REPORT

ON THE EXERCISE
OF CONSTITUTIONAL
JURISDICTION IN 2017

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REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2017

CHIȘINĂU 2018

Republic of Moldova
CONSTITUTIONAL COURT

JUDGMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2017

Chișinău,
5 January 2018

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

Mr. Tudor PANȚÎRU, *President,*
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Veaceslav ZAPOROJAN, *judges,*

with the participation of the Chief-Assistant Judge, Mrs. Rodica Secrieru,

having examined in the plenary session the Report on the exercise of constitutional jurisdiction in 2017,

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

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

DECIDES:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2017, according to the Annex.
2. This Judgment shall be published in the *Official Gazette of the Republic of Moldova.*

President Tudor PANȚÎRU

Chișinău,
5 January 2018,
JCC no. 1

Approved
by the Judgment of the Constitutional Court
no. 1 of 5 January 2018

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2017

TITLE I

CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

TITLE I

CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

A | STATUS AND FUNCTIONS OF THE CONSTITUTIONAL COURT

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

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

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

a) exercises, upon referral, the control over the constitutionality of laws and regulations of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government as well as international treaties, which the Republic of Moldova is a party to;
b) interprets the Constitution;
c) delivers its opinion on the initiatives to revise the Constitution;
d) confirms the results of republican referenda;
e) confirms the results of parliamentary and presidential elections in the Republic of Moldova, validates the mandate of the Members of the Parliament and of the President of the Republic of Moldova;
f) assesses the circumstances justifying the dissolution of the Parliament, resignation of the President of the Republic of Moldova, interim office of the President, impossibility of the President of the Republic of Moldova to perform his/her duties for over 60 days;
g) settles exceptions of unconstitutionality of legal acts, challenged by the Supreme Court of Justice;
h) decides on matters concerning the constitutionality of a party.

B | JUDGES OF THE CONSTITUTIONAL COURT

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

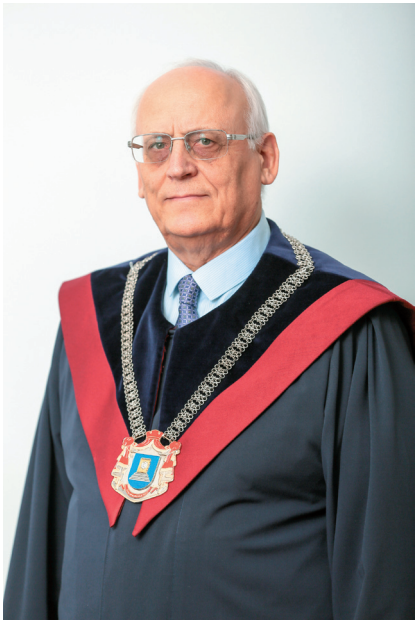
In April 2017 has expired the mandate of the constitutional judge, elected as President of the Constitutional Court, Mr. Alexandru Tănase. On 3 May 2017, the Government appointed Mrs. Victoria Iftodi to the position of judge of Constitutional Court.

As a result, following the expiry of the mandate of President of the Constitutional Court, Mr. Alexandru Tănase, on 12 May 2017, in plenary session of the Constitutional Court, the judge Tudor Panțîru was elected as President of the Constitutional Court for a three-year term.

Thus, since May 2017, the Plenum of the Constitutional Court was as follows:

1. Tudor PANȚÎRU, President
2. Igor DOLEA,
3. Aurel BĂIEȘU,
4. Victor POPA,
5. Veaceslav ZAPOROJAN,
6. Victoria IFTODI, judges.

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, Chișinău (1980-1990); President of Frunze District Court, Chișinău (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); Legal Advisor and Program Coordinator within United Nations Development Program in the Republic of Moldova on strengthening the legal and judicial sector (1996-1998); International Judge, European Court for Human Rights (1995-2001); Legal Adviser, Monitoring Department of the Council of Europe, Strasbourg (2001- April 2002); 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); International Judge, Constitutional Court of Bosnia and Herzegovina (2002 -present); Member of the Parliament of Romania, Chairman of the Subcommittee on the supervision of the enforcement of ECHR Judgements (December 2008 - December 2012). Judge at the Constitutional Court since February 2013.

On 12 May 2017 was elected as President of the Constitutional Court.

Appointed as judge of the Constitutional Court by the Decision of the Superior Council of Magistracy No. 130/6 of 12.02.2013.

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 Procedure Law (the former 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 Procedure Law (the former 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); member of the Qualification Committee under the Superior Council of Magistracy (2002-2006); member of the Scientific Advisory Council under the Supreme Court of Justice (2002-2014); expert on the National Working Group on Juvenile Justice (2005-2007); expert in the Scientific-Methodical Council of the General Prosecutor's Office (2005-2009); expert in the Advisory Scientific Council under the Constitutional Court (2007-2013); expert in the Scientific Council of the Bar of the Republic of Moldova (2007-2014); Chairman of the Experts Committee of the National Council for Accreditation and Attestation (2011 - present); Chairman of the Coordination and Monitoring Group for the implementation of the Justice Sector Reform Strategy (2012-2013); member of the National Council for the Reform of Law Enforcement Bodies (2012-2013); member of the Institutional Strategic Development Council of the "Ion Creangă" State Pedagogical University (2015-present). Judge at 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).

Appointed as judge of the Constitutional Court by the Decision of the Superior Council of Magistracy No. 130/6 of 12.02.2013.

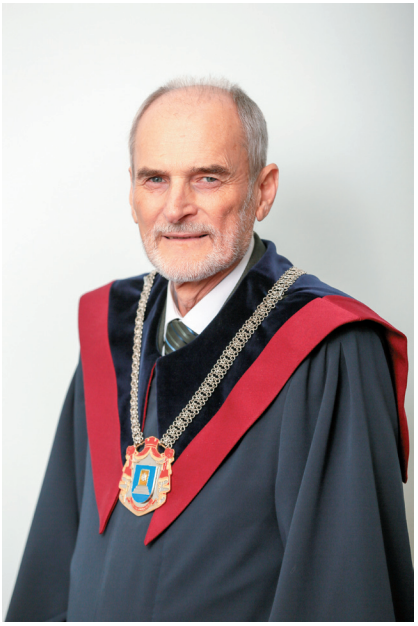
Aurel BĂIEȘU

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 Law and Foreign Economic Relations, Faculty of Law, State University of Moldova (1994-2014); Head of Department of International Law and Foreign Economic Relations, Faculty of Law, State University of Moldova (1994-2005); University Professor at the Department of International and European Law, State University of Moldova (2014 – present); PhD supervisor. 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 the secretary of the National Council for the Reform of Law Enforcement Bodies; 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, National Commission for Financial Markets, Ministry of Economy; member of the working groups on drafting the Civil Code, Law on international commercial arbitration, Law on leasing etc. Has activated as expert in international projects under the Council of Europe, World Bank, EBRD, UNDP, TACIS, USAID etc.

Appointed as judge of the Constitutional Court by the Decision of the Parliament No. 66 of 05.04.2013.

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). University 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, University Professor at the Free International University of Moldova (1995 -present); University 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 Doctor Habilitatus of Law; Adviser in the working group on drafting the Constitution of the Republic of Moldova (1991-1993); author of the draft 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).

Appointed as judge of the Constitutional Court by the Decision of the Parliament No. 61 of 29.03.2013.

Veaceslav ZAPOROJAN

Born on 16.07.1962, graduated the Law Faculty, State University of Moldova (1989); Doctor of Law upon taking the thesis "Protection of Fundamental Rights in the Constitutional Justice of the Republic of Moldova" at the State University of Moldova (2007); lawyer, member of the Moldovan Bar Association (1989-2002); head of Drochia Bar Association (1991-1995), head of the Associated Lawyers Office "Law Faculty" of the State University of Moldova (2000-2002). Associate Professor, Department of Public Law, State University of Moldova (1995 - present); Associate Professor, Department of Public Law, University of European Political and Economic Studies "Constantin Stere" (USPEE) (2010 - present); Associate Professor, Academy of Public Administration under the President of the Republic of Moldova (2006-2012); Associate Professor, Department of Private Law, Academy of Economic Studies of Moldova (ASEM) (2012 - present); Director of the Doctoral School in Law, Political and Administrative Sciences within the National Consortium between ASEM and USPEE (2015 - present). Assistant judge of the Constitutional Court of Moldova (2002-2015); Judge of the Constitutional Court of the Republic of Moldova since July 2016.

Acted as expert of the United Nations Development Program within the project „Support in Implementing the National Human Rights Action Plan in the Republic of Moldova" (2005-2008); expert of the Parliamentary Investigating Committee for the elucidation of the causes and consequences of the events following the 5th of April 2009 (2009-2010); alternate member of the OSCE International Court of Conciliation and Arbitration from Geneva (2004-2010); member of the working groups for the elaboration of the draft Law on citizenship (2002) and of the draft Law on the revision of the Constitution (2004); member of the working group on the revision of the legislative framework regulating the organisation and functioning of the Constitutional Court (2016). Co-author of the Commentary on the Constitution of the Republic of Moldova (2012) and of the Judge's Handbook on Civil Cases (2013). Member of the Committee on the evaluation of the degree of knowledge of the Constitutional provisions and of the state language for persons seeking acquisition of the citizenship of the Republic of Moldova (2001 - present). Decorated with the Medal "Meritul Civic" (Civil Glory) (2010). Appointed as judge of the Constitutional Court by the Government Decision No. 840 of 06.07.2016.

Victoria IFTODI

Born on 13 January 1969. Following the graduation of the Faculty of Law at the State University of Moldova with honourable mention in 1993. Started carrier as a specialist within the Notary and Lawyers Division of the Ministry of Justice of Moldova; notary, guest lecturer at the State University of Moldova (1993-2003); Deputy Minister of Justice (2003-2004); Minister of Justice (2004-2006); representative of the Government in the Parliament and Constitutional Court (2003-2006). Extraordinary and Plenipotentiary Ambassador of the Republic of Moldova to the French Republic and to the Republic of Algeria (2006-2010); permanent delegate of the Republic of Moldova to UNESCO (2006-2010); permanent representative of the President of the Republic of Moldova to the Permanent Council of the International Organisation of *La Francophonie* and to the Latin Union (2006-2010); member of the Integrity Council of the National Integrity Authority (2016 - May 2017); judge of the Constitutional Court of Moldova as of May 2017.

Expert member of the working group on drafting the Law on Notary; member of national and international specialised collegial bodies: representative in the committees of the Latin Notary Union (CAUE and CAEM); member of the Council of Notaries; member of the Committee on the selection of candidates for the profession of notary (1995-2003); member of the European Committee on Legal Cooperation of the Council of Europe – CDCJ (2003-2004); member of the Committee on Cooperation between the Republic of Moldova and European Union (2004-2006).

Participated in the process of drafting, promotion and implementation of legal acts on justice sector and human rights reform and coordinated the elaboration of National Human Rights Action Plan (PNADO) for 2004-2008; headed the activity of multiple governmental committees on human rights (Committee for the Enforcement of ECHR Judgments against Moldova, Committee on Rehabilitation of Victims of Political Repressions, Committee on drafting Government reports following the visits of the European Committee for the Prevention of Torture of the Council of Europe etc.); member of the National Committee on drafting and implementing the Individual Action Plan on the Republic of Moldova – NATO Partnership (2006); member of the inter-ministerial group on monitoring the implementation of the Joint Cooperation Programme of the European Commission and Council of Europe for Moldova "Strengthening Democratic Reforms" (2005-2006).

Appointed as Judge of the Constitutional Court of Moldova by the Government Decision no. 277 of 03.05.2017.

* * *

Since its foundation, the Constitutional Court has had 22 constitutional judges, as follows:

Pavel BARBALAT (February 1995 – February 2001),

Nicolae CHISEEV (February 1995 – February 2001),

Nicolae OSMOCHESCU (February 1995 – September 1998),

Eugen SOFRONI (February 1995 – August 1996),

Gheorghe SUSARENCO (February 1995 – February 2001),

Ion VASILATI (February 1995 – February 2001; October 2002 – October 2008),

Mihai COTOROBAI (August 1996 – September 2002),

Constantin LOZOVANU (March 1998 – April 2004),

Mircea IUGA (February 2001 – February 2007),

Alina IANUCENCO (April 2004 – April 2010),

Dumitru PULBERE (February 2001 – February 2007; February 2007 – February 2013),

Victor PUȘCAȘ (February 2001 – February 2007; March 2007 – February 2013),

Elena SAFALERU (February 2001 – February 2007; February 2007 – February 2013),

Valeria ȘTERBEȚ (February 2007 – February 2013),

Petru RAILEAN (October 2008 – October 2014),

Alexandru TĂNASE (April 2011 – April 2017),

Igor DOLEA (February 2013 – present),

Tudor PANȚÎRU (February 2013 – present),

Victor POPA (April 2013 – present),

Aurel BĂIEȘU (April 2013 – present),

Veaceslav ZAPOROJAN (July 2016 – present),

Victoria IFTODI (May 2017 – present).

C | ASSISTANT-JUDGES

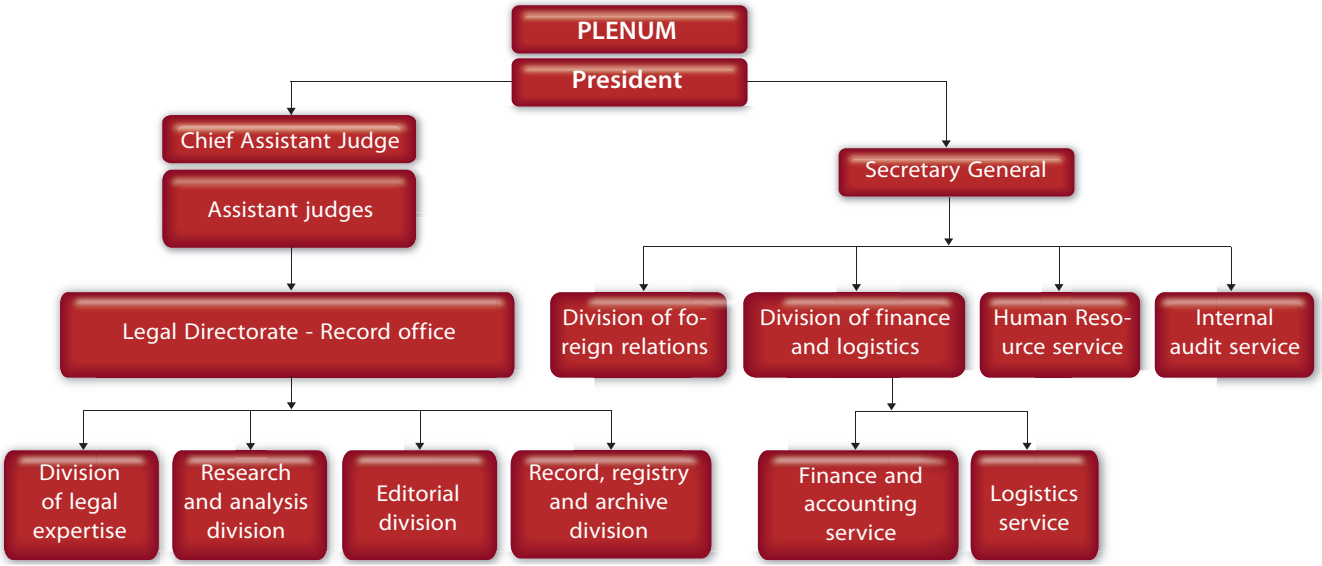
The judges of the Constitutional Court are assisted by assistant-judges fulfilling the following basic functional powers while carrying out their activity:

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

The assistant-judge is assimilated with the judge of the Court of Appeal.

D | ORGANIZATIONAL CHART

During 2017, by the Decision No. 5 of 28 March 2017, the Court reconfigured its organizational structure as follows,



E | SUBMISSION OF COMPLAINTS TO THE COURT

The Constitutional Court carries out its activity upon referral by the subjects vested with the right to file complaints. The legislation of the Republic of Moldova does not provide the Court with the competence to exercise constitutional jurisdiction *ex officio*. The Constitutional Court thus exercises constitutional jurisdiction based on complaints filed by the following subjects entitled according to Art. 25 of the Law on the Constitutional Court, taking into account the amendments operated by the *Law no. 24 of 04.03.2016*, as well as Art. 38 para. (1) of the Code of Constitutional Jurisdiction:

a) President of the Republic of Moldova;
b) Government;
c) Minister of Justice;
d) Supreme Court of Justice;
e) Prosecutor General;
f) members of the Parliament;
g) Parliamentary factions;
h) Ombudsman;
i¹) Ombudsman for Children's Rights;
i) Councils of territorial-administrative units of first or second level, People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases exercising the review of constitutionality of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions, ordinances and orders of the Government, as well as of international treaties to which the Republic of Moldova is party to, which fail to comply with the provisions of Art. 109 and, correspondingly, of Art. 111 of the Constitution of the Republic of Moldova.

The complaints filed by the subjects entitled with this right shall be motivated and should meet the requirements of form and content set out in Art. 39 of the Code of Constitutional Jurisdiction and in the Rules on the examination of complaints submitted to the Constitutional Court, approved by the Decision of the Constitutional Court no. AG-3 of 3 June 2014.

F | NOVELTY ACTIVITIES

Admission of CCM to the Superior Courts Network (SCN)[1] under the European Court of Human Rights

At the end of January 2017 the CCM was accepted into the Superior Courts Network - a platform aimed to facilitate communication between supreme and constitutional courts of European States, created by the ECtHR to ensure effective exchange of information on Convention case-law and related information.

Upon acceptance within the Network, the Constitutional Court of Moldova was granted access to the Network's restricted-access Intranet site, which ensures communication and interaction between its members. Thus, CCM will be granted access to detailed research, in particular on the caselaw of the ECtHR; comments of ECtHR's lawyers on important decisions on the day of their delivery; summaries of important judgments delivered during a certain period of time (week, month etc.); "quick search elements" – thematic selections of ECtHR's caselaw.

Accepting the CCM within the SCN will facilitate and further develop the implementation by the CCM, as a national human rights protection mechanism, of the standards promoted by the ECHR. The initiative to create the SCN has emerged in the context of the European Court of Human Rights reform following the intergovernmental conferences in Brighton (2012) and Brussels (2015), as an assisting instrument in applying the European Convention. The Network was officially launched on 5 October 2015 and pursues the goal of creating a modern, practical and useful platform for the dialogue between the ECtHR and Network's members, by sharing relevant information on ECtHR's caselaw and related matters, considering the shared responsibility of the European Court and national courts in implementing the European Convention on Human Rights. Currently, over 60 higher courts in 34 countries are part of this network.

[1] http://www.echr.coe.int/Pages/home.aspx?p=court/network&c=

TITLE II

JURISDICTIONAL ACTIVITY

TITLE II
JURISDICTIONAL ACTIVITY

A | COURT 'S ASSESSMENT

1 GENERAL PRINCIPLES

1.1. Sovereignty and state power

1.1.1. Types of referendums

In its Judgment no. 16 of 29 March 2001, the Court noted the following: "National sovereignty means, according to the Constitution, the absolute and perpetual power of the people, who shall exercise it through the representative bodies of the state power which is held in a sovereign manner by the people. In this sense, national sovereignty is inalienable, given that only the exercise thereof is transmitted to the representative bodies. The exercise of sovereignty directly by the people is accomplished by the participation of people in referendums and elections, as well as by the adoption of certain decisions directly by the people." *(JCC 24/2017[2], §53).*

[2] Judgment no. 24 of 27.07.2017 on the control of constitutionality of the Decree of the President of the Republic of Moldova no. 105-VIII of 28 March 2017 on holding a consultative republican referendum on issues of national interest *(consultative republican referendum)*

If, through elections, the people participate in the exercise of state power by appointing their representatives who, for the term of the mandate granted are decision-makers on behalf of the whole people, within the second form - the referendum, the holder of the state power exercises the sovereignty directly, through an efficient way of consulting the popular will in respect of essential issues *(JCC 24/2017, §54).*

The referendum represents an instrument of direct democracy, through which citizens express their opinion on issues of national interest *(JCC 24/2017, §55).*

The referendum has been established on the constitutional level as a way through which the people are able to exercise their national sovereignty directly, expressing their will in respect of matters of general interest or of particular importance for the state *(JCC 24/2017, §56).*

At the same time, the Venice Commission in its Opinion on the Draft Constitution of Ukraine CDL-AD (2008)015 (§46) emphasised that "[...] **referendums are not an appropriate means for solving a short-term political crisis. The referendum risks prolonging the crisis since after a successful referendum new election will be required**. *[...]"(JCC 24/2017, §57).*

As proven by the rules of international law and international practice, the referendum may be initiated in several ways and can take a number of forms. The referendum by its nature may be mandatory when is expressly required by the Constitution, and optional, if those entitled with the right to initiate consider it to be necessary *(JCC 24/2017, §58).*

The Fundamental Law regulates the following types of national referendums, by subject: the one initiated by the President of the Republic or by the Parliament on issues of national interest, as mentioned in Art. 66, 75 and 88; on the dismissal of the President of the Republic of Moldova, under the conditions of Art.89; and on the approval of the revision of the Constitution, according to Article 142 para.(1) *(JCC 24/2017, §60).*

Constitutional provisions, under Article 72 para. (3) let. b) of the Constitution, have been materialized at the level of organic law, being detailed and developed by the Electoral Code *(JCC 24/2017, §61).*

Thus, according to Article 142 of the Electoral Code, the republican referendum shall be carried out in order to exercise the people's power and their direct participati-

on in the management and administration of state affairs, and depending on the legal nature of the issues submitted to the referendum, according to Art.143 para.(1) of the Code, the republican referendums may be *constitutional, legislative, on the dismissal of the President of the Republic of Moldova and consultative (JCC 24/2017, §62).*

Constitutional referendums may be carried out in respect of proposals to revise the Constitution, while within legislative referendums are carried out in respect of draft laws or certain provisions thereof which are of particular importance *(JCC 24/2017, §63).*

The consultative referendum is carried out in respect of issues of national interest, in order to consult the people's opinion on such issues *(JCC 24/2017, §64).*

The Court noted that the wording of the issue submitted to referendum is influenced by the type of referendum, which in turn produces different legal effects *(JCC 24/2017, §65).*

