2012 6, articles III and IV of the Law no. 91 of April 26, 2012 to amend and complete some legal acts.	Complaint no. 6a/2013
20.	Judgment No. 20 of 16.07.2013 on the control of constitutionality of some provisions of article 37 of the Criminal Procedure Code of the Republic of Moldova no.122-XV of March 14, 2003.	Complaint no. 39a/2012
21.	Judgment No. 21 of 25.07.2013 on the control of constitutionality of the Decision of the Parliament no.314 of December 26, 2012 on dismissal of a judge of the Supreme Court of Justice	Complaint no. 2a/2013
22.	Judgment No. 22 of 05.09.2013 on the control of constitutionality of some provisions on judge's immunity	Complaint no. 32a/2012
23.	Judgment No. 23 of 09.06.2013 on the exception of unconstitutionality of Section 18 of the Regulation on the purchase of medicines and other health products for the needs of the health system, approved by Government Decision no.568 of September 10, 2009	Complaint no. 24g/2013
24.	Judgment No. 24 of 09.10.2013 on the control of constitutionality of some provisions on the wage of public officials working in courts.	Complaint no. 13a/2013

25.	Judgment No. 25 of 17.09.2013 on the control of constitutionality of some provisions concerning the review of anonymous petitions	Sesizarea nr. 14a/2013
26.	Judgment No. 26 of 09.19.2013 on the control of constitutionality of some provisions on the age limit for admission to master and PhD studies.	Complaint no. 25 a/2013
27.	Judgment No. 27 of 20.09.2013 on the control of constitutionality of the Decision of the Parliament no.183 of July 12, 2013 on dismissal of a member and deputy president of the Court of Accounts.	Complaint no. 33a/2013
28.	Judgment No. 28 of 20.09.2013 on the control of constitutionality of some Resolutions of the Parliament on revocation and dismissal of the director General of the Board of the National Agency for Energy Regulation	Complaint no. 34a/2013
29.	Judgment No. 29 of 23.09.2013 on the control of constitutionality of some acts referring to the Committee on the Investigation of the case ”Pădurea Domnească”.	Complaint no. 5a/2013
30.	Judgment No. 30 of 10.01.2013 on interpretation of art. 85 para. (1) and para. (2) of the Constitution	Complaint no. 22b/2013
31.	Judgment No. 31 of 01.10.2013 on the control of constitutionality of some provisions of article 11 para. (4) of the Law no.548-XIII of July 21, 1995 on the National Bank of Moldova and articles 21 para. (3) and 23 para. (3) of the Law on Administrative Litigation	Complaint no. 26a/2013
32.	Judgment No.32 of 07 October 2013 on the validation of the mandate of the Member of Parliament of the Republic of Moldova	Complaint no. 43e/2013
33.	Judgment No. 33 of 10.10.2013 on interpretation of art. 140 of the Constitution	Complaint no. 45b/2013

34.	Judgment No. 34 of 11 October 2013, explanatory, on the manner of enforcement of the Judgment of the Constitutional Court No. 27 of 20 December 2011 on the control of constitutionality of some laws modifying the conditions for ensuring with pensions and other social payments for certain categories of employees.	Complaint no.
35.	Judgment No.35 of 07 November 2013 on the validation of the mandate of the Member of Parliament of the Republic of Moldova	Complaint no. 50e/2013
36.	Judgment No. 36 of 05.12.2013 on interpretation of article 13 para. (1) of the Constitution inter-related with the Preamble of the Constitution and the Declaration of Independence of the Republic of Moldova	Complaint no. 8b/2013 Complaint no. 41b/2013

Summary

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