In the Guidelines for Constitutional Referendums at National Level (CDL-INF (2001)10, 6-7 July 2001), the Venice Commission mentioned the following: "Referendums on specifically worded draft amendments will usually have a binding character and their implementation will not present particular problems. Referendums on questions of principle or other generally-worded proposals should be consultative only." *(JCC 24/2017, §66).*

Regarding the effects of referendums, the Court held that, according to the provisions of Article 75 para. (2) of the Constitution, decisions adopted based on the results of the republican referendum have supreme legal power *(JCC 24/2017, §67).*

According to the provisions of Article 75 para. (2) of the Constitution read in combination with other constitutional provisions (Article 142 para. (1) of the Constitution), **only constitutional and legislative referendums produce binding legal effects,** while those having consultative character do not produce such effects. In this regard, the Court ruled in its Judgment no. 32 of 15 June 1999, that the results of the republican consultative referendum have no legal effect *(JCC 24/2017, §68).*

Thus, referring to the consultative referendum, the Court noted that, following the organization of this type of referendum, the authorities could get acquainted with the people's opinion on a matter of national interest in respect of which it was consulted, but without having any obligation. Moreover, even if the decisions adopted as a result of

consultative referendums do not have supreme legal power, the results thereof can serve as the basis for subsequent political decisions of the authorities, motivated by such results *(JCC 24/2017, §69).*

1.1.2. Specific rules for the referendum

Regarding the procedure for the organization and holding of referendums, the role of the Constitutional Court, according to Article 135 para.(1) let.d) of the Constitution, is to ensure the observance of procedures and to confirm its results *(JCC 24/2017[3], §70).*

In this respect, the Court stressed in its case-law that the constitutional court must verify the fulfilment of all conditions for the exercise of the referendum initiative and must ensure that **the instrument is not used for purposes other than those which the constituent legislator had envisaged when the referendum was established as an essential legal institution in a state governed by the rule of law** - a form of direct participation of citizens in decision-making - Opinion no.1 of 22 September 2014 *(JCC 24/2017, §71).*

In accordance with the Code of Good Practice on Referendum adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), the use of a referendum necessarily implies respect for the legal order as a whole *(JCC 24/2017, §72).*

In its Opinion No 1 of 22 September 2014, the Court held that observance of procedural guarantees and the wording of texts submitted to the referendum, which is in itself the formal condition based on which the Constitutional Court, under Article 135 para.(1) let.d) of the Constitution, is entitled to establish the validity and to confirm the results of the referendum, is not a mere technical or procedural aspect, it is rather a substantial aspect for the clarification of which it is necessary to determine the intention of the constituent legislator through a systematic interpretation of the Constitution *(JCC 24/2017, §73).*

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[3] Judgment no. 24 of 27.07.2017 on the control of constitutionality of the Decree of the President of the Republic of Moldova no. 105-VIII of 28 March 2017 on holding a consultative republican referendum on issues of national interest *(consultative republican referendum)*

a) Initiation of the referendum

The Fundamental Law regulates the following types of national referendums: the one initiated by the President of the Republic or by the Parliament on issues of national interest, as mentioned in Art. 66, 75 and 88; on the dismissal of the President of the Republic of Moldova, under the conditions of Art. 89; and on the approval of the revision of the Constitution, according to Article 142 para.(1) *(JCC 24/2017, §74).*

Under Article 66 let.b) of the Constitution, the Parliament is empowered to declare all types of republican referendum by its decision. If the President of the Republic of Moldova initiates the procedure for the organisation of a consultative referendum, he shall issue the corresponding decree *(JCC 24/2017, §76).*

At the same time, the *Code of Good Practices on the Referendum* states that: " **When a text is put to the vote at the request of a section of the electorate or an authority other than Parliament, Parliament must be able to give a non-binding opinion on the text put to the vote.** In the case of the popular initiatives, it may be entitled to put forward a counter-proposal to the proposed text, which will be put to the popular vote at the same time. A deadline must be set for Parliament to give its opinion: if this deadline is not met, the text will be put to the popular vote without Parliament's opinion" *(JCC 24/2017, §77).*

b) Validity in the formal sense of the texts submitted to the referendum

The principle of legality is a component part of the rule of law enshrined in Article 1 para.(3) of the Constitution *(JCC 24/2017, §78).*

Consequently, the Court held that compliance with the law is mandatory, and violation of this constitutional obligation implicitly attracts violation of the principle of the rule of law *(JCC 24/2017, §79).*

In this respect, the Court noted that, according to Article 143 of the Electoral Code, the text of the question submitted to consultative referendum **shall have a neutral, unambiguous or suggestive wording** *(JCC 24/2017, §80).*

At the same time, according to Article 144 para.(4) of the Electoral Code: "The proposal on the initiation of a referendum shall include questions subject to referendum

stated clearly, avoiding ambiguities, as well as the purpose of conducting the referendum and its suggested date. Issues running counter to one another shall not be subject to referendum." *(JCC 24/2017, §81).*

Referring to the validity in the formal sense of the texts submitted to the referendum, both the Guidelines for Constitutional Referendums at National Level and the Code of Good Practice on Referendums provide that the subject matter of the referendum must respect:

"– **unity of form:** the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle;

– **unity of content:** except in the case of total revision of the Constitution, there must be an intrinsic connection between the various parts of the text, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link; the revision of several chapters of the Constitution at the same time is equivalent to a total revision;

– **unity of hierarchical level:** it is desirable that the same question does not simultaneously apply to the Constitution and subordinate legislation." *(JCC 24/2017, §82).*

In the constitutional jurisprudence of the European countries the principle was established according to which the question in a referendum can only concern a single and homogeneous subject. The requirement of the monothematic referendum is designed to avoid confusion regarding both the subject matter of the consultations and the response of the population. This principle of homogeneity and uniqueness of the subject refers to the subject of the referendum, but not to the questions. However, if there are several questions, not just one, this principle becomes important on how they are formulated - ex. *Judgment of the Constitutional Court of Portugal no.176 of 19 February 2014 (JCC 24/2017, §83).*

The Court noted that **issues that are not related to content and nature, as well as legislative amendments, cannot be subject to the referendum as forming a single subject, as they would alter the possibility of determining the real will of the peopl**e *(JCC 24/2017, 84).*

In this respect, the Court emphasized that even if the referendum is initiated by citizens (at least 200,000 citizens of the Republic of Moldova with voting rights), the signatures are to be collected separately for each question that is expected to be submitted to the republican referendum. A single signature cannot constitute support for the initiative to convene a referendum on several issues uncorrelated by their nature and content. Otherwise, citizens will be deprived of the opportunity to decide separately on their support for each initiative to hold a referendum and it would be impossible to determine if each of these issues really needs to be submitted to a referendum *(JCC 24/2017, §85).*

At the same time, it is necessary to distinguish between the questions that pursue a public interest and the questions pursuing a political interest. The questions of public interest are those that are based on a transparent public action as a whole, characterized by a strong and unequivocal main message which belongs to the whole political class and is directed towards the realization of the common good. Political questions are those that are used as a political weapon and pursue the goal of gaining advantages in political struggle *(JCC 24/2017, §87).*

Therefore, questions addressed to the people, which fail to coordinate the political action that political leaders wish to implement, backed by political, economic and social context of the state, automatically become of political interest and **should therefore be avoided in order to prevent the deepening of the crisis** *(JCC 24/2017, §88).*

c) Procedural aspects on holding of the referendum

The court noted that the constitutional law does not circumscribe the type of referendum which may be declared by Parliament. At the same time, Article 88 let. f) of the Constitution merely, states that the President of the Republic of Moldova "may ask the people to express their will through referendum on issues of national interest" *(JCC 24/2017, §137).*

Therefore, following a corroboration of the aforementioned constitutional norms, the Court held that the **provisions of Article 66 let.b) refer to all types of referendum** *(JCC 24/2017, §138).*

Moreover, the Court found that, according to Article 150 para.(2) and Article 151 of the Electoral Code, the President by decree initiates the organisation of the national

consultative referendum and establishes the date of its deployment and the questions submitted to the referendum, whereas Article 150 para.(1) provides that, within 6 months following the receiving of proposals for the initiation of the referendum, the Parliament shall adopt one of the following decisions: a) on **declaring the holding of the referendum**, which shall take place within at least 60 days after the decision has been adopted; b) on the dismissal of the proposal to hold a referendum, if such proposal is formulated by the Members of Parliament; c) on solving the problems which are expected to be submitted to the referendum without holding thereof *(JCC 24/2017, §139).*

The Court held that the provisions of Article 150 para.(1) of the Electoral Code stipulate that the Parliament shall declare through a decision the holding of a referendum **in respect of all the proposals for the initiation of the referendum submitted by the subjects entitled with this right** *(JCC 24/2017, §140).*

The Court noted that holding of a referendum requires financial means. Therefore, it is only the Parliament that is competent to allocate financial resources from the state budget with the Government's approval. Therefore, the competent authorities in electoral matters shall act with a view to organize a referendum only after Parliament has adopted a decision in this respect *(JCC 24/2017, §141).*

1.2. Constitution, the Supreme Law

1.2.1. Constitution – a living instrument

Any interpretation of constitutional provisions derives from the **nature, objectives and spirit** of the Constitution itself *(JCC 28/2017[4], §92).*

At the same time, **the Constitution shall be regarded as a "living instrument",** which shall be interpreted in the light of current social and political realities, in order to guarantee continuous and effective functioning of the institutions *(JCC 28/2017, §93).*

Thus, while interpreting the Constitution, one must take into account that this **is an integral act, all the provisions of the Constitution being interconnected to the**

[4] Judgment no. 28 of 17.10.2017 on the interpretation of the provisions of Article 98 para.(6) in conjunction with Articles 1, 56, 91, 135 and 140 of the Constitution *(nonfulfillment by the President of constitutional duties)*

extent to which the content of certain provisions of the Constitution determines the content of other provisions of the Constitution *(JCC 28/2017, §97).*

The norms of the Constitution form a unitary one, in an indissoluble logical and legal connection. In this context, the Constitution establishes a tripartite division of state functions, which is a fundamental principle of state organization. Thus, the constitutional text reflects the image of the state as a structure of bodies, including the President. Therefore, starting from the spirit of the Constitution, **it is necessary to ensure the functioning of all state institutions**, strict observance of supreme principles and values, which represents in practice the test of effectiveness of the Constitution as the Supreme Law of a state governed by the Rule of Law *(JCC 28/2017, §98).*

The Constitution is not a "suicide pact". Thus, no provision in the Constitution can be interpreted as allowing the deadlock of its institutions. An overly restrictive interpretation, which greatly limits the possibilities of restoring constitutional order, would be a handicap for the functioning of democracy and the rule of law *(JCC 28/2017, §99).*

1.3. Republic of Moldova, neutral state

1.3.1. Permanent neutrality

Neutrality is a complex concept in international law and in politics, which basically means that such a state does not participate in wars between other states *(JCC 14/2017[5], §159).*

The law of neutrality confers a certain number of rights to a neutral state. For example, it prohibits any attack on the territory of the neutral state by belligerents, or the passage of any troops, munitions or provisions through its territory. The neutral state is also entitled to free movement of its economic goods and its nationals are free to trade on land and by sea with any other state, whether belligerent or not. On the other hand, the law of neutrality also imposes certain obligations on the neutral state. It is not permitted to play any direct part in armed conflicts or to assist belligerents by furnishing them with troops or arms. It is forbidden to place its territory at the disposal of belligerents

[5] Judgment no. 14 of 02.05.2017 on the interpretation of Article 11 of the Constitution *(permanent neutrality)*

for military purposes, whether to install operational bases, to move troops through it, or nowadays even to overfly it. The neutral state is obliged to ensure the inviolability of its territory with a suitably equipped army *(JCC 14/2017, §161).*

The law of neutrality does not impose any further conditions limiting the foreign policy of a neutral state, neither does it define the peacetime position of a permanently neutral state. In particular, traditional practice and doctrine have not prevented neutral states from collaborating with foreign military authorities to prepare joint defence measures. Similarly, a state that has proclaimed itself permanently neutral is under no obligation to extend its neutrality to the political, ideological or economic realms - see The White Paper on Neutrality, Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993 *(JCC 14/2017, §162).*

The law of neutrality grants great freedom of action and limits the political decision-making of the state only to a very small extent. Neutrality is not an institution that determines the overall conduct of foreign policy; rather, it is a status under public international law whose narrow essential content leaves great latitude for formulation of a foreign policy adapted to the needs of the moment and one which, in practice, has to be constantly developed to meet changes in the international political scene. The only unchanging principle inherent in neutrality is nonparticipation by a state in armed conflicts between other states *(JCC 14/2017, §163).*

The rights of a neutral state may be summarised as follows:

– **The right to independence, sovereignty and territorial integrity,** which are ensured through suitable means in accordance with the principles applied by international community.
– **A permanently neutral state enjoys the rights that follow from its international personality (the right to be a party in treaties, to participate in international conferences).**
– **The neutral state is entitled to protect its nationals on the territory of belligerent states.**
– **The neutral state has the right to the observance of its goods.**
– **A permanently neutral state will actively support the efforts of international community in the field of disarmament, confidence building, and in-**

terstate cooperation. In this regard, the neutral states are entitled to participate in the activities of international organisations to ensure collective security of states. Therefore, a state with permanent neutrality is entitled to become a party of defensive alliances, when it is under attack. The participation of neutral states in such alliances under certain conditions, may become a guarantee of their security and territorial inviolability. At the same time, a permanently neutral state is not entitled to become a member of an international organisation with goals and principles which are in breach of its status.

– **The right to legitimate defence** (individual and collective) against an armed attack directed to the sovereignty and territorial integrity of the state.
– **A neutral state is entitled to take part in peacekeeping operations conducted by international organisations.** The practice shows that the neutral states participate actively in such types of operations *(JCC 14/2017, §164).*

Neutrality refers to foreign policy and security of the State. The neutrality of the Republic of Moldova is closely related to its historical background; the military occupation of its Eastern area was a determinant factor in proclaiming its neutrality in the Constitution. From a historical and constitutional point of view, neutrality has never been a goal in itself, but rather an instrument among many others that would allow the Republic of Moldova to meet its true objectives, among which the withdrawal of foreign troops from its territory, consolidation of its independence and restoration of its territorial integrity *(JCC 14/2017, §177).*

According to Article 11 of the Constitution, there are two distinctive characteristics of the permanent neutrality instrument of the Republic of Moldova. First, permanent neutrality means that the Republic of Moldova commits itself to stay neutral in any present or future conflict, irrespective of the identity of the belligerents, location and its onset. Second, the neutrality of the Republic of Moldova means that the Republic of Moldova does not admit the stationing of foreign military troops on its territory. This, however, does not impede the Republic of Moldova to make use of all its means to defend itself militarily against any aggressor and to prevent any act that is incompatible with its neutrality, which may be committed by the belligerents on its territory *(JCC 14/2017, §178).*

The Republic of Moldova included the status of neutrality in the Constitution without requesting its confirmation by the UN. Actually, no state has recognised the neutrality of the Republic of Moldova and there are no international guarantees of this status (as in the case of Austria). The military occupation of a part of the territory of the Republic of Moldova when the neutrality was declared, as well as lack of international recognition and guarantees of this status, **do not affect the validity of constitutional provisions on neutrality** *(JCC 14/2017, §179).*

Article 11 of the Constitution stipulates that the "Republic of Moldova proclaims its permanent neutrality". Although the second paragraph of the article specifies that the "Republic of Moldova does not admit the stationing of any foreign military troops on its territory", since the Soviet occupation of the present territory of the Republic of Moldova (1944-1991) until now, in the Eastern part of the country there are still stationed occupation troops of the Russian Federation. Practically, the Soviet/Russian occupation has never stopped in the Eastern part of the country, although the independence of the Republic of Moldova has been proclaimed. The Russian Federation has recognised it but withdrew its army only from the western part of the Moldovan territory - 11% of the territory of the Republic of Moldova is still under occupation *(JCC 14/2017, §180).*

Hence, the fact that the Russian Federation did not withdraw its occupation troops from the Eastern region of the country, but on the contrary, has consolidated its military presence in the Transnistrian region of the Republic of Moldova, this **constitutes a violation of constitutional provisions regarding the independence, sovereignty, territorial integrity and permanent neutrality of the Republic of Moldova, as well as of international law** *(JCC 14/2017, §181).*

Neutrality and independence are interdependent: the independence is both what neutrality seeks to protect and, given the state has to make decisions freely, it is a sine qua non condition of neutrality. To show credibility, a permanently neutral state has to prove a sufficient degree of real independence from other states. Only then will it be able to resist pressures during crisis and meet its obligations as neutral state *(JCC 14/2017, §182).*

The Court noted that inasmuch the Republic of Moldova remains under military occupation, the more relative are rendered its independence and autonomy, which are required by the status of neutrality *(JCC 14/2017, §183).*

The law of neutrality does not impose additional conditions that would limit the foreign policy of a neutral state **nor it defines the position during peace** of a permanently neutral state. The only unchanging principle of neutrality is the non-participation of a state in armed conflicts between other states *(JCC 14/2017, §184).*

The Court has held that the purpose of every security policy should be the security at four levels: individual (citizens), collective (associations of interest), national (State) and international (foreign environment). It implies a continuous adjustment of the national security system to the foreign and domestic environment in order to face the new challenges and security issues at all five levels: political, military, economic, ecological and social, including: individual, cultural, energy, food, informational, communications, telecommunications, resources, etc. *(JCC 14/2017, §185).*

The security of the Republic of Moldova should be ensured considering the geopolitical factors that exercise their influence in the South-Eastern European region and directly on the State *(JCC 14/2017, §186).*

The Court held that **the Constitution is not a suicide pact. Hence, if there is any threat against fundamental constitutional values, such as national independence, the territorial integrity or the security of the state, the authorities of the Republic of Moldova are under the obligation to take all the necessary measures, including military to defend itself efficiently** *(JCC 14/2017, §188).*

Moreover, neutrality cannot be applied to the aggressor, as the **state cannot abstain when it is aggressed**. Neutrality creates special rights and obligations, which as a rule, do not exist during peace times and which end with the conclusion of hostilities or when the war starts between a neutral state and one of the belligerents. The neutral state enjoys **the right to legitimate defence** (individual and collective) against an armed attack targeting the sovereignty and territorial integrity of the state *(JCC 14/2017, §192).*

The Constitutional Court held that the provisions of the Constitution imply that the independence and security of the State may be ensured, including with the use of armed forces, both nationally and internationally. According to the Constitution (provisions of Article 8), while considering the limits and interdictions enshrined in the Fundamental Law, the international treaties of the Republic of Moldova and laws adopted to implement these treaties may provide for different measures in order to ensure the

independence and security of the state internationally, inter alia, measures of collective international defence and/or other joint measures, peacekeeping and international security measures, other international military cooperation measures, with constitutionally clear and reasoned bases, goals and character *(JCC 14/2017, §194).*

The main task of the security policy of a state is to eliminate structural causes of potential violent conflicts. The specific instruments to avoid conflicts include among others: preventive diplomacy, early detection and timely actions, peaceful conflict settlement, but also the threat of imposing sanctions, disarmament and building military confidence. Crisis management and conflict prevention may take place within the European Union, NATO and OSCE partnerships *(JCC 14/2017, §198).*

Modern neutrality does not exclude cooperation with military alliance members to consolidate the defence capacity of the Republic of Moldova, as long as they can agree on the key issues. In this partnership context, the peacekeeping operations are perfectly consistent with neutrality. Neutral states, such as Austria, participate actively in the EU crisis management tasks, in accordance with the Lisbon Treaty. Also, Austria cooperates closely with NATO in important and necessary fields, such as crisis management, humanitarian or peacekeeping operations *(JCC 14/2017, §199).*

Similarly, the new National Security Strategy of the Republic of Moldova approved by the Parliament on 15 July 2011 provides that in the context of security of the Republic of Moldova, an important role resides with the participation in global, regional and sub-regional efforts of promoting stability and international security through cooperation within the UN, OSCE, NATO and other international organisations, as well as participation in missions of The Common Security and Defence Policy of the EU (CSDP) *(JCC 14/2017, §200).*

Interdiction on the stationing of military troops of other states

Article 11 of the Constitution should be seen as an instrument of protection, not as an obstacle in protecting the independence, democracy and other constitutional values of the Republic of Moldova *(JCC 14/2017, §204).*

Participation in collective security systems

Participation to a collective security system, which like the UN security system would impose collective sanctions against aggressors and international law offenders, is not in contradiction with neutrality status. The extent to which one security system or another or an alliance are contrary to neutrality status should be estimated on a case-by-case basis, and there is no generally applicable interdiction. The decision shall be based mainly on the answer to the question as to whether participation to a regional defence system is to protect the country and its population more efficiently than non-participation *(JCC 14/2017, §207)*.

The Court ruled:

In the meaning of Article 11 of the Constitution corroborated with Article 1 para. (1), Article 3 and Article 8 of the Constitution:

– the military occupation of a part of the territory of the Republic of Moldova at the moment of declaring neutrality, as well as the lack of international recognition and guarantees of this status, **do not affect the validity of constitutional provisions on neutrality**;
– in the event of **any threats to constitutional fundamental values, as well as national independence, territorial integrity or state security, the authorities of the Republic of Moldova are obliged to take all necessary measures, including military that would allow it to efficiently defend against these threats**;
– stationing of any military troops or bases on the territory of the Republic of Moldova, *managed and controlled by foreign states*, is unconstitutional;
– the participation of the Republic of Moldova in collective security systems, such as the United Nations security system, peacekeeping operations, humanitarian operations, etc., which would impose collective sanctions against aggressors and international law offenders, is not in contradiction with the neutrality status *(JCC 14/2017, dispositive part)*.

2 FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES

2.1. Equality

2.1.1. Financial incentive for investigating agents within the General Police Inspectorate

The Court held that the principle of equality before the law, enshrined in Article 16 of the Constitution, provides for equal treatment in situations which, depending on the purpose pursued, are not different *(JCC 37/2017[6], §33).*

The Court ascertained that on 16 December 2016, the Law no.355-XVI of 23 December 2005 on the salary system in the budgetary sector was supplemented with Article 21/2 providing that "Investigating agents from subdivisions of the General Police Inspectorate of the Ministry of Internal Affairs who, by examining contraventions, in accordance with their competences, contributed to the collection of revenues to the state budget are financially incentivised with an amount of 25 % of the respective revenues, from the budget of the General Police Inspectorate" *(JCC 37/2017, §38).*

For the purpose of implementing the provisions of Article 21/2 of the Law, on 22 March 2017 the Government, by its Decision no.172 approved the Regulation on the financial incentive procedure for investigating agents within the General Police Inspectorate of the Ministry of Internal Affairs *(JCC 37/2017, §39).*

The Court noted that the legislator, given the specificity of the activity of certain categories of employees, may intervene with a view to establish bonuses and incentives, which shall differ in accordance with staff categories *(JCC 37/2017, §40).*

The Court found that the job positions cannot be deemed as identical, since each position has its particular features and requirements under which it is exercised. The Court also noted that, in light of the legal provisions, the comparison of positions and

[6] Judgment no. 37 of 13.12.2017 on the control of constitutionality of Article 21/2 of the Law no.355-XVI of 23 December 2005 on the salary system in the budgetary sector and Government Decision no.172 of 22 March 2017 for the approval of the Regulation on the financial incentive procedure for investigating agents within the General Police Inspectorate of the Ministry of Internal Affairs (financial incentive for investigating agents)

the salary system shall be made taking into account the complexity of the competences required, the degree of commitment and responsibility in the exercise of public powers, as well as the level of institutions in the hierarchy of state bodies *(JCC 37/2017, §44).*

Therefore, the Court noted that the investigating agents of the General Police Inspectorate, having a special status, with rights and duties specific to their statute, and having regard to the existence of risk factors in their activity, are not in identical situations with other categories of prosecution agents within public authorities *(JCC 37/2017, §48).*

Moreover, the Court pointed out that while the challenged provisions provide for a quarterly financial incentive for investigating agents within the General Police Inspectorate in proportion of 25% of the number of fines collected to the state budget, in case the report on the contravention is annulled by the court of law, the amount that the prosecution agent beneficiated from previously shall be withheld *(JCC 37/2017, §52).*

Therefore, the Court held that in case of abuses by investigating agents in establishing contravention fines, the drawn up reports may be challenged in a court of law which, according to the Contravention Code, has full competence: to establish the guilt of a person against whom were initiated contravention proceedings; the existence of mitigating and/or aggravating circumstances; the necessity to penalize and, where appropriate, the nature of the contravention sanction *(JCC 37/2017, §53).*

Similarly, the Court noted that the General Police Inspectorate is entitled to bring an action of recourse against the investigating agent regarding the payment of material and non-material damages caused by the unlawful application of the contravention fine *(JCC 37/2017, §54).*

In this respect, the Court underlined that the investigating agent shall behave loyally and act in good faith in the exercise of his/her duties *(JCC 37/2017, §55).*

The Court has held that, under Article 43 of the Constitution, the State is bound to establish a minimum wage *(JCC 37/2017, §59).*

the Court noted that the legislator has the competence to grant bonuses, incentives, and basic salary bonuses to state officials. The legislator is also entitled to differentiate bonuses in accordance with staff categories, to modify, suspend or even annul them *(JCC 37/2017, §60).*

Thus, The Court held that the adoption of the challenged provisions falls within Parliament's margin of appreciation and is not contrary to Article 16 para.(2) of the Constitution *(JCC 37/2017, §61).*

2.2. Free access to justice

2.2.1. Limitation period

The Court held that the regulation by the legislator, within the limits of powers conferred by the Constitution, of the conditions for the exercise of a right – either material or procedural, including by establishing certain time-limits, does not represent a restriction of the exercise of such right, rather an effective manner to prevent the abusive exercise thereof, to the detriment of other holders which are equally protected. In this respect, the European Court also held that the use of limitation periods (prescription or depriving of a right if not exercised) pursues a legitimate aim for the general interest. The length of the limitation period is a matter in respect of which the State enjoys a margin of appreciation, provided that the duration of the period is not limited in the manner to make it unacceptable. Similarly, the Court held that one of the consequences of limitation periods or deprivation is that the holder of the right can no longer exercise it - ECHR Jud. Pye (Oxford) Ltd and JA. Pye (Oxford) Land Ltd v. The United Kingdom, 30 August 2007 *(DCC 46/2017[7], §22).*

The Court also noted that failure to submit the preliminary application within the limitation period does not prevent from the possibility to apply to the court of law. Moreover, the law provides for the right to request the court to re-establish the limitation period to submit the preliminary application. At the same time, the Court noted that the limitation period starts from the date when the person found out or ought to have been informed of defamatory information. The Court therefore held that the defence of the right to honour, dignity and professional reputation also depends on the diligence of the persons concerned to act accordingly *(DCC 46/2017, §24).*

[7] Decision no. 46 of 22.05.2017 on the inadmissibility of the complaint no. 53g/2017 referring to the exception of unconstitutionality of Art. 15 para.(2) of the Law no. 64 of 23 April 2010 on the freedom of expression

2.2.2. The limitation period for the disciplinary liability of the bailiff

The Court pointed out that it is the legislator's choice to regulate the limitation period for disciplinary liability of bailiffs *(DCC 92/2017[8], §26).*

At the same time, the Court noted that limitation periods must ensure a fair balance, on the one hand, between the principle of legal certainty and, on the other hand, the principle of equality *(DCC 92/2017, §27).*

The Court noted that the jurisprudence of the European Court, which emphasized the importance of limitation periods for legal certainty and the security of legal relations in the context of the right to a fair trial, is relevant in this regard *(DCC 92/2017, §21).*

The European Court held that the role of limitation periods is of major importance when interpreted in light of the Convention's Preamble which, in its relevant part, states the pre-eminence of the right as the joint property of the Contracting States - *Dacia SRL v. Republic of Moldova*, Judgment of 18 March 2008, §75 *(DCC 92/2017, §22).*

At the same time, limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time - *Stubbings and Others v. the United Kingdom*, Judgment of 22 October 1996, §51 *(DCC 92/2017, §24).*

2.2.3. Start of criminal investigation

The Court noted that, based on the nature of the purpose of actions at the pre-investigation stage, these are limited to the ascertainment of the offense (in rem), but not to the indictment of the person (*in personam).* This rule also applies at the stage of start of criminal investigation. Therefore, the Order on the start of criminal investigation shall refer only to the act which conditioned the issuance thereof (in rem); as a matter

[8] Decision no. 92 of 21.09.2017 on the inadmissibility of the complaint no. 121g/2017 referring to the exception of unconstitutionality of Art. 21/1 and Art. 24 para.(5) of the Law no. 113 of 17 June 2010 on bailiffs *(limitation term for disciplinary liability of bailiffs)*

of fact, in the case of a reasonable suspicion regarding the commission of a crime by a person, the criminal investigation body must offer all guarantees that are characteristic for a charge in criminal matters *(DCC 12/2017[9], §27).*

2.2.4. Adjudication based on evidence administered at the stage of criminal investigation

In order to implement the constitutional provisions, the Criminal Procedure Code no. 122-XV of 14 March 2003 provides detailed rules on the adjudication of criminal cases by the courts of law. In this context the Court held that the provisions of the Code also regulate adjudication based on the evidence administered during the stage of criminal investigation, which in fact represents adjudication in a simplified procedure *(JCC 9/2017[10], §41).*

The Court noted, in this respect by the Recommendation no. R (87) 18 the Committee of Ministers encouraged the member states to take measures aimed at simplifying ordinary judicial procedures through the use of accelerated procedures, including summary judgments, out-of-court settlements," guilty pleas" and hearing of case based on evidence administered at the stage of criminal investigation *(JCC 9/2017, §42).*

The Court noted that the adjudication of the criminal case under a simplified procedure is an instrument offering the advantage of a speedy settlement of criminal cases when the defendant fully recognizes the commission of facts indicated in the indictment and demands that the trial be based on the evidence administered during criminal investigation *(JCC 9/2017, §43).*

In its case law, the European Court of Justice stated that when a criminal charge against the defendant is established under summary procedures, it essentially leads to the waiving of a number of procedural safeguards. This cannot be a problem in itself, as neither the letter nor the spirit of Article 6 prevents a person from waiving them of his

[9] Decision no. 12 of 07.02.2017 on the inadmissibility of the complaint no. 123g/2017 referring to the exception of unconstitutionality of Art. 274 para.(7) of the criminal procedure Code of the Republic of Moldova *(start of criminal investigation)*

[10] Judgment no. 9 of 09.03.2017 on the exception of unconstitutionality of Art. 364/1 of the Crimial procedure Code *(adjudication based on evidence administered at the stage of criminal investigation)*

own free will - see *Scoppola v. Italy* (No.2) [GC], Judgment of 17 September 2009, §135 *(JCC 9/2017, §44).*

However, the European Court has pointed out that such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. In addition, it must not run counter to **any important public interest** - see, inter alia, *Scoppola* (No 2), cited above, §135-136, *Poitrimol v. France*, Judgment of 23 November 1993 §31 and *Hermi v. Italy* [GC], Judgment of 18 October 2006, §73 *(JCC 9/2017, §45).*

Having examined the exception of unconstitutionality, the Court found that in line with Article 364/1 of the Code of Criminal Procedure, the court of law may proceed to the adjudication of the case based on the evidence adduced at the stage of criminal investigation, in case the accused **declares personally, by authentic text, that he admits committing the offences shown in the indictment** *(JCC 9/2017, §47).*

At the same time, the court of law is under the duty to examine the case applying this procedure, **only if: 1) there results from the adduced evidence that the offences committed by the accused were established and 2) there is sufficient data on this person which makes it possible for a sanction to be set** *(JCC 9/2017, §48).*

Moreover, the Court found that, in accordance with the **provisions of Art. 364/1 para.(9) of the Criminal Procedure Code, the judge is entitled to dismiss the defendant's request** and to order the hearing of the case under general procedure *(JCC 9/2017, §49).*

Thus, whenever the judge has doubts as to the guilt of the defendant or in the case of a partial acknowledgment of facts, or even in the case of full acknowledgment of the imputed facts, when he/she has no clear view on the facts of the case and considers that the adjudication cannot take place only based on the evidence administered during the stage of criminal investigation, the judge shall dismiss the defendant's request to adjudicate the case under the simplified procedure *(JCC 9/2017, §50).*

The Court has stated that it is not the mere recognition of charges which is decisive for the efficiency of a fair trial carried out within the limits of legality and impartiality, as such ascertainment represents only a procedural condition, it is rather the ascertainment of the defendant's guilt in respect of the facts found in favour of the charge. In addition,

regardless of the recognition of charges, the existence of a fair trial shall prevail, and there is nothing to be said about it if the principle of finding the truth is denied *(JCC 9/2017, §51)*.

In this context, the Court pointed out that under the summary procedures, the minimum level of safeguards which might be awarded to the injured party is: 1) the right to be informed in respect of the conditions of the summary procedures, the date, place and time of the hearing within which the case will be examined; 2) the right to attend the court hearing in which the case will be examined based on the evidence administered during the stage of criminal investigation; and the key factor 3) the right to become a civil party with the possibility to propose the administration of evidence *(JCC 9/2017, §53)*.

The Court has therefore noted that although criminal cases may also be examined in a summary procedure, this **does not preclude ensuring certain safeguards to the victim**, one of them being the recovery of prejudices made by the committed offence *(JCC 9/2017, §54)*.

Thus, the Court noted that the hearing of the case on the basis of evidence administered during the stage of criminal investigation **does not relieve the defendant of civil liability**. In this respect, the provisions of art. 364/1 para.(5) of the Criminal Procedure Code expressly stipulate that if the application is admitted, the judge shall explain to the injured person his/her right to become a civil party and shall ask the civil party and the civilly liable party **if they propose the administration of evidence**, and after that the court shall proceed to judicial hearing *(JCC 9/2017, §56)*.

Similarly, the Court noted that if the court leaves the civil action unsettled within the criminal proceedings, this does not prevent the civil party from initiating civil action under civil procedure. Moreover, according to the provisions of Art. 85 para.(1) let. a) of the Civil Procedure Code, the civil action on the civil liability of the defendant or of the civilly liable party exercised in the civil court is exempted from the state duty *(JCC 9/2017, §62)*.

The Court held that by establishing special rules of procedure and by their application in cases when the accused admits the charges shown in the indictment and requests the court of law to proceed to a summary procedure, it is without prejudice to the essence of the right to free access to justice of the victim, this being in line with provisions of Article 20 in conjunction with Articles 16 and 54 of the Constitution *(JCC 9/2017, §66)*.

2.2.5. Admissibility of evidence

In accordance with Article 95 para.(2) of the Criminal Procedure Code, the decision in respect of the issue related to the admissibility of data as evidence is taken by the criminal prosecution body, ex officio or at the request of the parties, or, as the case may be, by the court of law *(DCC 120/2017[11], §19).*

The Court found that the subjects empowered with competence to decide the admissibility of the evidence are: 1) the criminal prosecution body; 2) the court of law. In this respect the following may be concluded: the parties may request the admissibility of evidence both at the stage of criminal prosecution and during the hearings. Accordingly, at the stage of criminal prosecution, the admissibility of an evidence will be decided by the criminal prosecution body, and the court will decide the admissibility of an evidence during the hearings *(DCC 120/2017, §20).*

The Court noted that the admissibility of evidence must be examined under all aspects, in an objective manner and in accordance with the law, having a proper reasoning, so as to eliminate any suspicion of arbitrariness. In particular, when admitting certain evidence and dismissing others, the criminal prosecution body or, as the case may be, the court of law are required to indicate with sufficient clarity the arguments for the solution they render *(DCC 120/2017, §21).*

The Court has pointed out that, according to Article 100 para.(1) of the Criminal Procedure Code, the administration of evidence represents the use of evidence within criminal proceedings, which involves gathering and verification of evidence **in favour of and against the accused** or the defendant by the criminal prosecution body, ex officio or at the request of other participants in the trial, as well as by the court of law, at the request of the parties, by the evidential procedures provided by the Criminal Procedure Code *(DCC 120/2017, §27).*

At the same time, if some evidence were dismissed by the criminal prosecution body at the stage of the criminal prosecution i.e. these being declared inadmissible, the Court

[11] Decision no. 120 of 15.12.2017 on the inadmissibility of the complaint no. 155g/2017 referring to the exception of unconstitutionality of certain provisions of Art. 95 para.(2) of the Criminal procedure Code of the Republic of Moldova *(admissibility of evidence)*

found that the person **has the possibility to request the administration of these evidence also at the stage of court hearings, which means that the right to defence in this case is not violated** *(DCC 120/2017, §30).*

2.2.6. Prohibition to get acquainted with the materials of the case file at the stage of criminal prosecution

The Court held that the challenged legal provisions refer to the confidential nature of the criminal prosecution, which implies that certain criminal prosecution acts can only be known at the end of criminal prosecution. This rule is imposed by objective requirements related to the operability of criminal prosecution, respect of dignity of the persons under investigation, protection of the identity of witnesses, protection of information sources and methods and techniques used to collect the evidence (*DCC 107/2017*[12]*, §20).*

The systemic analysis of the rules governing the right of the parties to get acquainted with the materials of the case file during the stage of criminal prosecution, the Court noted that the defence counsel is not entirely deprived of the opportunity to get acquainted with the criminal case file, being entitled **to inspect the minutes of the actions carried out with the participation of the latter** and to request their completion or inclusion of his/her objections in the respective minutes (art. 68 para.(1) section 10 of the Criminal Procedure Code) *(DCC 107/2017, §21).*

The Court also noted that the prohibition to get acquainted with the materials of the case file at the stage of criminal prosecution is supplemented by other procedural safeguards provided by the applicable criminal procedural law. Thus, following the verification of materials of the case file, the prosecutor shall inform the accused, the legal representative of the defence counsel thereof, the injured party, the civil party, the civilly responsible party and their representatives about the termination of criminal prosecution, the place and the time limit within which they **can inspect the materials of the criminal prosecution** (Article 293 para.(1) of the Criminal Procedure Code), and having

[12] Decision no. 107 of 07.11.2017 on the inadmissibility of the complaint no. 135g/2017 referring to the exception of unconstitutionality of certain provisions of Art. 68 paras.(1) and (2) and Art. 293 para.(1) of the criminal procedure Code *(access to the materials collected during criminal investigation)*

got acquainted with the materials of the criminal investigation, they **have the possibility to file new claims in respect of the criminal prosecution** (Article 293 para.(6) of the Criminal Procedure Code) *(DCC 107/2017, §22).*

2.2.7. Removal of the defendant from the courtroom

The Court found that the defendant may decide prior to the application of the measure of his/her removal from the courtroom, in full knowledge of facts, whether or not he/she wishes to benefit from the right to participate in his/her own trial. However, by disregarding the corresponding basic rules of conduct, the defendant through his/her behaviour expresses unequivocally the will not to participate in the trial. Furthermore, the defendant, being removed from the courtroom, continues to benefit from the right to be assisted and effectively defended by a lawyer at his/her choice or appointed ex officio. Moreover, the European Court has held that, under certain circumstances, the defendants may be removed from the courtroom for maintaining order in the court and it cannot be considered to have curtailed the overall fairness of the proceedings against the applicants, if they were represented by lawyers in their absence. (*Sergey Denisov and others v. Russian Federation*, Judgment of 19 April 2016, §143) *(DCC 11/2017[13], §25).*

The European Court has ruled that it is essential for the proper administration of justice that dignity and order in the courtroom be the hallmarks of judicial proceedings. The flagrant disregard by a defendant of elementary standards of proper conduct neither could nor should have been tolerated - *Ananyev v. Russian Federation*, Judgment of 30 July 2009, §44 *(DCC 11/2017, §20).*

The Court held that the regulation of the possibility of the judge or, as the case may be, of the panel of judges to order the removal of the defendant from the courtroom and to continue the trial in his/her absence does not represent *per se,* a prejudice to the provisions of Art. 20, 21 and 54 of the Constitution, as this measure is intended to secure order and solemnity of the hearing *(DCC 11/2017, §29).*

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[13] Decision no. 11 of 02.02.2017 on the inadmissibility of the complaint no. 16g/2017 referring to the exception of unconstitutionality of certain provisions of Art. 334 para.(2) of the Criminal Procedure Code of the Republic of Moldova *(removal of the defendant from the courtroom)*

2.2.8. Individualization of punishment. Assignment of penalty points

The Court has emphasized that the principle of individualisation of punishment excludes the assignment of an absolutely determined penalty in the absence of individualization criteria - JCC no. 10 of 10 May 2016, §66, 68 *(DCC 114/2017[14], §18).*

Having examined the provisions of the Contravention Code, the Court found that the amount of penalty points varies from one offense to another depending on the importance of the social value protected by the contravention rule, and **their application does not immediately lead to deprivation of the special right to drive motor cars** *(DCC 114/2017, §19).*

The Court noted that the court of law may order the person to be deprived of this right for a period of **at least 6 months up to one year**. Therefore, the court of law is not deprived of the possibility to individualize the sanction, taking into account the particular circumstances of each case *(DCC 114/2017, §21).*

2.3. Non-retroactivity of the law

2.3.1. Limitations for reconciliation in criminal cases

Given that the reconciliation of the parties, by removing criminal liability, determines the state to renounce to its sovereign right to deliver a public condemnation, in the name of the law, the criminal offenses and the persons having committed them, in favour of a compromise between the parties, of reparation of the prejudice caused and of the principle of procedural economy *(JCC 27/2017[15], §48).*

By way of derogation from the general rule to prosecute and punish the persons who have committed crimes, the state has pursued the accomplishment of restorative justice in respect of defendants who meet the conditions for reconciliation. Thus, the institution of reconciliation was instituted by the legislator as a means to correct and re-educate the defendant, as an alternative to criminal punishment *(JCC 27/2017, §49).*

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[14] Decision no. 114 of 15.12.2017 on the inadmissibility of the complaint no. 160g/2017 referring to the exception of unconstitutionality of certain provisions of Art. 229 para.(2) and Art. 230 para.(2) of the Contravention Code of the Republic of Moldova *(assignment of penalty points)*

[15] Judgment no. 27 of 21.09.2017 on the exception of unconstitutionality of certain provisions of Article 109 para.(1) of the Criminal Code *(limitation of reconciliation in criminal cases)*

In order to achieve the purpose of the criminal law to prevent the commission of new offenses (Article 2 para.(2) of the Criminal Code), the legislator may condition the exercise of the right of the parties to be reconciled under criminal proceedings. However, this right does not have an absolute character and may be subject to limitations *(JCC 27/2017, §50).*

In this respect, by the Law no.130 of 9 June 2016, in force since 15 July 2016, the content of the institution of reconciliation has been substantially reconsidered in respect of the previous provisions of art.109 para.(1) of the Criminal Code, by introducing new conditions on the functioning of the given institution *(JCC 27/2017, §51).*

According to the text of Art. 109 of the Criminal Code the reconciliation of parties can be terminated only upon the cumulative fulfilment of certain conditions. One of the conditions to conclude the criminal reconciliation is that the law expressly provides for the possibility of reconciliation for the committed deed. In this respect, taking into account the severity of the offense, Art. 109 para.(1) and para.(4) of the Criminal Code allows parties to be reconciled in case of a minor offense or less severe offense, while for juveniles - also in case of a serious offense. At the same time, depending on the classification of offenses, reconciliation is allowed only for offenses provided for in chapters II-VI of the Special Part and it is forbidden in case of persons who have committed offenses under Art. 171-1751, 201, 206, 208, 208/1 and 208/2 of the Criminal Code *(JCC 27/2017, §52).*

Moreover, reconciliation is **bilateral** as it is concluded between the suspect, the accused, the defendant and the injured party. At the same time, it must be **expressed personally**, so the reconciliation operates only *in personam*, exempting from the criminal responsibility only that particular suspect, accused, defendant with whom the injured party has reconciled. Other formality of reconciliation states that it should not be deduced from certain circumstances or environments and shall imply the **explicit and clear** agreement by which the parties **freely** agree to resolve the criminal conflict *(JCC 27/2017, §53).*

Similarly, reconciliation cannot be valid unless it is: 1) **total**, since it concerns both the criminal and civil aspects of the case; 2) **final,** as it attracts the procedural impossibility of resuming the conflict; 3) **unconditional**, the conflict between the parties ceasing without imposing particular conditions *(JCC 27/2017, §54).*

At the same time, in line with the new requirements, reconciliation may be concluded in the following cases: *1) a person has no criminal record for similar crimes committed intentionally; 2) no termination of criminal proceedings was ordered for a person – resulting from reconciliation – for similar crimes committed intentionally in the last five years (JCC 27/2017, §55).*

The Court found that the interdiction of repeated reconciliation set out in Article 109 para.(1) of the Criminal Code is based on the consideration of the fact that within the last five years there were orders in respect of the person to terminate the criminal proceedings as a result of reconciliation, for similar offenses committed with intention *(JCC 27/2017, §56).*

The Court noted this **last condition does not aim at crimes committed previously, but it is only applied in cases of reconciliation of litigants within criminal proceedings for crimes committed following the entry into force of the Law no. 130 of 9 June 2016**, the five-year time limit being a requirement for reconciliation to be concluded in case of new crimes committed. At the same time, the provisions of this law have effects *in integrum* in respect of all persons who meet the conditions for reconciliation starting with the moment when the law enters into force *(JCC 27/2017, §57).*

By instituting the five-year time limit when a criminal reconciliation may not be concluded in cases there was concluded another reconciliation, which served as a basis for the termination of criminal proceedings against a person, for similar crimes committed intentionally, **the lawmaker did not amend the law targeting the content of crime or a punishment, but it instituted additional conditions for the reconciliation to be concluded**. Thus, a mere regulation of a term within which a person cannot benefit from the institution of reconciliation is not by its nature a worse law, it rather has the meaning of establishing a legal framework to achieve the purpose of the criminal law to prevent the commission of new offenses. As a matter of fact, the state has a wide margin of appreciation in choosing the necessary measures to combat criminality *(JCC 27/2017, §58).*

Thus, there is no doubt that the person in respect of whom the termination of the criminal trial as a result of reconciliation has been ordered during the last five years may prospect that in case of a new offense, following the amendments to Article 109 para.(1) of the Criminal Code, it will be impossible to conclude a new reconciliation. As a matter of fact, according to the case-law of the European Court, the requirement of clarity of criminal law is ensured if the individual can know from the wording of the relevant pro-

vision and, if need be, with the assistance of the courts' interpretation of it and if the person concerned has to take appropriate legal advice, as well as the fact that foreseeability of the low does not oppose the idea that the person concerned is forced to follow clarification guidelines to be able to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail - *Cantoni v. France*, [GC], Judgment of 15 November 1996, §§29 and 35; *Dragotoniu and Militaru-Pidhorni v. Romania*, Judgment of 24 May 2007, §§33-34 and 35; *Sud Fondi - S.R.L. and Others v. Italy*, judgment of 20 January 2009, §§107-109 *(JCC 27/2017, §59).*

The Court found that the new provisions of Article 109 para.(1) of the Criminal Code do not apply retrospectively within the meaning of Article 22 of the Constitution, they are rather applicable according to the principle of criminal law enforcement, which implies that the law is applied to all the crimes committed when it is in force *(JCC 27/2017, §60).*

Moreover, reconciliations concluded in the last five years prior to the moment of entry into force of the amendments operated by the lawmaker constitute, *de facto,* acts that took place and shall be considered by criminal prosecution bodies or by courts of law in the application of the institution of reconciliation under the new law. As a matter of fact, in *Achour v. France,* Judgment of 29 March 2006, the reasoning of which is valid and applies *mutatis mutandis* to the present case, the Grand Chamber of the European Court of Human Rights ruled that **the practice of taking past events into consideration should be distinguished from the notion of retrospective application of the law, *stricto sensu*** *(JCC 27/2017, §61).*

In conclusion, the Court held that instituting a five-year time limit for cases when criminal reconciliation may not be concluded in the event another reconciliation took place previously, which served as a ground for the criminal proceedings against the person to be terminated, for similar crimes committed intentionally, there are not affected the provisions of Article 22 of the Constitution on non-retroactivity of the law *(JCC 27/2017, §62).*

2.3.2. Penalties. Unpaid community service

The Court held that any punishment in criminal law is intended to restore social equity, to correct the convict, and to prevent new offenses from being committed by both convicts and other persons, which implies a proper individualization of punish-

ment. Unpaid community service can be applied as a primary punishment or in the case of application of suspended sentence - as an obligation for the probationary period *(DCC 15/2017[16], §23, 24).*

A more severe punishment, out of the number of alternatives provided for the commission of the offense, is established only if a milder punishment, out of the number mentioned, fails to ensure the achievement of the purpose of punishment *(DCC 15/2017, §27).*

The aforementioned punishment, being an alternative to detention, does not fit the notion of "forced labor". The fact that the services provided under this punishment are free of charge does not determine its qualification as forced labor, it rather constitutes the element of constraint of the given punishment through which it tends to correct and re-educate the person *(DCC 15/2017, §31).*

The Court also noted that the lack of consent of the person to the application of the punishment in the form of unpaid community service cannot be interpreted in itself as determining the forced labor of the conduct imposed by the court order. Moreover, in view of the legal nature and purpose of the given measure, requesting the agreement would have the effect of rendering ineffective the punishment applied for committing of an offense incriminated by criminal law *(DCC 15/2017, §32).*

2.4. The quality of criminal law

2.4.1. Clarity of provisions on "public interests" *in criminal law*

Criminalization/deincrimination of deeds or change of the structure of constitutive elements of a crime, as well as the use of wider notions to define criminal norms are within the margin of appreciation of the legislator, a margin which is not absolute, being limited by the constitutional provisions *(JCC 22/2017[17], §64).*

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[16] Decision no. 15 of 07.02.2017 on the inadmissibility of the complaint no. 13g/2017 referring to the exception of unconstitutionality of Art. 67 para.(4) of the Criminal Code and of certain provisions of Art. 194 para.(2) of the Enforcement Code *(unpaid community service)*

[17] Judgment no. 22 of 27.06.2017 on the exception of unconstitutionality of certain provisions of Article 328 para.(1) of the Criminal Code *(excess of power or excess of official authority)*

Any offense related to excess power or excess of official authority belongs to the category of offenses against the good performance of the activity within the public service, and therefore is committed by a particular subject, namely the public person *(JCC 22/2017, §66).*

The public person, as a special subject of the offense of excess of power or excess of official authority, is entrusted with the exercise of the public service duties *(JCC 22/2017, §67).*

Excess of power or excess of official authority is a material offense, so the termination thereof is linked in a mandatory manner to the occurrence of damaging consequences, namely: "considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities" *(JCC 22/2017, §68).*

The Court has held that while the *damaging nature* of the offense is determined by the protected legal object and constitutes the *qualitative sign* of the offense, the *degree of damage* depends on the seriousness of the deed (amount of damage, form of the guilt, reason, purpose, etc.) and constitutes *the quantitative sign (JCC 22/2017, §69).*

The Court thus found that the result of the offense provided in Article 328 para.(1) of the Criminal Code, in the current wording, determines the congregation of the following signs: *(1) the considerable nature of the damage; and (2) the scope of action: either the public interest, or the legally protected rights and interests of individuals or legal entities (JCC 22/2017, §70).*

Having examined the provisions of Article 328 para.(1) of the Criminal Code, the Court found that one of the damaging consequences of the offense of excess of power or excess of official authority is causing considerable damage to *"public interests" (JCC 22/2017, §77).*

Article 328 para.(1) of the Criminal Code regulates a material offense and includes the public interest as damaging consequences thereof; however, the reference norm of Article 126 para.(2) of the same Code, on the basis of which the damage is assessed *in concreto* in each case, does not provide *expresis verbis* the "public interest" as a social value that can be assessed *(JCC 22/2017, §78).*

In the case of *Liivik v. Estonia*, the European Court held that the criteria used by the national courts to establish that the applicant had caused "considerable damage to the

interests of the State" as a high-ranking civil servant and that his actions were incompatible with "the general sense of justice" were too vague. The European Court was not satisfied that the applicant could reasonably have foreseen that he risked being charged with and convicted of *causing significant damage to the interests of the State*, **given that the criminal norm involves the use of such broad notions and such vague criteria that the criminal provision in question was not of the quality required under the Convention in terms of its clarity and the foreseeability of its effects** *(§§100-101).* The Court found that the arguments of the European Court in *Liivik v. Estonia* are valid and shall be applied *mutatis mutandis* in the present case *(JCC 22/2017, §79, 76).*

Absence of any provisions for the assessment of the considerable nature of the damaging consequences caused to *public interests* opens a broad field to arbitrariness, there existing the risk that any actions of the public person that exceed the limits of the rights and duties granted by law***, regardless of the seriousness of the committed deed,* will fall within the scope of action of the criminal nor**m *(JCC 22/2017, §80).*

In this respect, the Court held that the broad character of the norm in respect of the above-mentioned injurious consequences, implies the risk that the judicial bodies may apply Article 328 para.(1) of the Criminal Code not as a *material* offense, but as a *formal* offense, i.e. only based on the ascertainment in respect of incriminated actions, without taking into account the assessment of damaging consequences. As a matter of fact, from the point of view of the *ultima ratio* criminal law principle, it is not sufficient to ascertain that the incriminated deeds are detrimental to the social value protected, **this prejudice must rather convey a certain degree of intensity and seriousness justifying the criminal sanction** *(JCC 22/2017, §81).*

The lack of clear, foreseeable and accessible criteria in order to assess the damaging consequences of the offense provided by Article 328 para.(1) of the Criminal Code determines the judicial bodies to assess the *concrete* impact of actions committed by public persons in respect of an abstract value protected by criminal law such as "public interest" *(JCC 22/2017, §82).*

In this regard, the Venice Commission in *its Report on the relationship between political and the criminal ministerial responsibility* adopted at its 94th plenary session (8-9 March 2013) (CDL-AD (2013) 001), stressed that: "95. [...] Article 7 (of the ECHR) does not

require absolute predictability, and judicial interpretation is sometimes inevitable. But a certain level of legal clarity is necessary **and criminal provisions using such formulas as for example *"infringement of the rule of law"* or *"infringement of democracy"* may easily be found in breach of the ECHR**" *(JCC 22/2017, §83).*

The Court noted that **the law enforcement bodies cannot substitute the legislator in defining the objective aspect of the offense, thereby accomplishing specific powers of the legislative** *(JCC 22/2017, §84).*

The Court found that while individualizing criminal liability and criminal penalties the court of law is bound to establish *with certainty* the damaging consequences of the offense incriminated against the defendant; however, according to Art. 7 para.(1) of the Criminal Code, when applying the criminal law it is necessary to take into account **the nature and the degree of prejudice of the committed offense**, the responsible person and the circumstances of the case that mitigate or aggravate criminal liability. Moreover, the characterisation *in abstracto* of concrete criminal offenses as damaging the *"public interest"* cannot satisfy the requirement of clarity and foreseeability and at the same time constitutes an extensive and unfavourable interpretation of the criminal law, contrary to the provisions of Art.3 para.(2) of the Criminal Code *(JCC 22/2017, §85).*

Public interest is a complex and dynamic notion, which, by its nature and by reference to the economic, political, social, legal, etc. dimensions of the state and society vary depending on the changes that occur both on the national and international level *(JCC 22/2017, §86).*

The Court noted that, according to Article 2 of the Criminal Code, criminal law protects persons from crimes; a person's rights and freedoms; property; the environment; constitutional order; the sovereignty, independence, and territorial integrity of the Republic of Moldova; the peace and security of humanity as well as the rule of law in its entirety *(JCC 22/2017, §87).*

Therefore, **the criminal law as a whole, by its entirety, aims to protect the public interest, which is characterized by the identification of concretely determined legal values** *(JCC 22/2017, §88).*

Although the activity of the public person is directly linked to the safeguarding of the public interest as a main generic objective, the recipient of the law, i.e. the public per-

son, **is deprived of the possibility to unambiguously determine the damaging consequences of incriminated actions** *(JCC 22/2017, §89).*

The Court held that the use in Art. 328 para.(1) of the Criminal Code of the notion "public interest" – which is a generic notion, that may not be defined – is in breach of Articles 1 para.(3) and 22 of the Constitution *[the principle of legality of criminal offences and penalties]*, as well as Article 23 of the Constitution *[the quality of criminal law] (JCC 22/2017, §91).*

Having examined the provisions of Art. 327 para.(1) and Art. 361 para.(2) let. d) of the Criminal Code, the Court found that the text "public interests" is found in both components of the crime as a damaging consequence and, applying *mutatis mutandis* the arguments of the Judgment no. 22 of 27 June 2017, declared the above-mentioned text unconstitutional *(JCC 33/2017*[18]*).*

2.4.2. The concept of "considerable damage" in criminal law

According to Article 126 para.(1) and (1/1) of the Criminal Code, criminal liability for damages caused by committing offenses is gradually differentiated, namely for *(1) large scale damage* and *(2) especially large-scale damage*. The amount of large scale and especially large scale is regulated *expressis verbis*. Thus, when determining the large scale and especially large-scale damage, the lawmaker provided as a basis of calculation the forecasted average national monthly salary, established by a Government Decision, which is in force at the moment the act is committed, as follows:

- large scale - *more than 20 salaries*;
- especially large scales - *more than 40 salaries (JCC 22/2017*[19]*, §95).*

The small-scale damages caused, that trigger liability under Contraventions Code, are the damages that when committing the offence, do not exceed *20% of the quantum of the forecasted average monthly national salary*, approved by the Government for the year when the offence was committed *(JCC 22/2017, §96).*

[18] Judgment no. 33 of 07.12.2017 on the exception of unconstitutionality of certain provisions of Articles 327 para.(1) and 361 para.(2) p.d) of the Criminal Code *(abuse of power or abuse of office)*

[19] Judgment no. 22 of 27.06.2017 on the exception of unconstitutionality of certain provisions of Article 328 para.(1) of the Criminal Code *(excess of power or excess of official authority)*

The Court found that, according to the aforementioned legal provisions, the damages falling within the limits of the small-scale damages and large-scale damages shall be classified, as the case may be, as essential or considerable *(JCC 22/2017, §97).*

At the same time, the Court observed that the lawmaker provided in Article 126 para.(2) of the Criminal Code subjective criteria on delimiting between *"considerable"* and *"essential"* damage, which is decided upon depending on the significance the victim attributes to the goods and upon other circumstances that have an influence on their financial condition *(JCC 22/2017, §98).*

While exercising its the competence to legislate in criminal matters, the legislator must take into account the principle according to which criminalization of an act must intervene as a last resort in the protection of a social value and shall follow the principle of *"ultima ratio"*. The Court held that, from the point of view of the principle of *"ultima ratio"* in criminal matters, **it is not sufficient to ascertain that the incriminated facts are detrimental to the social value protected; this detriment must rather present a certain degree of intensity and severity which justifies the sanction** *(JCC 22/2017, §100).*

At the same time, prior to instituting by the lawmaker of a threshold for the essential or considerable damage, their amount shall constitute the limits that fall between the small scale and large-scale damages *(JCC 22/2017, §102).*

2.4.3. Clarity of provisions on "official duties" in criminal law

Having examined the provisions of Art. 327 para.(1) of the Criminal Code, the Court found that for committing of the offense of excess of power or excess of official authority it is sufficient for the perpetrator to intentionally make use of his/her official duties. In addition, as far as the subject of the offense is concerned, it is necessary to have a special quality, namely to be a public person *(JCC 33/2017[20], §79).*

The Court notes that the equivalent of the offense of excess of power or excess of official authority has been regulated on the international level by the United Nations

[20] Judgment no. 33 of 07.12.2017 on the exception of unconstitutionality of certain provisions of Articles 327 para.(1) and 361 para.(2) p.d) of the Criminal Code *(abuse of power or abuse of office)*

Convention Against Corruption, which, in Article 19 entitled "Abuse of Functions", recommends that each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, **in violation of laws**, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity *(JCC 33/2017, §80).*

The Court notes that the details of the offenses referred to in Art. 19 of the UN Convention Against Corruption, *the performance of or failure to perform an act, "**in violation of laws**",* **aims to ensure a formulation that would prevent the arbitrary application of criminal law** *(JCC 33/2017, §82).*

By comparing the provisions of Article 327 para.(1) of the Criminal Code to the provisions of Article 19 of the United Nations Convention against Corruption, the Court noted that the legislator failed to specify the *"the violation of the law"* in the material element of the offense of excess of power or excess of public authority, and merely used the wording *"make use of [...] the office position" (JCC 33/2017, §85).*

While misconduct within the meaning of Article 19 of the United Nations Convention against Corruption provides for criminal liability for the performance of, or refusal to perform an act in violation of law, excess of power or excess of official authority in the meaning of Article 327 para.(1) of the Criminal Code does not expressly lay down such a requirement *(JCC 33/2017, §86).*

The Court notes that the text "an act in violation of the law" in Article 19 of the aforementioned Convention **is an element of the offense which is directly related to the intensity of the breach of office duties,** whereas such particularities cannot be deduced from the material element of the offense of excess of power or excess of official authority *(JCC 33/2017, §87).*

The Court found that the material element of the offense provided in Article 327 of the Criminal Code in essence summarizes a general wording penalizing any breach of official duties if it has caused considerable damage to public interests or to the legally protected rights and interests protected of individuals or legal entities *(JCC 33/2017, §88).*

Thus, the Court notes that the material element of the offense of excess of power or excess of official authority is set out in a very vague wording, so that both the judicial bodies which have the task of interpreting and applying the law as well as the addressees of the law **cannot anticipate the infringement of what particular office duties may lead to criminal liability, as the criminal rule does not indicate to which normative provision the challenged provisions must be reported** *(JCC 33/2017, §89).*

In view of the specificity of criminal law, the Court notes that criminal liability for the offense of excess of power or excess of official authority cannot intervene in case of violation of any office duty by public persons in absence of a fair appreciation of the character of the normative act from which it emanates. As a matter of fact, it is necessary to establish a certain ratio of proportionality between the character of the normative act laying down the office duty of the public person and the conduct following which this duty is violated and gets the shape of a criminal offense *(JCC 33/2017, §90).*

The Court notes that, when the Criminal Code operates with the notion of "office duties", the wording **"duties granted by law"** is used - see Art. 328 of the Criminal Code, which criminalizes "Excess of power or excess of official authority" *(JCC 33/2017, §91).*

The **Court therefore concludes that the aim of the legislator was to shape the criminal law to the circle of office duties provided by " the law"** *(JCC 33/2017, §92).*

In this respect, despite the fact that the offense of excess of power or excess of official authority was designed to cover a wide range of deviations of public persons, the **Court noted that, for the purposes of applying the criminal law as a last resort, the notion of "office duty" in the material element of the offense "excess of power or excess of official authority" in Article 327 of the Criminal Code should be considered only by reference to the office duties granted by the law** *(JCC 33/2017, §93).*

In this respect, the Court noted that the concept of **law** can only be understood as an act adopted by the Parliament under Art. 72 of the Constitution *(JCC 33/2017, §94).*

The Court observes that if the intended use by a public person of the official situation does not refer to the office duties provided by the law, it would be the case that the material element of the offense of excess of power or excess of official authority be configured by both the legislator and other public entities *(JCC 33/2017, §95).*

Moreover, the Court found that the legislator had identified and had regulated at the extra-criminal legislative level the means which are necessary to remove the consequences of certain acts which may, according to the current regulation, be classified as the commission of the excess of official authority, but which do not show the degree of intensity necessary for the application of a criminal punishment *(JCC 33/2017, §97).*

Thus, in case of the breach by public persons of their office duties, the legislator also provides for other forms of liability, such as disciplinary, contravention or civil liability *(JCC 33/2017, §98).*

Accordingly, the Court noted that the offense of excess of power or excess of official position must be distinguished from acts having a disciplinary or contravention character, **particularly by the intensity of the material element of the offense**. As a matter of fact, since the legislator preferred to establish several forms of liability for breach of office duties, the criminal procedure should be delimited from other extra-criminal forms by clear regulations that would allow both the addressee of the law and the law enforcement authorities to distinguish criminal behaviour from the one which may entail other forms of legal liability *(JCC 33/2017, §100).*

Therefore, the Court observed that, in order to ensure the principle of the legality of incrimination, the text "official situation" in para.(1) of Art. 327 of the Criminal Code shall be interpreted **by reference to the office duties expressly provided by the law** *(JCC 33/2017, §103).*

At the same time, the Court reiterated that **not any violation of a law may entail criminal liability for excess of power or excess of official position** *(JCC 33/2017, §104).*

In this context, the Court noted that it is within the competence of the criminal investigation bodies and of the courts of law to assess whether the breach of official duties (rights and obligations) deducted from the provisions of a law **corresponds to such a severity** so that the application of the provisions of art. 327 para.(1) of the Criminal Code **to intervene as a means of last resort**. Thus, the referral to the violated normative provision must be made in the hypothesis of analysing the degree of intensity of the pre-established duties following the administration of plausible evidence *(JCC 33/2017, §105).*

2.4.4. Criminal liability for money laundering

In the process of exercising the control of the constitutionality of the text "should have known" in Article 243 para.(1) let. a) and c) of the Criminal Code, which establishes criminal liability for money laundering, the Court held, as a preliminary matter, that there exists no doubt that money laundering directly threatens the rule of law *(DCC 109/2017[21], §24).*

Pursuant to Article 23 of the Constitution, in order to exclude any ambiguity, the legislative text must be formulated in a clear and comprehensible manner, in absence of any syntactic difficulties and obscure passages. As a matter of fact, the quality of criminal law is a vital condition to maintain the security of legal relations and effective ordering of social relations *(DCC 109/2017, §23).*

As such, the Court found that Article 243 para.(1) let. a) and c) of the Criminal Code establishes liability for money laundering by: conversion or transfer of goods by a person who knows or ought to have known that they constitute illicit income in order to conceal or disguise the illicit origin of goods or to assist any person involved in committing the primary offense to evade the legal consequences of such actions; acquisition, possession or use of goods by a person who knows or ought to know that they constitute illicit income *(DCC 109/2017, §25).*

The Court found that the defining elements of the money laundering offense were predetermined by the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 to which the Republic of Moldova is a party *(DCC 109/2017, §26).*

Thus, under Article 6 para.(3) let. a) of the Convention, Each Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender ought to have assumed that the property was proceeds *(DCC 109/2017, §27).*

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[21] Decision no. 109 of 07.11.2017 on the inadmissibility of the complaint no. 138g/2017 referring to the exception of unconstitutionality of certain provisions of Art. 243 para.(1) p.a) and c) of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(money laundering)*

Similarly, Article 9 para.(3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 to which the Republic of Moldova is a Party provides that each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender: (a) suspected that the property was proceeds; b) ought to have assumed that the property was proceeds *(DCC 109/2017, §28).*

Therefore, the Court held that the criticized text has specific normative support in the aforementioned conventions *(DCC 109/2017, §29).*

The Court noted that given the fact that the offence of money laundering is of a consequential nature *(delictum subsequens),* its material or non-material object are the goods deriving from the commission of a principal/predicate offense against which the normative modalities of the damaging act provided in Article 243 of the Criminal Code shall apply. In other words, although it has an autonomous character, money laundering has as a precondition the commission of another crime generating illicit income *(DCC 109/2017, §31).*

In the context of money laundering, the perpetrator must pursue the purpose of assigning a legal aspect to the source and origin of illicit income, that is, the introduction in the legal circuit of goods which are known or ought to have been known to constitute illicit income *(DCC 109/2017, §34)*

The Court held that the intention or purpose of the offense can be deduced from objective factual circumstances, taking into account the knowledge or status of the subject, especially in the case of failure to fulfil the obligations which are attributed according to the law *(DCC 109/2017, §37).*

In this respect, the Court noted that, according to the principles of the criminal procedure law, the burden of proof lies with the accusation, and the situation of doubt is interpreted in favour of the accused (*in dubio pro reo*) *(DCC 109/2017, §38).*

In criminal matters, the standard "beyond reasonable doubts" has been outlined which provides in essence that in order to be able to deliver a conviction, the allegation must be proven beyond reasonable doubts (*Boicenco v. Republic of Moldova,* Judgment

of 11 July 2006, §104, *Hassan v. The United Kingdom* [GC], Judgment of 16 September 2014, §48, *Blokhin v. Russia* [GC], Judgment of 23 March 2016, §139). Correlatively, the conclusions in respect of the person's guilt for committing the offense cannot be based on assumptions *(DCC 109/2017, §40).*

The existence of evidence beyond reasonable doubts is an essential component of the right to a fair trial and establishes the duty of the accusation to prove all the elements of guilt in a manner which is capable of removing any doubt *(DCC 109/2017, §41).*

In the context of the aforesaid, it is necessary to establish, on the basis of certain evidence, that the goods constituting an illicit income within the meaning of Article 243 of the Criminal Code derive from the commission of offenses, and the perpetrator ought to have known this by objective criteria including normative ones *(DCC 109/2017, §42).*

Respectively, while determining whether the person should have known that the assets entered in the civil circuit constituted illicit income, he would not start from the preconceived idea that he had indeed committed the imputed act. Otherwise, the principle of presumption of innocence, guaranteed by Article 21 of the Constitution, would be violated *(DCC 109/2017, §43).*

2.4.5. The technique of legislative references

The Court noted that there is a need for a logical connection between the regulatory acts governing a particular domain which would enable the addressees to determine the content of the regulated domain and a correspondence in terms of legal force thereof. Moreover, the reference rule is also used to highlight certain legal connections *(DCC 5/2017*[22]*, §23).*

Thus, referring to the technique of legislative references, the Court pointed out that the reference in one legal text to another legal text, in a particular normative act, is a commonly used procedure used for the sake of economy. In order to avoid repetitions,

[22] Decision no. 5 of 19.01.2017 on the inadmissibility of the complaint no. 6g/2017 referring to the exception of unconstitutionality of a sentence from Art. 318 para.(1) of the Enforcement Code of the Republic of Moldova no. 443-XV of 24 December 2004 *(enforcing the sanction of non-criminal arrest)*

the legislator may refer to another legal norm which expressly provides certain normative prescriptions. The effect of the reference provision is to ideally incorporate the referred provisions in the content of the rule containing such a reference *(DCC 5/2017, §24)*.

2.4.6. Transitional rules

The Court noted that the purpose of transitional provisions is to introduce certain measures with regard to the implementation of the legal relationships arising under the old regulation and which shall be replaced by the new normative act. Transitional rules therefore ensure that both regulations are correlated for a specified period until the new code enters into force *(DCC 27/2017[23], §27)*.

The new Road Transport Code was published in the Official Gazette of the Republic of Moldova on 15 August 2014 and entered into force, except for some provisions, on 15 September 2014 *(DCC 27/2017, §23)*.

The Court noted that Art. 153 of the Road Transport Code contains final and transitional provisions regarding the implementation and the establishment of measures in the event of succession of laws *(DCC 27/2017, §24)*.

In particular, the challenged provision of Art. 153 para.(4) of the aforementioned Code stipulates that from the moment the Code is published and until the approval of the new road transport programs developed and approved in accordance with this Code, operation of any changes in the national road traffic network existing at the time of publication is prohibited *(DCC 27/2017, §25)*.

At the same time, Article 153 para.(5) provides that local, municipal and district road transport programs, as well as the international and international road transport program, will be approved under the new Code by 31 December 2014 *(DCC 27/2017, §26)*.

In view of the transitional period between the two codes, the Court has emphasized that the establishment of certain transitional rules in this case is indispensable for the stability and safety of road transport *(DCC 27/2017, §28)*.

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[23] Decision no. 27 of 31.03.2017 on the inadmissibility of the complaint no. 36g/2017 referring to the exception of unconstitutionality of Art. 153 para.(4) of the Road Transport Code *(entering into force of the new Road Transport Code)*

2.4.7. Place of the transnational crime

The pre-eminence of law is ensured by the whole system of law, including by the criminal norms which are characterized by certain particular features, distinct from other categories of norms, which differ given their character and structure, as well as by the scope of action *(JCC No.4/2017[24], §59)*

In its case-law the Court held that the **pre-eminence of law in criminal matters expresses *inter alia* the assurance of lawfulness of offenses and punishments; inadmissibility of extensive application of criminal law, to the detriment of the person, particularly malign use of analogy** *(JCC no.4/2017, §60).*

At the same time, the Court noted that criminalization of facts in criminal laws, the establishment of punishment in respect of such facts and other regulations are based on criminal policy considerations. Thus, the criminal law constitutes a set of legal rules, formulated in a **clear, concise and precise manner,** in line with the guarantees of the quality of law provided by Article 23 of the Constitution *(JCC no.4/2017, §62).*

The Court held that the safeguards laid down in the Constitution require that **only the legislator shall regulate the incriminated conduct, to ensure that the act, as a sign of the objective side of the offense, is defined with certainty and is not identified following the extensive interpretation of those who apply the criminal law.** This manner of application can lead to **abusive interpretations**. The requirement for strict interpretation of the criminal law, as well as the prohibition of analogy in the application of criminal law, seeks to protect the person from arbitrariness *(JCC no.4/2017, §64).*

The Court held that Art. 362/1 of the Criminal Code sanctions the organizing illegal migration. In para.(1) of this article, the legislator incriminates the act of organizing illegal migration as: *"Organization, with a view to obtaining, directly or indirectly, a financial or material benefit, of the entry, residence, illegal transit of the territory of the state or of the exit from that territory by a person who is neither a citizen nor a resident of that State" (JCC no.4/2017, §67).*

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[24] Judgment no. 4 of 07.02.2017 on the exception of unconstitutionality of certain provisions of Articles 424 para.(2) and 431 para.(1) p.11) of the Criminal Procedure Code and Article 362/1 of the Criminal Code *(organization of illegal migration)*

The Court held that the organization of illegal migration is a transnational crime and migration also involves the transit of territories other than the territory of the Republic of Moldova. When introducing the words "the territory of the state", the legislator's intention was to circumscribe the facts of organizing illegal migration not only on the territory of the Republic of Moldova but to take over the transnational element due to the complexity of this criminal phenomenon *(JCC no.4/2017, §70).*

In this respect, the Court held that the **notion of "territory",** as defined by the provisions of Art. 120 of the Criminal Code, which relates to the territory of the Republic of Moldova, cannot constitute a reference to identify the place of committing the offense - the organization of the illegal migration – as a matter of fact, the offense is transnational *(JCC nr.4/2017, §71).*

At the same time, the Court noted that, while examining the interpretation provided by national jurisdictions in respect of a provision emanating from international public law, the European Court in the case of *Jorgic v. Germany* held that the **national criminal rule must be interpreted and applied in the light of the provisions from which it originates** - Judgment of 12 July 2007, §110 *(JCC No.4/2017, §72).*

Starting from the necessity to fight against illegal migration as a transnational phenomenon, but also from the right of the legislator to incriminate facts in criminal law, the Court noted that the words "the territory of the state" in Art. 362/1 para.(1) of the Criminal Code, according to *ratio legis,* cannot be interpreted more restrictively than the legislator's intention, which did not limit it to the territorial-national element of the offense, it rather took over the transnational element due to the complexity of the criminal phenomenon *(JCC no.4/2017, §74).*

The Court held that, based on the transnational nature of the contested rule, it is for the courts of law to apply the rule to the circumstances of each particular case, taking into account the principles of application of criminal law in space and the rules applicable to the place where the transnational crime was committed *(JCC No.4/2017, §77).*

Thus, the Court held that the provisions of Article 362/1 of the Criminal Code do not contravene the principles of the pre-eminence of law, the legality of incrimination and the quality of the law safeguarded by Articles 1 para.(3), 22 and 23 of the Constitution *(JCC no.4/2017, §78).*

2.4.8. Criteria for the qualification of an offence

The Court held that the legislator has established criteria that make it possible to distinguish the qualification of an offense under the Customs Code or under the Contravention Code (Article 287), particularly depending on the subject of liability, there being no regulatory overlap and no legal uncertainty for the addressees of the law *(DCC 6/2017[25], §32).*

In order to find a violation of the principle *non bis in idem* (considering the material aspect thereof), it is necessary for the following conditions to be met: 1) identity of offences, 2) unity of subject, and 3) unity of the protected social relations. Both forms of liability - according to the Customs Code and the Contravention Code - have their distinct individuality with respect to different subjects *(DCC 6/2017, §33).*

2.5. Individual freedom and safety of the person

2.5.1. Deadline for the request on the prolongation of arrest

Article 25 of the Constitution guarantees the principle of inviolability of the individual freedom and the security of person, according to which no one can be detained and arrested except for the cases and manner established by law *(JCC 40/2017[26], §48).*

The Court ascertained that, under Article 232 para.(2) of the Criminal Procedure Code, the document prepared by the prosecutor shall be construed as lodged within the time-limit, provided that the date specified in the register of outgoing documents falls within the time-limit required by law for the preparation of the document *(JCC 40/2017, §66).*

The Court noted that for the purpose of carrying out certain procedural actions, the prosecutor lodges requests with the investigating judge or, as the case may be, with the court of law, within the time-limit set by the provisions of the Criminal Procedure Code *(JCC 40/2017, §65).*

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[25] Decision no. 6 of 19.01.2017 on the inadmissibility of the complaint no. 9g/2017 and no. 9g-1/2017 referring to the exception of unconstitutionality of Articles 231 and 232 of the Customs Code of the Republic of Moldova no. 1149-XIV of 20 July 2000 *(customs infringements)*

[26] Judgment no. 40 of 21.12.2017 on the exception of unconstitutionality of Articles 232 para.(2) and 308 para.(4) of the Criminal Procedure Code of the Republic of Moldova *(deadline for the submission of claims on the prolongation of arrest)*

Thus, the Court noted that, pursuant to Articles 186 para.(9) and 186 para.(10) of the Criminal Procedure Code the extension of the preventive arrest at the trial stage is decided by the court of law, **based on the prosecutor's request**, and Article 308 para. (3) provides for that the request for arrest extension **is to be submitted at least 5 days before the arrest term** expires *(JCC 40/2017, §67).*

In its case-law, the Court noted that by setting the five-day time limit for lodging the request for arrest extension until the expiry of the arrest term, **the legislator pursued the aim of providing sufficient time for the request to be dealt with in observance of the right to defence and individual freedom**. Moreover, before being lodged with the court, the prosecutor is required to submit the request before the lawyer together with all the materials and evidence attached to it *(JCC 40/2017, §70, 71).*

The Court pointed out that the purpose of regulating this time-limit is also to give the judge the opportunity to get acquainted with the reasons justifying the application or extension of the arrest, so as to eliminate the arbitrariness from his/her solution *(JCC 40/2017, §72).*

Therefore, the Court held that the registration of the request for extending the preventive arrest at the court of law **with less than 5 days** prior to the expiry of the preventive arrest, is likely to affect both the fundamental right to defence and the equality of arms, as well as the right to individual liberty. At the same time, in the absence of a sufficient time-limit to study the proposal submitted by the request, the court of law could deliver a solution that would not be based on a thorough knowledge of the case *(JCC 40/2017, §73).*

Therefore, in view of the above, the Court underlined that this time-limit has the legal nature of a peremptory time-limit, the breach of which entails the consequences provided by Article 230.2 of the Criminal Procedure Code, namely the loss of the procedural right and the nullity of the document prepared in breach of this time-limit. Indeed, the European Court itself ruled in the case of *Ialamov v. Republic of Moldova* (Judgment of 12 December 2017) that the acceptance of the prosecutor's request to extend the preventive arrest lodged with the investigative judge two days before the expiry of the arrest term was contrary to national law. Consequently, the extension of the duration of the arrest was found by the European Court to be illegal, thus being contrary to Article 5 § 1 of the Convention *(JCC 40/2017, §74).*

the Court held that the provision laid down in Article 232 para.(2) of the Criminal Procedure Code, under which the documents of the prosecutor are construed to have been lodged in due time on the date specified in the register of outgoing documents, cannot be related with the lodging of requests with the court of law, for which the law establishes mandatory time-limits in respect of the prosecutor. In these situations, the time-limit shall be calculated **from the date of registration of the document in the court of law** *(JCC 40/2017, §75).*

The Court concluded that the method of calculating the time-limit for exercising the means of appeal by the prosecutor, to which the rule of registration in the register of outgoing documents does not apply, enshrined in Article 232 para.(2) of the Criminal Procedure Code also fully operates with regard to the lodging of other documents by the prosecutor with the court of law, for which the procedural law establishes time-limits and the non-observance of which determines the lapse of exercising the right *(JCC 40/2017, §76).*

At the same time, the Court underlined that in case a person has been illegally detained, including as a result of non-observance of the time-limit for lodging the request for arrest extension, he/she should be compensated for the deprivation of liberty carried out under arbitrary conditions *(JCC 40/2017, §77).*

2.5.2. Application of preventive measures in case of conviction sentence

The Court held that the legal provisions of Article 395 of the Criminal Procedure Code expressly and severally determine the content of the conviction sentence. Thus, the dispositive part of the conviction sentence must include, inter alia, the provision regarding the preventive measures to be applied to the defendant until the sentence becomes final *(DCC 72/2017[27], §18).*

Moreover, in the case of *Savca v. Moldova*, the European Court dismissed the applicant's claims under Article 5 §1 of the Convention on his unlawful detention fol-

[27] Decision no. 72 of 27.07.2017 on the inadmissibility of the complaint no. 94g/2017 referring to the exception of unconstitutionality of Art. 395 para.(1) p.5) of the Criminal Procedure Code *(application of preventive measures in case of conviction sentence)*

lowing the delivery of conviction sentence by the court of first instance, recalling that pre-trial detention ends when the detained person is released and/or he/she is convicted even by a court of first instance *(DCC 72/2017, §23).*

2.6. The right to free movement

2.6.1. Prohibition on the issue of civil status documents, identity papers or driving licenses

The Court held that freedom of movement concerns two situations: first, it concerns the freedom of movement of a legally staying person on the territory of a State, i.e. within that territory, within the State; and second - enshrines the freedom of movement into other states within an interstate framework *(JCC 17/2017[28], §57).*

However, the right of the person to freedom of movement, protected by the provisions of Article 27 of the Constitution and by international instruments, is not part of the category of absolute rights, the limitation of which is excluded. This right may be restricted, its exercise requiring compliance with the conditions laid down by law - JCC No. 7 of 5 April 2011, §3 *(JCC 17/2017, §58).*

Pursuant to Article 54 para.(2) of the Constitution, The exercise of the rights and freedoms may not be subdued to other restrictions unless for those provided by the law, which are in compliance with the unanimously recognised norms of the international law and are requested in such cases as: the defence of national security, territorial integrity, economic welfare of the country, public order aiming at preventing mass riots and crimes, protection of the rights, freedoms and dignity of other persons, prevention of disclosing confidential information or the guarantee of the power and impartiality of justice *(JCC 17/2017, §59).*

The Court noted that the right of every person to know his rights and duties, enshrined in Article 23 para.(2) of the Constitution, implies the adoption by the legislator of accessible, foreseeable and clear laws *(JCC 17/2017, §67).*

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[28] Judgment no. 17 of 10.05.2017 on the exception of unconstitutionality of certain provisions of Art. 22 para.(1) let v) of the Enforcement Code *(prohibition to issue civil status acts, identity acts or driving licenses)*

The Court held that foreseeability and clarity are *sine qua non* elements of the constitutionality of a norm, which cannot in any way be omitted within the legislative activity *(JCC 17/2017, §70).*

The Court found that the challenged provision of Article 22 para.(1) let.v) of the Enforcement Code provides for the possibility to impose to the debtor, by the court of law – within the procedure of compulsory enforcement – a ban on issuing three categories of acts: 1) identity acts; 2) documents of civil status and 3) driving licenses *(JCC 17/2017, §71).*

a) Identity acts

The Court held that, by the law, **the right to exit and to enter the territory of the Republic of Moldova is exercised on the basis of passport** [for the citizens of the Republic of Moldova] or on the basis of travel documents [for stateless persons, refugees and beneficiaries of humanitarian protection], a condition clearly stipulated in Article 1 para.(1) of the Law no. 269-XIII of 9 November 1994 on the exit and entry into the Republic of Moldova *(JCC 17/2017, §73).*

In this regard, the European Court has ruled that the refusal of domestic authorities to grant the person a passport or other valid identity act to travel abroad, dispossessing or annulment the use thereof undoubtedly amounts to an interference with the exercise of liberty of movement - *Baumann v. France*, Judgment of 22 May 2001, §62; *Napijalo v. Croatia*, Judgment of 13 November 2003, §69; *Sissanis v. Romania*, Judgment of 25 January 2007, §64; *Battista v. Italy*, Judgment of 2 December 2014, §37 and 43 *(JCC 17/2017, §74).*

The Court therefore held that the right to exit from the own country includes both a positive duty of states to issue documents as well as the negative obligation - not to hinder a person who is willing to leave the country *(JCC 17/2017, §77).*

b) Civil Status Documents

The Court found that civil status is a concept of synthesis that highlights the individuality of a natural person within the family and society through strictly personal qualities deriving from civil status acts and deeds *(JCC 17/2017, §81).*

In fact, the European Court has pointed out that the civil status of individuals envisages civil rights (*Mustafa v. France*, Judgment of 17 June 2003, §4), while also specifying that the concept of "private and family life" may be extensively defined to comprise, *inter alia,* elements that may refer to the person's identity such as name, surname and patronymic (*Stjerna v. Finland*, Judgment of 25 November 1994, §39, *Burghartz v. Switzerland*, Judgment of 22 February 1994, 23-24, *Daróczy v. Hungary*, Judgment of 1 July 2008, §26-27, *Güzel Erdagöz v. Turkey*, Judgment of 21 October 2008, §43, *Von Hannover v. Germany* (No.2) 2012, §95). *A fortiori,* this notion includes also aspects related to adoption and marriage *(JCC 17/2017, §82).*

c) Driving license

With regard to the prohibition of the third category of acts, [...] the driving license is an administrative authorization necessary in order to drive motor cars on public roads *(JCC 17/2017, §83).*

The Court concluded that the prohibition imposed on the issuance of civil status documents, identity documents or driving licenses to the debtor within forced enforcement procedures implies the encroachment of the rights enshrined in Articles 27 and 28 of the Constitution *(JCC 17/2017, §86).*

The Court held that, in the absence of clear criteria on the application, maintenance and dismissal, such prohibition becomes *eo ipso* ambiguous and creates a state of legal insecurity for the potential addressees of this measure. As a matter of fact, a restriction on the person's rights must be clearly regulated and shall provide precise deadlines for operation, which cannot be perpetuated. Consequently, the measure under discussion infringes the constitutional standard for the protection of rights and freedoms, which requires that any limitation thereof be achieved under a regulatory framework, which, on the one hand, clearly establishes the cases for the limitation of these constitutional values, and, on the other hand, provides these cases in a clear, precise and predictable manner *(JCC 17/2017, §94).*

At the same time, the Court found that the law entrusts *per se* the courts of law with a wide margin of appreciation *(JCC 17/2017, §95).*

The Court held that the challenged provision, while authorizing an interference with the right to free movement and the right to respect for private and family life, fails to display in a sufficient manner the extent and the means in which the discretion of the courts of law in the area under consideration may be exercised. Moreover, there is no provision on the manner in which the maintenance of the prohibition on the issuance of civil status documents, identity documents or driving licenses is controlled following a possible application of that measure *(JCC 17/2017, §97).*

Thus, the Court found that the second sentence of Article 22 para.(1) let. v) of the Enforcement Code is formulated imprecisely and unclearly, which does not correspond to the requirement of clarity and foreseeability enshrined in Article 23 para. (2) of the Constitution *(JCC 17/2017, §98).*

By an *obiter dictum*, the Court pointed out that enforcement of a court decision is the last stage of the judicial process and constitutes a right enshrined both in Article 20 and Article 120 of the Supreme Law. A non-enforced enforceable act or, otherwise, a formal justice, cannot ensure the achievement of the basic aim - protection of human rights and freedoms proclaimed by national and international normative acts - JCC No. 1 of 15 January 2013, §62 *(JCC 17/2017, §99).*

In fulfilling this goal, the State, as the possessor of the public force, has to act diligently in order to assist a creditor in execution of a judgment (*Fociac v. Romania*, Judgment of 3 February 2005, §70, *Cebotari and Others v. The Republic Moldova*, Judgment of 27 January 2009, §40) or, in more general words, a writ of execution within the meaning of Article 11 of the Enforcement Code *(JCC 17/2017, §100).*

In conclusion, the Court found that the prohibition on the issuance of civil status documents, identity documents or driving licenses pursues a legitimate aim, namely: the protection of rights of others, in this case of the creditor, to obtain the execution by the debtor of the latter's obligation under an enforceable document *(JCC 17/2017, §101).*

The Court has emphasized that the legal arsenal enacted with a view to execute (even in a forced manner) an enforceable document must be adequate and sufficient and evenly delimitates the gap between the rights of the creditor and those of the debtor *(JCC 17/2017, §103).*

In this regard the Court reiterated that "any limitation on the right of a person to freedom of movement, manifested either by the refusal to issue the travel documents necessary for the exercise of that freedom ... must correspond to certain procedural and material requirements which guarantee its proportionality to the intended purpose" *(JCC 17/2017, §104).*

In the present case, the Court held that the prohibition on the issuance of a passport or a travel document pursuant to Article 22 para.(1) let.v) of the Enforcement Code could be justified only as long as the intended purpose to guarantee the execution of an enforceable document is pursued (*Napijalo v. Croatia*, Judgment of 13 November 2003, §78-82). Moreover, even is the measure restricting individual freedom of movement was justified from the outset, it may become disproportionate and may violate these personal rights of the individual if extended automatically for a long period - *Luordo v. Italy*, Judgment of 17 July 2003, §96; *Földes and Földesné Hajlik v. Hungary*, Judgment of 31 October 2006, §35 *(JCC 17/2017, §105).*

The Court found that, although the prohibition on the issuance of the aforementioned acts is a measure which is applied separately in regard of the prohibition not to leave the country, in essence it results in restricting the right to free movement. As a matter of fact, in the absence of a passport and of the travel document, the right to free movement abroad cannot be exercised, as the existence of these acts is an indispensable condition to exercise the right at stake *(JCC 17/2017, §109).*

It thus follows that *ope legis* the right to free movement abroad is suspended if the applicant is forbidden to exit the country on the basis of a court order under Article 64 of the Enforcement Code. Correlatively, under this hypothesis the issuance of the passport or of a travel document is also refused *(JCC 17/2017, §113).*

Stemming from these premises, the Court held that **the prohibition on the issuance of a passport or a travel document alone is not justified as a measure of enforcing the executory act as provided for by Article 22 para.(1) let.v) of the Enforcement Code. In other words, its goal may be achieved by the ban to leave the country – a measure susceptible to be applied exclusively and exceptionally as a consequence of the inefficiency and of exhaustion of all the enforcement measures of an executory document, in cases where the debtor leaving Moldova would**

make it obviously impossible or difficult to enforce the judicial decision, or any other executory document for purposes provided for by Article 11 of the Enforcement Code *(JCC 17/2017, §114).*

The Court noted that **the prohibition on the issuance of a passport or travel document** under Article 22 para.(1) let.v) of the Enforcement Code **may sometimes be detrimental to forced enforcement, particularly in the case of a debtor who complies with the enforcement procedure and who is employed in a foreign country, thus having the possibility to increase his/her assets provided the free movement to that state is grated.** It is therefore appropriate to take into account the fact that the debtor's departure abroad can be determined by his good faith in order to execute properly the obligations provided in the enforceable document *(JCC 17/2017, §118).*

In the alternative, the Court found that **there exist legal remedies for the execution of an enforceable document outside the borders of a State, the debtor's freedom of movement not being necessarily limited**, namely: by recognizing and enforcing judgments in a another state [exequatur] - a procedure regulated by international acts *(JCC 17/2017, §119).*

Moreover, in respect of the prohibition on the issuance of identity documents and residence permits as a separate category of identity documents, as well as of civil status documents, the Court also considered that it was an excessive measure in relation to the aim pursued and restricted the substance the right to private and family life *(JCC 17/2017, §121).*

Thus, the identity card and residence permit, as a separate category of identity documents, allow the holder to legitimize [in the same manner as the passport]. **The reason for the issuance of these acts derives from the need to register and keep records of the population in the state.** Therefore, the non-issuance of these acts would make illusory the realization and assurance of other related rights [such as the right to property and inheritance, the right to housing, the right to work, the freedom of entrepreneurship, the right to social assistance and protection, the right to health protection etc.] *(JCC 17/2017, §124).*

In this sequence of ideas, the Court pointed out that, par excellence, in case of patrimonial obligations the **forced execution of an enforceable document should provide**

for a range of measures that would burden the debtor's assets in order to fulfil the obligation prescribed by an enforceable document, but in no way it should suppress the non-patrimonial personal rights of the latter in a disproportionate manner *(JCC 17/2017, §126).*

The Court found that the prohibition imposed on the issuance of driving licenses was disproportionate in respect of the purpose provided in the second sentence of Article 22 para.(1) let.v) of the Enforcement Code – to ensure the fulfilment of the debtor's obligations by means of an enforceable document *(JCC 17/2017, §133).*

The Court concluded that the ban on issuing civil status documents, identity acts and driving licenses represents in itself a disproportionate measure to the goal pursued, thus infringing upon Articles 27 and 28 in conjunction with Articles 23 and 24 of the Constitution *(JCC 17/2017, §134).*

2.6.2. Deprivation of the right to drive motor cars

The Court held that the imposition of a contravention sanction that temporarily suspends the right to drive motor cars does not infringe the substance of the right to free movement, in particular, the right to exit the country; on the contrary, limitation of the aforementioned right is a necessity imposed under Art. 54 of the Constitution, in order to preserve public order, prevent crime and protect the rights and freedoms of others. As a matter of fact, by the means of this contravention sanction, the person is not subject to the application of the prohibition to leave the country and still enjoys 0the right to exit and enter the territory of the Republic of Moldova on the basis of the passport *(DCC 23/2017[29], §21).*

2.7. Intimate, family and private life

2.7.1. Deprivation of persons suffering from drug addition of parental rights

Deprivation of parental rights is a sanction specific to family law which results in the parent's loss of parental rights, in some cases expressly provided for by the law. Furt-

[29] Decision no. 23 of 10.03.2017 on the inadmissibility of the complaint no. 26g/2017 referring to the exception of unconstitutionality of Article 35 of the Contravention Code of the Republic of Moldova *(deprivation of the right to drive motor cars (no.2))*

hermore, the deprivation of parental rights is the most serious sanction that can be applied to a parent when the physical or intellectual health or development of the child is endangered by abusive or gross negligence while carrying out parental duties *(JCC 19/2017[30], §46).*

According to the preamble to the Single Convention on Narcotic Drugs of 30 March 1961, addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind *(JCC 19/2017, §48).*

Moreover, in accordance with Article 1 of the Law No.713-XV of 6 December 2001 on control and prevention of alcohol abuse, illicit use of drugs and other psychotropic substances, addiction to narcotic drugs is a disease caused by illicit use of drugs and other psychotropic substances that develop addiction, trigger physical and mental health disorders manifested by different antisocial actions and behaviours, cause problems for the individual, his family and society *(JCC 19/2017, §49).*

Drug addiction creates problems both for the addicted person and for those around him/her, and the family is the first to suffer. Drug addiction is also associated with a number of antisocial facts, of which violence is most prominent *(JCC 19/2017, §50).*

The Court noted that in the specialized literature the drug addiction phenomenon is regarded as a form of deviant conduct, a deviation from the recognized norms and from accepted and desirable behaviour, while among the unanimously acknowledged indices of this conduct there may be found: abandoning the interest for family life, growing financial needs, deviations of motor coordination, increased aggressiveness. As a result of such deviant behaviour, the drug addicted parent, given his/her condition, can endanger the child's mental and physical health, moral development, assurance of normal financial conditions *(JCC 19/2017, §51).*

Thus, the Court held that the legislator has established this measure to protect the health and physical, moral or intellectual development of the child when they are endangered by the behaviour of the parent suffering from drug addiction *(JCC 19/2017, §52).*

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[30] Judgment no.19 of 06.06.2017 on the exception of unconstitutionality of Article 67 let.f) of the Family Code relating to the words "of drug addiction" *(deprivation of persons suffering from drug addition of parental rights)*

According to Family law, the **measure of deprivation of parental rights shall be applied as *ultima ratio*** when other means to defend the child's primary interests are insufficient or ineffective, i.e. in the case of a drug addicted parent only if the medical, psychological or social means are clearly ineffective *(JCC 19/2017, §54).*

Regarding the adequacy and necessity of restricting the exercise of the right to family life in relation to the aim pursued, the Court held that the deprivation of persons suffering from drug addiction of their parental rights, under the hypothesis of the aforestated, is a measure adjusted to the aim pursued and is capable, in abstracto, to meet the requirements thereof *(JCC 19/2017, §59).*

Thus, the Court held that the provisions of Article 67 let.f) **should not be applied automatically**, but only following an examination by the court of law, in order to find whether *1) Serious irregularities were committed by the parent against the child and 2) it is in the best interest of the child for such a measure to be applied*. Therefore, **the mere fact that the person is registered as a drug addicted person should not constitute the basis for the deprivation of parental rights** *(JCC 19/2017, §60).*

Therefore, the protection of the right to family life cannot have as ultimate goal the consequence of impacting the best interests of the child, the latter being the only criterion by which the public authorities must be guided in deciding on the deprivation of parental rights and not the status, condition or the economic situation in which a parent is, while the deprivation of parental rights appears to be an appropriate measure in circumstances where the maintenance of family ties would prejudice the development of the child *(JCC 19/2017, §61).*

The Court has also held that regulating the possibility of deprivation of parental rights in situations where the courts of law consider that the interests of the child could be negatively influenced by avoiding to exercise the parental rights and the fulfilment of parental obligations is a necessary measure to ensure the effective protection of the rights and interests of the child *(JCC 19/2017, §62).*

At the same time, the Court emphasized that the measure of deprivation of parental rights of people suffering from drug addiction cannot be applied in an arbitrary manner, and that a fair balance between the rights at stake, in this case the right to family life, and the superior interest of the child, is necessary *(JCC 19/2017, §63).*

In its jurisprudence, the European Court has stated that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down (*Elsholz v. Germany*, Judgment of 13 July 2000, §43). Such measures should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests - *M.D. and others v. Malta*, Judgment of 17 July 2012, §76 *(JCC 19/2017, §42).*

In order to identify the child's interest in a particular case two limbs should be taken into consideration: on the one hand, **it dictates that the child's ties with its family must be maintained**, except in cases where the family has proved particularly unfit; on the other hand, **it is clearly also in the child's interest to ensure its development in a sound environment** – *Neulinger and Shuruk*, Judgment of 6 July 2010, §136, and *R. and H. v. the United Kingdom*, Judgment of 31 May 2011, §73-74 *(JCC 19/2017, §43).*

Applying the total and absolute prohibition on the exercise of parental rights, by the effect of law, without any control by the courts [...] on the interests of minors, cannot meet a primary requirement relating to the interests of the child and therefore cannot pursue a legitimate aim, such as protection of the health, morals or education of minors - *Sabou and Pîrcălab v. Romania*, Judgment of 28 September 2004, §48-49 *(JCC 19/2017, §44).*

Thus, the Court held that the deprivation of parental rights, when there are grounds for considering that the parent who is a drug addicted person could undermine the best interests of the child by his/her conduct, must be subject to conditions ensuring that this measure is not applied in an arbitrary manner *(JCC 19/2017, §64).*

In particular, the Court pointed out that for public authorities *ad literam* adherence to the provisions of Article 67 let.f) of the Family Code, which regulates the deprivation of parental rights for people suffering from drug addiction, **should not** in any way **mean formal proceedings**, the court of law being required to order the deprivation of parental rights only in cases when child growth, education, physical and intellectual development are threatened in this way *(JCC 19/2017, §65).*

The Court held that the legal provision of Article 67 let.f) of the Family Code, which establishes the deprivation of parental rights of drug addicted persons is reasonable,

proportionate to the aim pursued and does not infringe the provisions of Article 28 combined with Article 54 of the Constitution, inasmuch as the deprivation of parental rights is applied in the best interests of the child *(JCC 19/2017, §66).*

2.8. Right to education

2.8.1. Providing pupils with school textbooks

It follows from the provisions of international legal instruments that it is the responsibility of the State to ensure compulsory and free primary education for everyone, to encourage different forms of secondary education, both general and vocational, which should be open and accessible to any child; to take appropriate measures, such as **granting free education and provision of financial assistance in case of need** *(JCC 7/2017*[31]*, §36).*

At the same time, in its case law, the European Court recognized that in spite of its importance, the right to education is not absolute, but may be subject to limitations. Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access "by its very nature calls for regulation by the State" - *Catan and Others v. Republic of Moldova and the Russian Federation*, Judgment of 19 October 2012, §140, and the Case *"relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, Judgment of 23 July 1968, §3 *(JCC 7/2017, §37).*

Also, in *Campbell and Cosans v. The United Kingdom*, the European Court has held that **the right to education requires the adoption by the states of regulations** which may vary in time and space, depending on the needs of the society and the resources of the state community, as well as on the resources of its members; however **such regulation must never injure the substance of that right** - Judgment of 25 February 1982 *(JCC 7/2017, §38).*

In this context, the Court held that the State, through its policies, has the obligation to create conditions in order to ensure the right to education, including to decide in

[31] Judgment no. 7 of 16.02.2017 on the control of constitutionality of Article 41 para.(4) of the Education Code of the Republic of Moldova no. 152 of 17 July 2014 *(providing pupils with school textbooks)*

respect of the programs, the manner and the means by which education is performed, the level for compulsory education as well as the **establishment of guarantees and the provision of free necessary means to accomplish education.** At the same time, the state policy in the field of education shall be implemented in strict compliance with the constitutional provisions *(JCC 7/2017, §39).*

Under Article 35 para.(1) of the Constitution, the right to education is ensured by: (1) **compulsory general education**; (2) high school and vocational education, (3) higher education, as well as other forms of education and continuous training. At the same time, Article 35 para.(7) of the Constitution provides that high-school, vocational and higher state education is equally accessible to all, **based on the merit** *(JCC 7/2017, §40).*

Thus, **in the sphere of general compulsory education the rule is gratuitousness thereof**. As a matter of fact, compulsory general education is the foundation of the education system and is the most visible element thereof, and due to this fact, the state's involvement in providing free education is necessary, given that the basis of education is set at this particular level *(JCC 7/2017, §41).*

Thus, once the state, under constitutional provisions, has assumed the responsibility to provide free education, it is bind to fulfil this positive obligation by providing the means necessary to ensure the educational process **free of charge** *(JCC 7/2017, §42).*

At the same time, the Court held that under compulsory general education the concept "free education" as a constitutional guarantee shall be interpreted as the possibility to acquire knowledge in educational institutions without requiring any payments, including payments for the rent of textbooks *(JCC 7/2017, §43).*

At the same time, the Court held that an effective education system implements educational strategies and grants free of charge provision with necessary means, including textbooks, at certain levels of education, thus developing mechanisms that help to accumulate knowledge *(JCC 7/2017, §44).*

The Court noted that, according to Art. 20 of the Education Code, general education comprises: 1) primary education: Ist-IVth grades; 2) gymnasium education: Vth-IXth grades; and 3) high school education: Xth-XIIth (XIIIth) grades *(JCC 7/2017, §47).*

At the same time, the Court held that, **through compulsory general education, the legislative referred to primary and secondary education**, to which it attributed a legally binding regime. However, the following education cycles (high school, vocational and higher education), as it results from the logic of the interpretation of art. 35 of the Constitution, is accessible to everyone only on the basis of merits *(JCC 7/2017, §48).*

Therefore, the Court noted that, by virtue of constitutional provisions, according to which general education is compulsory and is free of charge, the costs of education under the system of compulsory general educational institutions **must be fully covered by the state from the state budget** *(JCC 7/2017, §49).*

Article 41 para.(1) of the Education Code establishes that the institutions within general education use the textbooks which are drawn up on the basis of the National Curriculum, are selected and published through contest procedures. At the same time, paras. (3) and (4) of the same article stipulate that **pupils in primary education are provided free of charge with school textbooks and pupils of Vth-IXth grades are provided with school textbooks according to the rental scheme approved by the Ministry of Education** *(JCC 7/2017, §50).*

The Court noted that, according to Government Decision No.876 of 22 December 2015 on the provision of pupils with textbooks, the rental scheme provides for the establishment and receipt of a payment (part of the textbook cost) for the rental of textbooks used by the pupils for a year of study. Lease payments for manuals are established annually by the Special Book Fund, depending on the wear and cost of each manual (JCC 7/2017, §51).

Thus, the Court found that, unlike students in grades I to IV who are provided with free textbooks**, pupils of grades Vth-IXth are provided with school textbooks only after paying a rental payment** (JCC 7/2017, §52).

The Court held that, by virtue of the constitutional provisions **guaranteeing free general compulsory education**, any legal provision that would allow for compulsory payments for pupils in primary and secondary education, including school textbooks, which are an inherent element of the educational process, is contrary to the Supreme Law *(JCC 7/2017, §53).*

In conclusion, the Court held that the provisions of Art. 41 para.(4) of the Education Code, in so far as it governs the provision of pupils in V-IX grades with school textbooks approved by the Ministry of Education, is contrary to the constitutional principle of free education provided for in Article 35 of the Constitution *(JCC 7/2017, §54).*

2.8.2. Governing bodies of higher education institutions

The right to education is enshrined and guaranteed by art.35 of the Constitution. According to paras. (5) and (6) of the Article 35, educational institutions, including non-state ones, are being established and operate under the terms of law and are entitled to exercise the right of autonomy *(JCC 5/2017*[32]*, §48).*

The Court observed that the constitutional provisions enshrine and guarantee a single form of autonomy, namely the university one, regardless of whether it concerns higher education or private higher education, autonomy the content of which must be identical in both cases (*JCC 5/2017, §49).*

In its Judgement no. 6 of 3 May 2012 the Court pointed out that: „[...] autonomy of universities consists of the right of the institution to lead, to exercise its academic freedoms without any ideological, political, religious interferences, to assume a set of competences, obligations and responsibilities in accordance with national strategic options and guidelines for the development of higher education, along with the progress of science and technology, regional and universal civilization" *(JCC 5/2017, §50).*

At the same time, the Court stated that such autonomy targets the areas of leading, structuring and functioning of the institution, as well as administration and financing hereof, **being not an absolute one**, as simply dependent upon Constitution and laws *(JCC 5/2017, §52).*

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[32] Judgement no. 5 of 14.07.2017 on the control of constitutionality of certain provisions of the Education Code of the Republic of Moldova no. 152 of 17 July 2014 and appendixes no. 3 and no. 4 to the Government Decision no.390 of 16 June 2015 regarding the plans (state command) for the training of specialists, in line with their professions, specialty and general fields of study in both vocational-technical schools and higher education institutions for the academic year 2015-2016 (*governing bodies of higher education institutions*)

The Court noted that, according to constitutional provisions, the establishment of state policies in the field of education, the determination of the criteria for the organization and functioning of the education system is the responsibility of the legislator. In accordance with art. 72 para. (3) let. k) of the Constitution, the general organization of education is regulated by organic law. The special law in this field is the Education Code *(JCC 5/2017, §55).*

Thus, the Court revealed that, according to the challenged rules [art. 102 of the Education Code], **the Council for Institutional Strategic Development** (hereinafter referred to as – the Council) together with the Senate, the Scientific Council, the Faculty Council, the Board of Directors and the Rector are part of the system of governing bodies of higher education institutions *(JCC 5/2017, §57).*

The Court found that the provisions of the Education Code lay down the **dual leadership** in higher education institutions by creating the Council for Institutional Strategic Development. Furthermore, the Court observed that the decisions of the Council are taken in most cases with the favourable opinion of the Senate, thus being established a balance between these governing bodies *(JCC 5/2017, §60).*

At the same time, the Council for Institutional Strategic Development, exercising the tasks of organizing and conducting elections for the position of rector of the higher education institution, replaces the former Ministerial Competition Commission, which was previously responsible for this process, and implicitly reduces the influence of the government in this process selection *(JCC 5/2017, §61).*

The Court noted that by putting in place double governance structures it was aimed at ensuring quality in higher education, which means continuous improvement of results, an efficient management, adequate financial policy for the rational use of resources by encouraging a responsible attitude of all staff *(JCC 5/2017, §62).*

In view of the above considerations, the Court revealed that, as the governing body of the higher education institution, the Council plays an important role in the autonomy of universities by ensuring transparency and objectivity in decision-making, the efficient use of financial resources, the rational management of public patrimony, stimulation of teachers to increase the efficiency of using the allocated financial means *(JCC 5/2017, §63).*

The Court pointed out that by including external members in the Council, **the legislator pursued the aim of ensuring the accountability of higher education institutions towards stakeholders** *(JCC 5/2017, §66).*

The Court also underlined that the inclusion of members outside the higher education institutions in the Council **is no more than a guarantee that higher education will be based on quality standards** *(JCC 5/2017, §67).*

In the light of the foregoing, the Court noted that nine persons are members of the Council for Institutional Strategic Development, of which only three are not appointed by the higher education institution, which **does not affect the autonomy of universities** *(JCC 5/2017, §68).*

In the same vein, the Court held that the establishment by law of various models of governance structure of higher education institutions is the legislative option *(JCC 5/2017, §69).*

The Court found that the founder of the higher education institution is obliged to pay a monthly allowance to the members of the Council for Institutional Strategic Development that he has appointed, as well as to the members appointed by the competent ministries. Although art. 104 para. (2) of the Education Code, which establishes the procedure for designating the members of the Council, refers only to the members designated by the Ministry of Education, the Ministry of Finance, the competent ministry, however, it follows from the norm that the founder has the right to designate only one single member in the composition of the Council *(JCC 5/2017, §74).*

In this regard, the Court held that, although this constitutes an interference with the ownership right of the founder of the private higher education institution, such interference has a legal basis, expressly provided for in article 104 para. (8) of the Education Code and pursues an aim of public interest, namely to ensure quality standards in higher education, and is proportionate to the aim pursued, and is not an excessive burden *(JCC 5/2017, §75).*

Therefore, the ownership right of the founder of the private higher education institution is not violated *(JCC 5/2017, §76).*

2.8.3. Procedure of occupancy of teaching posts in higher education institutions

The Court established that the procedure of occupancy of teaching posts in higher education institutions is closely linked to the principle of autonomy of universities (in this case its academic component) and the right of universities to select and to promote teachers and other categories of staff *(DCC 35/2017[33], §22).*

Higher education institutions should be granted a real academic autonomy, including the academic component of such autonomy, so that they can decide independently on staff policy and take decisions without any external constraints on educational missions and research activities undertaken *(DCC 35/2017, §28).*

The Court found that the final decision of whether or not to choose the candidate to the post of university professor or associate professor, belongs to the Senate of the University. Moreover, although the procedure for the election by the Senate consists of two stages, initially by open vote and subsequently by secret vote, which are consecutive and binding, their juxtaposition must be regarded as a single procedure involving participation of the same members of the Senate with a full right to decide upon the election of candidates to the post of associate professor in the educational institution *(DCC 35/2017, §31).*

2.9. The right to vote and the right to stand for election

2.9.1. Mixed electoral system

– Referring to the number of rounds for parliamentary elections

Within the meaning of article 2 of the Constitution, a genuine democracy can be constituted only by the people, by exercising national sovereignty directly or through its

[33] Decision no. 35 of 20.04.2017 on the inadmissibility of complaint no.114g/2016 referring to the exception of unconstitutionality of section 20 of the Regulation on the occupancy of teaching posts in higher education institutions, approved by the Government Decision no. 854 of 21 September 2010

representatives elected in a democratic scrutiny – JCC no.15 of 27 May 2014, §46 *(DCC 124/2017[34], §30).*

The constitutional provisions of article 2 are to be correlated with the provisions of article 38 of the Supreme Law, according to which the will of the people constitutes the basis of state power, expressed in free elections, which take place periodically, by direct, universal, equal, secretly and freely expressed suffrage *(DCC 124/2017, §31).*

Accordingly, as the ultimate guarantor of political pluralism, the state has the task to adopt certain positive measures for "conducting" democratic elections in "conditions that ensure the free expression of the people's opinion on the choice of the legislative forum" – *Mathieu-Mohin and Clerfayt v. Belgium*, judgement of 2 March 1987, §54; *Özgürlük ve Dayanişma Partisi (ÖDP) v. Turkey*, judgement of 10 May 2012, §27 *(DCC 124/2017, §33).*

Pursuant to article 72 paragraph (3) let. a) of the Constitution, the Parliament, is to regulate the electoral system by an organic law *(DCC 124/2017, §34).*

Thus, the constituent has left with the legislator the freedom to lay down the rules for the organization and conduct of the electoral process, the concrete ways of exercising the right to vote and the right to stand for election, observing the conditions imposed by the Constitution *(DCC 124/2017, §35).*

Likewise, the Court noted that the option for one or two rounds of the election is a matter of political opportunity, which is at the discretion of the legislative body, taking into account the democratic standards and the faithful reflection of the voter's choice *(DCC 124/2017, §37).*

For its part, the European Court has consistently held that the contracting states benefit from a wide margin of appreciation when it is necessary to determine the mode of voting through which the free expression of the people on the choice of the legislative body will be ensured. In this regard, article 3 of the Protocol no.1 to the Convention is limited to put an obligation to hold "free" elections at "reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the people's opinion". Notwithstanding this, there is no "obligation to introduce a certain system" such

[34] Decision no.124 of 15.12.2017 on the inadmissibility of the complaint no.117a/2017 on the control of constitutionality of the Law no.154 of 20 July 2017 amending and supplementing some legislative acts

as proportional one or majority vote in one or two election rounds – *Yumak and Sadak v. Turkey* [GC], judgement of 8 July 2008, §110; *Sitaropoulos and Giakoumopoulos v. Greece* [GC], judgement of 15 March 2012, §65 *(DCC 124/2017, §38).*

The European Court also noted that the rules in this area vary according to the historical and policy-specific factors of each state; the multitude of situations provided by electoral law in many member states of the Council of Europe demonstrate the diversity of possible options in this regard. For the purpose of applying the article 3 of the Protocol no.1 to the Convention, any electoral law must always be judged in the context of the political evolution of the state, so that unacceptable elements within a system can be justified under another system at least as long as the adopted system fulfils the conditions that ensure "free expression of the people's opinion on the choice of the legislative body" – *Yumak and Sadak v. Turkey* [GC], judgement of 8 July 2008, §111 *(DCC 124/2017, §39).*

Thus, the Court pointed out that while the adoption or modification of the electoral system is the sovereign right of the state and of its representative body – the Parliament of the Republic of Moldova, it cannot go beyond the spirit and letter of the Constitution. All aspects of the electoral process are governed by an organic law, which, based on the criteria of accessibility, clarity and predictability, sets out the rules under which the elections take place. The Parliament, when adopting the Electoral Code and any organic law amending or supplementing it, is to act in accordance with a number of constitutional principles such as: the rule of law, national sovereignty, the right to vote, equality, freedom of opinion and expression, right to information, the right to hold meetings etc. *(DCC 124/2017, §40).*

Consequently, the Court held that the establishment of conducting parliamentary elections on the basis of a mixed voting system in one round per se does not contravene the Constitution *(DCC 124/2017, §41).*

– Referring to constituency boundaries and the voting weight

The Court held that, according to the contested law, parliamentary elections are organized on the basis of a national constituency covering the entire territory of the Republic of Moldova and the polling stations abroad as well as on the basis of 51 uninominal

constituencies, including for the localities on the left bank of the Nistru river [the so-called "Transnistria"] and abroad *(DCC 124/2017, §42).*

The Court observed that, in accordance with article 74 paragraph (2) of the Electoral Code [in the drafting of the Law no.154 of 20 July 2017], the uninominal constituencies are approved by the Government on the basis of a decision taken by an independent commission, the composition of which is determined by a Governmental decision and of which mandatory form part, representatives of: a) Central Electoral Commission; b) Legal Commission on Appointments and Immunities of the Parliament of the Republic of Moldova; c) the Presidency of the Republic of Moldova; d) parliamentary fractions and groups; e) extra-parliamentary political parties that obtained more than 2% of the validly cast votes at the last parliamentary elections; f) the People's Assembly of Gagauzia; g) associations of national minorities; h) local public authorities; i) Diaspora Relations Office; j) civil society and academia in the field, including geographers and sociologists *(DCC 124/2017, §43).*

The Commission empowered to establish the uninominal constituencies will act on the basis of its own regulation approved by the Government and will elect from among its members a president and a secretary *(DCC 124/2017, §44).*

Analysing the legal provisions criticized herein, the Court found, preliminarily, that in the parliamentary elections each voter has the right to vote with two ballots – one for the national constituency and the other for the uninominal constituency. Each vote having equal legal power *(DCC 124/2017, §47).*

The Code of Good Practice in Electoral Matters, adopted by the European Commission for Democracy through Law (hereinafter referred to as – Venice Commission) at its 52nd Plenary Session (Venice, 18-19 October 2002), shows that the equal suffrage includes, *inter alia*, the equality in voting power (*DCC 124/2017, §48).*

In particular, it has been underlined that "equality in voting power […] requires constituency boundaries to be distributed equally and clearly among the constituencies, based on the following apportionment criterion: the number of the population, the number of citizens residing in the constituency (including minors), the number of registered electors and, possibly, the number of people actually voting. An appropriate combination of these criteria is conceivable. […] The geographical criterion and administrative boundaries, or even historical ones, may also be taken into account" *(DCC 124/2017, §49).*

Considering compliance with these standards, the Court held that the contested law laid down criteria for the formation of uninominal constituencies on the territory of the Republic of Moldova under the jurisdiction of the constitutional authorities, outside the borders of the Republic of Moldova, as well as for the localities on the left bank of the Nistru river [the so-called "Transnistria"] (DCC 124/2017, §50).

The Court found that the determination of the criteria for the establishment of the uninominal constituencies is an exclusive right of the state, taking into account the possibilities and practical requirements of conducting the elections *(DCC 124/2017, §51).*

Thus, the state can establish certain clear and predictable criteria on the basis of which the uninominal constituencies are to be created, criteria which are imposed due to the technical reasons for the authorities responsible for organising the electoral process *(DCC 124/2017, §52).*

However, according to the contested law, the deviation of the number of electors between uninominal constituencies should not exceed 10% *(DCC 124/2017, §53).*

In the same line, according to the Code of Good Practice in Electoral Matters, the admissible departure from the norm should not exceed the limit of 10% and never 15%, except in really exceptional circumstances (protection of the rights of a predominant minority, administrative unit with a low density of population) *(DCC 124/2017, §54).*

For its part, the European Court noted that the article 3 of the Protocol no.1 to the Convention does not imply the fact that all ballot papers must have an equal weight on the results of the elections, nor the fact that all candidates must have equal chances of winning; it is thus clear that no system can avoid the phenomenon of "lost votes" – *Mathieu-Mohin and Clerfayt v. Belgium*, cited above, §54; *Bompard v. France*, decision of 4 April 2006; *Kovach v. Ukraine*, judgement of 7 February 2008, §49; *Yumak and Sadak v. Turkey*, cited above, §112 *(DCC 124/2017, §55).*

On the other hand, the Court noted that, according to the law, the uninominal constituencies on the territory of the autonomous territorial unit of Gagauzia will be constituted so as not to exceed the administrative boundaries of autonomy. At the same time, these constituencies cannot be completed with localities outside the autonomy, taking into account the risk of dilution of the national minority *(DCC 124/2017, §56).*

The Court has held that, according to the Lund Recommendations (Sweden) on the effective participation of national minorities in public life, adopted in September 1999 by a group of international experts under the aegis of the OSCE High Commissioner for National Minorities [the European Court also referred to this document in the case of *Grosaru v. Romania*, judgement of 2 March 2010, §25], "states shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination" *(DCC 124/2017, §57)*.

At the same time, according to the Code of Good Practice in Electoral Matters, the adoption of special rules that would guarantee the reservation of a number of mandates to national minorities or would regulate exceptions to traditional mandate distribution rules (e.g. exemption from the quorum condition) for parties representing national minorities, in principle, is not contrary to the equal right to vote *(DCC 124/2017, §58)*.

The principle of equality does not mean uniformity, so if equal situations have to match an equal treatment, for different situations the legal treatment can only be different. Violation of the principle of equality and non-discrimination exists when differential treatment of equal cases is applied without objective and reasonable motivation *(DCC 124/2017, §59)*.

In addition, the Court recalled that the electoral threshold is in principle based on the idea that political parties that have a certain credibility in the electorate's masses or the political and civic maturity of candidates, as well as other considerations related to concrete sociopolitical context shall have access to governance – JCC no.15 of 27 May 1998 *(DCC 124/2017, §61)*.

In fact, the European Court has also admitted that the electoral threshold encourages sufficiently representative trends of thought and allows for excessive and non-functional parliamentary fragmentation and hence for strengthening democratic stability – *Partija „Jaunie Demokrāti" and Partija „Mūsu Zeme" v. Latvia*, decision of 29 November 2007; *Yumak and Sadak*, cited above, §125 *(DCC 124/2017, §62)*.

At the same time, the Court noted that the parliamentary elections organized on the basis of a national constituency, as well as on the basis of uninominal constituencies, including for the localities on the left bank of the Nistru river [the so-called

"Transnistria"] and abroad, must ensure the formation of a free opinion and informed decision makers. Or, free elections and freedom of expression, especially the freedom of political debate, are the foundation of any democratic regime – *Mathieu-Mohin and Clerfayt*, cited above, §47, and *Lingens v. Austria*, judgement of 8 July 1986, §41-42 *(DCC 124/2017, §63).*

The Court held that the "free expression of the opinion of the people" means that the elections do not cause any pressure of any kind on the election of one or more candidates and that, in this election, the electorate is not unjustly incited to vote for a Party or other (*Özgürlük ve Dayanişma Partisi (ÖDP)*, cited above, §29). Consequently, no form of coercion should be exercised over voters in choosing candidates or parties *(DCC 124/2017, §64).*

The Court pointed out that free opinion formation is a prerequisite for the ballot to be able to effectively and genuinely express the will of the citizens, constituting the premise of an authentic democratic manifestation of sovereignty, in accordance with the principle stated in art. 2 of the Basic Law. Hence, the honesty of the ballot is to be verified at all stages of the electoral process, and not just in the voting process itself *(DCC 124/2017, §65).*

In this respect, at the free formation of voters' will and honesty of the ballot, the authorities must ensure the observance of the principles of loyal consultation of the citizens with voting rights, principles which presuppose the creation at all stages of the electoral process [during the registration of the candidates, the electoral campaign, on the election day, resolution of appeals, etc.] of all the necessary conditions for sufficient debate and reflection so that the voters can freely form their opinion, know the problems underlying the vote, the legal consequences of the choices, and the effects that the result of the ballot is likely to produce in terms of the general interests of the community. The above-mentioned principles have as a corollary the provisions regarding the free elections, enshrined in art.2 paragraph (1) and art.38 paragraph (1) of the Basic Law, constitutional norms reflecting the international regulations contained in article 3 of the Protocol no.1 additional to the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 25 of the International Covenant on Civil and Political Rights *(DCC 124/2017, §66).*

– Referring to the number of signatures of the supporters for the registration of the candidate in the electoral race

The condition stipulated by the law on the submission of the list with the signatures of the supporters with the right to vote does not in itself have the effect of emptying the content of the right to be elected. However, the essential feature of any mandate gained from the voicing of the political will of the electorate lies in its representativeness *(DCC 124/2017, §71).*

In other words, the introduction of the condition for the submission of the list with signatures is a way in which the candidate demonstrates his/her potential for representativeness and at the same time shows the legislator's concern to prevent the abuse of the right to be elected on the one hand, and to ensure, on the other hand, the effective access to eligible persons who really benefit from electoral support to the exercise of the right hereof *(DCC 124/2017, §72).*

In particular, the Court considered that halving the number of supporters with the right to vote in the constituency where they are applying for registration of a female candidate in parliamentary elections in an uninominal constituency is intended to facilitate the exercise by women of the right to be elected and does not contradict the principle of equality *(DCC 124/2017, §73).*

From another perspective, the Court considered that the provisions establishing that the signatures for the support of the candidates from the uninominal constituencies abroad may come from any constituency are meant to facilitate the exercise of the right to be elected of persons outside the Republic of Moldova, so that this right to be effective and practical. Or, people going abroad can maintain close and continuous ties with the Republic of Moldova, following the political, economic and social life of the country, with the thought of getting involved in its affairs *(DCC 124/2017, §79).*

However, the Court noted that there is no legal difference in the number of votes that the candidate has to accumulate in the uninominal constituency in order to be considered elected. Or, according to article 91 paragraph (1) of the Electoral Code, the candidate for the position of deputy in the Parliament in the uninominal constituency shall be considered elected if he/she has obtained the highest number of validly cast votes *(DCC 124/2017, §80).*

– Referring to the requirement of the candidate to submit the certificate of integrity

The Court noted that people who aspire to gain access to or exercise public office functions must demonstrate that they meet high standards in terms of integrity *(DCC 124/2017, §84).*

On this issue, through *obiter dictum*, the Court noted that the confidence of citizens in the fairness of public officials and institutions in general represents the democratic foundation of their functioning. Trust in institutions is part of the "social capital", along with generalized trust (in peers) and association networks involving individuals. "Trust in state institutions" motivates citizens to become more involved in the sphere of public life. The level of public trust in institutions also has an impact on the economic development of society – JCC no.7 of 16 April 2015, §42-44 *(DCC 124/2017, §85).*

– Referring to the exercise of the right to vote in the polling station in the uninominal constituency where the voter is domiciled

The Court pointed out that, along with the name and civil status, the natural person's domicile is one of the attributes of identifying in space by indicating a precise place, an address (DCC 124/2017, §88).

The Court held that the notions of "domicile" and "residence" are defined in article 30 paragraphs (1) and (2) of the Civil Code *(DCC 124/2017, §89).*

Thus, the place of residence of the natural person is where he/she has his or her home or principal place of residence. The person is deemed to be in residence for as long as he/she has not established another. Correlatively, the residence of the natural person is the place of temporary or secondary residence *(DCC 124/2017, §90).*

The Court found that the specific legal features of domicile are: stability, uniqueness, obliquity and inviolability *(DCC 124/2017, §91).*

The Court revealed that the domicile's obligation derives from its social and legal function of serving as a means of individualisation of the natural person in space, a function which is of interest to society as well, not only to the holder. This function determined the rule that every person must have a domicile *(DCC 124/2017, §92).*

Therefore, the Court held that, by virtue of the law, is considered that any person is domiciled *(DCC 124/2017, §94).*

Moreover, the European Court has highlighted that the requirement to satisfy the condition of residence or length of stay in order to have the right to vote or to exercise it in the elections does not, in principle, constitute a restriction on that right and is not, and therefore incompatible with article 3 of Protocol No. 1 to the Convention – *Doyle v. United Kingdom*, decision of 6 February 2007 *(DCC 124/2017, §95).*

At the same time, good management of electoral lists is an indispensable condition for ensuring free and fair elections. The actual exercise of the right to be elected depends, undoubtedly, on the correct exercise of the right to elect. Thus, omitting voters to enter the electoral roll and/or multiple enrollment of others could not only undermine voters' interest but also diminish candidates' chances to participate in elections on an equal and fair basis – *The Georgian Labour Party v. Georgia*, judgement of 8 July 2008 *(DCC 124/2017, §96).*

2.10. Freedom of parties and other socio-political organizations

2.10.1. Prohibition imposed on the President of the Republic of Moldova to hold membership within a political party

According to constitutional guarantees, citizens are free to express their will to associate with a party, the will hereof not being imposed or dictated *(JCC 35/2017*[35]*, §43).*

The Court held that freedom of association with political parties must be understood as one of the many means that can be used to influence political processes in the state (JCC 35/2017, §44).

At the same time, paragraph (7) of the article 41 of the Constitution provides that: "*The organic law shall establish those public offices whose holders may not join political parties*". Thus, the Court observes that the Basic Law allows for the restriction of this right depending on the exercise of a particular office, namely of the public one (JCC 35/2017, §45).

[35] Judgement no.35 of 12.12.2017 on the control of constitutionality of certain provisions of article 112 paragraph (2) of the Electoral Code (*prohibition imposed on the President of the Republic of Moldova to hold membership within a political party*)

The infra-constitutional legal framework regulates the legal status of different categories of public officials, a statute which may provide, in addition to rights, freedoms and obligations, for a series of prohibitions and incompatibilities, such as that relating to holding membership within a political party (JCC 35/2017, §46).

At the same time, art. 11 § 2 of the European Convention allows states to restrict the freedom of association to three categories of persons: (1) members of the armed forces, (2) police and **(3) state administration** (JCC 35/2017, §39).

In this regard, the European Court has recognized the legitimacy of restricting the political activity of such public authorities from the necessity of **guaranteeing their political neutrality** and ensuring the proper fulfilment of their impartial obligations, treating all citizens equally, fairly and without to be influenced by political considerations – *see Ahmed and others v. the United Kingdom, judgement of 2 September 1998; Rekvényi v. Hungary, judgement of 20 May 1999* (JCC 35/2017, §40).

Under article 112 paragraph (2) of the Electoral Code: "**The office of the President of the State is incompatible with the membership of any political party**" (JCC 35/2017, §50).

The Court pointed out that when taking the oath, the President of the Republic of Moldova **assumes a legal commitment towards the all citizens of the Republic of Moldova** (JCC 35/2017, §55).

The Court held that the President of the State must be a unifying factor for state institutions, society and political parties. Therefore, the head of state cannot, in itself, be a factor of political or institutional blockage or to generate conflict factors. The President acts as a mediator between the powers of the state, as well as between the state and the society (JCC 35/2017, §56).

The Court noted that settlement of divergences occurred between the state powers and between political parties can only be achieved when the President of the State is an arbitrator identifying himself/herself with the national interest and not with a political party (JCC 35/2017, §57).

The Court held that the political neutrality of the President of the State has an impact on the confidence of the population in that position (JCC 35/2017, §61).

Therefore, in the Judgement no. 2 of 24 January 2017, the Court noted that the President of the Republic of Moldova is obliged to act in the interests of the entire society, and not of a part of it, of a political group or party. **For these reasons, the President of the Republic of Moldova cannot be a member of a political party and cannot promote in any way the interests of a political party** (JCC 35/2017, §62).

Also, in the *Judgement no. 24 of 27 July 2017*, the Court has highlighted that within the parliamentary systems, **the head of state plays the role of an arbitrator, or of a neutral power**, ***being detached from political parties***. Even if no one can prevent the head of state from having his/her political opinions and sympathies, his/her mandate is limited. The President is an important element of the political system, but **he/she is not a partisan of politics**. Although the election by popular vote tends to strengthen the position of the President, in similar constitutional systems, presidents elected by popular vote continue to play the role of *neutral power* and do not have broad powers, whilst the necessary balances and counterbalances are guaranteed by parliamentarism [§§ 113, 114] (JCC 35/2017, §63).

This opinion is supported by the Venice Commission, being exposed in the Opinion on the proposal of the President of the Republic of Moldova to amend the Constitution with a view to expand the President's powers to dissolve Parliament adopted at its 111th plenary session of 16-17 June 2017, CDL-AD(2017)014 (JCC 35/2017, §64).

The Court could not accept the argument of the author of the complaint according to which the President of the State should be allowed to be a party member, similarly to members of Parliament and the Government (JCC 35/2017, §66).

The Court noted that they are in different legal situations and that the criterion of "political neutrality" cannot be applied to members of the Parliament and the Government in the same way that it is applied to the President of the State, given that **deputies and members of the Government by definition cannot be politically neutral** – see, *mutatis mutandis*, judgement of the Grand Chamber of the European Court of Human Rights, case of *Ždanoka v. Latvia*, of 16 March 2006, §117 (JCC 35/2017, §67).

The Court held that the obligation of the President of the State to waive his/her membership within a political party derives from "*the duty of ingratitude*" towards the party that supported him/her in the elections, or, in the absence of this obligation, the

membership within a political party, the image and the function of the head of the state could be used for political advantage by the political party whose member s/he is and ultimately **the presidential institution would be associated with a political party** (JCC 35/2017, §68).

In this regard, the Court noted that the incompatibility imposed on the President is not aimed at suppressing freedom of association, but on the contrary, political incompatibility serves for the benefit of that function, because it contributes to the establishment of a favourable framework for the exercise of his/her constitutional attributions, detached from political parties (JCC 35/2017, §69).

At the same time, the Court found that while the contested provisions prohibit membership within a political party, the constitutional provisions state that the President of the State enjoys immunity from civil action and cannot be held liable for the opinions expressed while in the execution of his/her mandate [art. 81 paragraph (2)]. The head of the state can also take part in the work of the Parliament and address Parliament messages concerning the main issues of national interest [art. 84]. At the same time, the President of the State has the right to initiate legislation [art. 73] as well as the right to initiate consultative republican referendum (JCC 35/2017, §70).

Thus, the Court held that the **range of measures available through which the right to influence state policy can be realized extends beyond the membership within any political party** (JCC 35/2017, §71).

The Court noted that, by instituting the incompatibility of the mandate of the President of the Republic of Moldova with the membership within a political party, the legislator sought to exclude the factors that would prevent the accomplishment of the duties of arbitrator of the respective function. Thus, the Court found that there were no less restrictive means to ensure the political neutrality of the post of head of state. Or, in the absence of such a prohibition, the political neutrality of the head of state would become a theoretical and illusory one (JCC 35/2017, §72).

In the light of the above, the Court held that the prohibition imposed on the President of the Republic of Moldova on holding *membership within a political party* falls within the admissible limits of the restrictions of the right of association to political parties, thus complying with article 41 paragraphs (1) and (7) of the Constitution (JCC 35/2017, §73).

2.11. Right to work and labour protection

2.11.1. Employment of young professionals

The Court found that, according to the Government Decision no. 1396 of 24 November 2003, following the graduation of the post-graduate residency studies, physicians and pharmacists, young professionals, under the contract entered into with the Ministry of Health, are to be distributed by the latter for employment according to the needs of the state, for a period of three years, and in case of non-observance by the young professionals of the terms of the contract signed by them, they will be obliged to reimburse the expenses for the university training, from the state budget, as well as for post-graduate program in the amount calculated by the Ministry of Health (DCC 106/2017[36], §19).

Therefore, the Court stressed that the freedom of labour includes the right of the person to freely choose his/her work (profession, occupation), place of work, as well as the right not to work and to continue post-graduate studies (to get master's, doctoral degrees), **but does not imply the freedom to not fulfil the obligations assumed at the time of concluding the standard contract** (on carrying out studies in higher education institutions and vocational schools (full-time tuition) in the groups with budget financing and employment of young professionals) between persons and the educational institution and, implicitly, not to reimburse the state for study expenses (DCC 106/2017, §23).

In the same context, the European Court has also stated that work to be performed under a freely entered contract cannot fall within the scope of art. 4 [forced labor] because one of the two contractors has committed himself/herself to the other to respect him/her and is subject to sanctions if he/she does not honour his/her obligations – Judgement ECHR Van der Mussele v. Belgium, 23 November 1983, §34 (DCC 106/2017, §24).

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[36] Decision no.106 of 07.11.2017 on the inadmissibility of the complaint no. 133g/2017 referring to the exception of unconstitutionality of the Government Decision no. 1396 of 24 November 2003 on training of resident physicians and pharmacists and employment of young professionals (*employment of young professionals*)

2.11.2. Termination of employment relationships in connection with the refusal to grant the right of access to state secrets

Under article 43 of the Constitution, every person shall enjoy the right to work, to freely choose his/her profession and workplace (JCC 38/2017[37], §52).

In the present case, the Court found that, pursuant to the provisions of article 26 paragraph (5) of the Law on State Secrets, the appointment or employment of a person in a position that involves working with information on State secrets or access to State secrets, is not allowed without the decision of the Security and Intelligence Service, the only specialized body in the field of State security (JCC 38/2017, §70).

At the same time, article 27 paragraph (5) of the same law provides that in case a person is not granted the right of access to State secrets, he/she is to be transferred to another job or to another position, which has nothing to do with the information on State secrets, and in case of impossibility of transfer, he/she shall be fired (JCC 38/2017, §82).

The Court found that, if the presence of the circumstance concerning the "detection, following the verification measures, of other actions of the person presenting a threat to the security of the Republic of Moldova" will be established herein [art. 25 paragraph (1) let. c) of the law], the Security and Intelligence Service is to formulate its conclusion on the impossibility to grant the person the right of access to the state secret (JCC 38/2017, §77).

The Court held that the restriction of the right to accede to a post, following the refusal of the Security and Intelligence Service to grant the right of access to state secret, is applied to safeguard the "other right", in particular, protection of national security. Therefore, this purpose corresponds to the legitimate aim referred to in the second paragraph of article 54 of the Constitution (JCC 38/2017, §100).

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[37] Judgement no.38 of 14.12.2017 referring to the exception of unconstitutionality of certain provisions of Law no. 245-XVI of 27 November 2008 on state secrets, Law no. 320 of 27 December 2012 on police activity and the policeman statute and Regulation on securing secrecy within public authorities and other legal entities, approved by the Government Decision no. 1176 of 22 December 2010 (*the refusal to grant the right of access to state secrets*)

The Court noted that the text *"presenting a threat to the security of the Republic of Moldova"* is contained in several legislative acts and is defined in art. 1 of the Law on National Security no. 618-XIII of 31 October 1995 (JCC 38/2017, §45).

In the particular context of national security measures, the European Court itself stated that the requirement of predictability could not be the same as in many other areas, since the notion of "*national security*" cannot be the subject of an exhaustive definition, and may have a broad meaning, with a great margin of appreciation left to the executive. However, it cannot go beyond the meaning of the term itself (JCC 38/2017, §92).

The Court noted that the provisions of the Constitution do not prohibit the termination of employment relationships, provided that it is accompanied by guarantees, while complying with the principle of proportionality. This measure, by itself, does not contradict the right to work, due to its nature and specificity, since the legislator considers it necessary, being guided by some reasoning (JCC 38/2017, §102).

Thus, the Court emphasized that the dismissal of the person from office in the case of the Security and Intelligence Service refusal to grant the right of access to state secrets, on the basis of the statutory grounds, operates only in case of impossibility of transfer to another job or to another function (JCC 38/2017, §105).

Similarly, the Court noted that, under article 25 paragraph (2) of the Law on State Secrets, the decision on the refusal to grant the right of access to State secrets, adopted by the head of the public authority, may be challenged in the hierarchical superior body or in a court of law (JCC 38/2017, §106).

The Court underlined that while the assessment of the risk of access to state secrets lies with the Security and Intelligence Service, however, **the court of law will have full jurisdiction to establish and examine the substantive grounds on which the refusal was based.** The jurisdiction of the court of law must include the possibility of rejecting the arguments of the authorities relating to the presence in a person's actions of a threat to the security of the State in case where it considers that such assessments are arbitrary or unfounded. This view is also shared by the European Union in its case-law – *see the case of Miryana Petrova v. Bulgaria* (JCC 38/2017, §111).

In view of the above, the Court held that the challenged legal provisions did not affect the provisions of article 43 combined with articles 23 and 54 of the Constituti-

on. However, the establishment of criteria for the exercise of certain activities cannot be *a priori* regarded as an infringement upon the constitutional right to work (JCC 38/2017, §112).

2.12. The right to strike

2.12.1. Limitation of the right to strike for certain categories of employees

The right to strike was enshrined by the constituent legislator through article 45 paragraph (1) of the Constitution, stating that *strikes may be started only if aimed at defending the economic, social and professional interests of employees*. At the same time, according to paragraph (2) of the above cited article, ***the conditions requested in the exercise of the right to strike**, as well as the responsibility involved in the illegal start of strikes **are to be established under provisions of law** (JCC 30/2017[38], §47,48).*

The Court noted that the right to strike is also enshrined in a series of international instruments. Thus, the European Social Charter (revised) recognizes the right of workers and employers to collective action in cases of conflicts of interest, including the *right to strike, subject to obligations that might arise out of collective agreements previously entered into* (art. 6 § 4). The right to strike enshrined in the European Social Charter is part of the "hard core" of essential rights enshrined in the Charter *(JCC 30/2017, §49).*

At the same time, in line with the other "conditional" rights, *the right to strike does not have an absolute character,* it can be limited or prohibited under national regulations *(JCC 30/2017, §54).*

According to the provisions of art. 369 paragraph (2) of the Labour Code, the limitations have been introduced in the areas that concern: healthcare; energy and water supply as well as continuous flow units; telecommunication system; air traffic; central public authorities; bodies ensuring the defence system, public and legal order *(JCC 30/2017, §67).*

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[38] Judgement no. 30 of 07.11.2017 on the control of constitutionality of art. 369 paragraphs (2), (3) and (4) of the Labour Code, art. 21 paragraphs (2) and (3) of the Code on Railway Transportation, Government Decision no. 656 of 11 June 2004 on the approval of Nomenclature of Units, Sectors and Services which employees cannot participate in strikes (*limitation of the right to strike for certain categories of employees*)

The Court held that *the aforementioned fields of activity are of primary importance for both the State and the society as a whole, as well as for each individual (JCC 30/2017, §68).*

Moreover, the Court noted that the employees responsible for ensuring public and legal order and state security, as well as the judges and officials within central public authorities, *are acting directly or indirectly under a system of public power, in order to achieve a public interest*. They pursue their professional activity in the interest and with the support of individuals, of the community and of the state institutions exclusively on the basis of the law and with a view to enforce the law, therefore the cessation of their activity may affect essential services for society. *(JCC 30/2017, §69).*

At the same time, the European Court also has mentioned in its case-law that *states are entitled, in the name of "public security", to prohibit the right to strike for the persons activating within law enforcement bodies (JCC 30/2017, §71).*

Therefore, the legislator has set up certain interdictions and restrictions in respect of the right to strike, *with a view to ensure the proper conduct of economic and social activities and to guarantee the general interests of the State and of the society, such as national security, public security, public health etc. (JCC 30/2017, §72).*

The Court has held that *cessation of activity in these areas following certain demanding actions would be likely to cause an imminent harm to these areas, as well as to the society as a whole (JCC 30/2017, §73).*

At the same time, *interdiction on exercising the right to strike does not place these socio-professional categories of employees in the impossibility to defend their professional and social interests, as well as their legitimate rights (JCC 30/2017, §79).*

Thus, art.369 paragraph (4) of the Labour Code provides safeguards in this respect, stipulating that in the case the strike is forbidden under paragraphs (1) and (2), the collective labour disputes shall be settled by the labour jurisdiction bodies. According to art.351 of the Labour Code, *labour jurisdiction bodies* are: (1) conciliation commissions (extrajudicial bodies) and (2) ordinary courts *(JCC 30/2017, §80).*

The Court also noted that prohibition of the strike in the aforementioned fields of activity cannot be considered discriminatory in relation to the other areas in which it is permitted. In its case-law, the Court has consistently held that the principle of equality is violated when differential treatment is applied in identical cases without objective and

reasonable grounds. However, the services covered by article 369 para. (2) of the Labour Code are of general and vital interest for the entire social and economic life of the State, as well as for the protection of State security, public and legal order, which makes them distinct from other services *(JCC 30/2017, §83).*

Taking into account the abovementioned considerations, the Court held that, under article 54 of the Constitution, the limitation of the right to strike through the provisions of article 369 para. (2) of the Labour Code and article 21 paras. (2) and (3) of the Code on Railway Transportation is proportionate to the purpose pursued, which is without prejudice to articles 16 and 45 of the Constitution *(JCC 30/2017, §86).*

In the part concerning the allegations of the author of the complaint regarding the unconstitutionality of the Government Decision no. 656 of 11 June 2004, the Court noted that it was approved based on art. 369 paragraph (3) of the Labour Code *(JCC 30/2017, §87).*

The Court underlined that, according to art.102 of the Constitution, *the Government decisions are adopted to ensure enforcement of laws.* Such normative acts cannot regulate areas that are not previously covered by the law. Government acts are issued with a view to develop and implement the provisions of the law *(JCC 30/2017, §88).*

Based on the above stated, the Court noted that the Nomenclature of Units, Sectors and Services which employees cannot participate in strikes, approved by Government Decision no. 656 of 11 June 2004, cannot exceed the limits instituted by the legislator through article 369 para. (2) of the Labour Code *(JCC 30/2017, §89).*

Therefore, the Court found that while art. 369 paragraph (2) let. e) of the Labour Code provides that ***only officials from central public authorities cannot take part in strikes, the dispositions of the Government Decision prohibit the participation at strikes of*** *all employees of the Parliament, the State Chancellery and the Presidency (JCC 30/2017, 90).*

Under these circumstances, the Court noted that the wording *"all employees"* in sections 2, 3 and 4 shall be interpreted as referring only to the officials from central public authorities *(JCC 30/2017, §92).*

At the same time, in line with the provisions of art. 369 paragraph (2) let.f) of the Labour Code, the Court held that the words *"all employees"* in sections 10, 12, 16, 17, 19, 20 of the aforementioned Nomenclature shall be interpreted as referring only to the

staff members of internal affairs bodies, the General Prosecutor's Office, the Intelligence and Security Service, the Department of Penitentiary Institutions, the Department of Emergency Situations, the State Protection and Guard Service, *which have as functional competencies to ensure public order, rule of law and state security*. Moreover, the text ***"entire system"*** in section 11 shall be understood as referring to judges of ordinary courts *(JCC 30/2017, §93).*

2.13. Right to private property and its protection

2.13.1. Voluntary enforcement of judgements

The obligation to execute a judgement belongs to the debtor. Where he/she fails to fulfil this obligation voluntarily, the officer of justice can apply measures to forced execution hereof (JCC 39/2017[39], §52).

The Court found that, in accordance with article 15 paragraph (2) let. d) of the Enforcement Code, the enforceable title in cases related to maintenance payments tracking is submitted for ex officio execution by the court (JCC 39/2017, §55).

At the same time, according to article 10 paragraph (1) of the Enforcement Code, forced execution represents a set of measures whereby the creditor through the officer of justice, with the consent of the competent state bodies, performs his/her rights recognized by an enforceable document, if the debtor fails to fulfil his/her obligations voluntarily (JCC 39/2017, §53).

In the Judgement no. 7 of 5 April 2011, the Constitutional Court has ruled that the measure related to forced execution should be applied only after the expiry of the voluntary enforcement period of the enforceable title and after making reasonable efforts to charge the debt by other means, so that forced execution being the last solution likely to influence the conduct of the debtors (JCC 39/2017, §57).

In the present case, the Court noted that, by giving the enforceable title ex officio by the court, the debtor is deprived of the possibility to execute the judgement voluntarily,

[39] Judgement no. 39 of 14.12.2017 referring to the exception of unconstitutionality of articles 15 paragraph (2) let. d) and 38 paragraph (4) let. f) of the Enforcement Code of the Republic of Moldova (*maintenance payment*)

until the commencement of forced execution, contrary to the provisions of article 10 of the code hereof. This circumstance leads to the automatic incurring of the execution costs, charged by the officer of justice in all cases of total or partial settlement of the obligation set forth in the enforceable document (JCC 39/2017, §64).

Consequently, automatic transmission of the enforceable title to forced execution leads to additional payments that would not be paid if there was a possibility of voluntary execution. Thus, such situation constitutes an excessive burden on the debtor's assets, which undermines his/her right to property, guaranteed by article 46 paragraph (1) of the Constitution (JCC 39/2017, §65).

For these reasons, the Parliament is to regulate the deadlines for voluntary enforcement of judgements. Also, in order to exclude an excessive burden on the debtor, the Court considered it necessary to regulate the periodical receipt of the fees while pursuing periodic payments (JCC 39/2017, §66).

Until putting in order the deadlines for voluntary enforcement by the Parliament, before transmission of the enforceable document to forced execution, the 15-day period left after the final judgement for voluntary execution, similar to the deadline provided for in article 60 paragraph (3) of the Enforcement Code shall be applied herewith. In the case of a judgement with immediate execution, such deadline shall be calculated as of the date of issue hereof. This reasoning does not prevent the Parliament from regulating other deadlines for the voluntary execution of different categories of enforceable acts (JCC 39/2017, §67).

At the same time, the Court recalled that upon pronouncement of the Judgement no. 1 of 15 January 2013, an address was issued indicating the need to impose an obligation on the creditor to summon the debtor on the voluntary execution of the enforceable document until the initiation of the procedure of forced execution. However, so far this address has not been enforced, which is why it will repeatedly signal this omission to Parliament (JCC 39/2017, §68).

Referring to the author's allegations concerning the unconstitutionality of the provisions of art. 38 paragraph (4) let. f) of the Enforcement Code, regulating the amount of fees of the officers of justice, the Court has held that the officer of justice does not

arbitrarily decide on the manner, the term and the amount of the received fee, this being provided for in the legislation (JCC 39/2017, §69).

Moreover, according to articles 36, 44 and 66 of the Enforcement Code, the conclusion on the recovery of enforcement costs is susceptible to judicial review and may be challenged within 10 days of the date of communication hereof (JCC 39/2017, §73).

The Court held that the provisions of article 38 paragraph (4) let. f) of the Enforcement Code **are only applicable to forced execution procedures** (JCC 39/2017, §72).

Therefore, in view of the findings on the unconstitutionality of the omission to grant a deadline for the voluntary enforcement of judgments until the initiation of the procedure of forced execution, the contested provisions regarding the collection of fees under the forced execution procedure are not contrary to article 46 of the Constitution (JCC 39/2017, §74).

At the same time, if the enforceable title on maintenance payments was sent ex officio to the officer of justice by the court, without giving the deadline for voluntary execution, in verifying the correctness of the determination of the fee of the officer of justice, the court is to verify whether maintenance payment was made without the officer of justice being forced to take any certain actions (JCC 39/2017, §75).

Until putting in order the deadlines for voluntary enforcement by the Parliament, before transmission of the enforceable document to forced execution, the 15-day period left after the final judgement for voluntary enforcement, similar to the deadline provided for in article 60 paragraph (3) of the Enforcement Code shall be applied herewith (JCC 39/2017, operative part).

2.13.2. Mandatory consent of Trade Unions at dismissal

The Court observed that according to the provisions of art. 87 paragraph (1) of the Labour Code: *"The dismissal of employees – trade union members is admitted only* ***with the preliminary consultation of the trade union body*** *of the unit" (JCC 34/2017[40], §58).*

[40] Judgement no.34 of 08.12.2017 referring to the exception of unconstitutionality of the article 87 paragraph (1) of the Labour Code no.154-XV of 28 March 2003 (*the mandatory consent at dismissal of the trade union*)

The author of the complaint claimed that, in essence, the challenged provision according to which the employee, a trade union member, cannot be dismissed without the consent of the trade union, infringes upon the right to property of the employer, contrary to article 46 of the Constitution *(JCC 34/2017, § 38).*

The Court underlined that the role of the trade union body upon the termination of the individual labour contract at the initiative of the employer is a guarantee for the employee, who is in a relationship of subordination to the employer and requires special protection in order to avoid abusive dismissal *(JCC 34/2017, §63).*

At the same time, having regard to the mandatory nature of the provisions of the Labour Code, the Court observed that the consent of the trade union body was a mandatory requirement for the dismissal of the employee. Correlatively, the simple ascertainment of lack of this consent could have served as basis for the automatic re-establishment of the employee in office by a court of law *(JCC 34/2017, §64).*

In this context, the Court found that the mandatory consent of the trade union body and the automatic re-establishment in office in the absence of such consent amounts to a **veto right** at the dismissal of employees *(JCC 34/2017, §65).*

Ensuring a balance between the interests of employees on the one hand and the interests of employers on the other hand can take place according to the level of cooperation between them as social partners *(JCC 34/2017, §68).*

However, it is clear from the content of the contested rule that the mechanism of cooperation in the dismissal procedure is lacking, due to the favorization of the interests of employees in particular. Thus, the matter of dismissing the employee from the start could not be the subject of a debate between the employer and the trade union body *(JCC 34/2017, §69).*

The Court has held that the protection of employees cannot be ensured by the total neglect of the employer's interests, which, within the limits of the law, must have a certain autonomy in the organization and functioning of his/her own institution *(JCC 34/2017, §70).*

It is obvious that when the termination or continuation of employment relationships with the employee depends on the consent of the trade union body, the employer's exclusive right **to decide** on his/her activity depending on the economic, commercial

situation in which he/she carries out his/her activity is likely to be obstructed *(JCC 34/2017, §71)*.

Thus, conditioning of the dismissal of the employee based on the **consent of the trade union body** may affect the economic and financial mechanisms of the enterprise, such as the production structure, the revenue and expenditure budget, the nature and volume of the commercial contracts concluded by the unit *(JCC 34/2017, §72)*.

Also, if the trade union is opposed to the dismissal of the employee, the employer's right to property may also be violated, as he/she has to continue the individual labor contract and pay salary rights to the employee *(JCC 34/2017, §73)*.

Thus, even though trade unions are independent and are not subject to control or subordination in their activity, they cannot have a **veto right** on decisions relating to the dismissal of employees taken by the employer *(JCC 34/2017, §74)*.

Therefore, the veto right of trade union bodies is **disproportionate** to the legitimate purpose of protecting the rights of employees in relation to the rights of the employer in the process of organizing the operation of the unit *(JCC 34/2017, §75)*.

As a matter of fact, strengthening of trade union freedom in exchange for limiting the right to free economic initiative and entrepreneurial activity and, respectively, the employer's right to property is not a legislative solution proportionate to the aim pursued herein *(JCC 34/2017, §76)*.

For the aforementioned reasons, **the veto right** of trade union bodies when taking the decisions on dismissal of employees **violates** the provisions of articles 9, 46 and 126 of the Constitution, which enshrine the free economic initiative, the free entrepreneurial activity and the right to property. In this respect, the lack of the consent of the trade union body on the dismissal of employees cannot in itself constitute a basis for automatic re-employment *(JCC 34/2017, §77)*.

At the same time, the Court held that, in order to defend his/her rights and interests protected by law, in the event of abusive dismissal, the employee is entitled to bring legal proceedings. Thus, if the court **finds that the dismissal is unlawful**, it may order his/her re-employment and compensation for damage caused for the entire period of forced absence from work *(JCC 34/2017, §79)*.

2.14. Right to social assistance and protection

2.14.1. Compulsory national insurance contributions

The Court held that a distinction is to be made in determining the pension between persons who have paid a percentage contribution of compulsory national social insurance out of the wage fund and other rewards or according to the amounts received for the services rendered and the persons who have paid a fixed contribution of compulsory national social insurance (DCC 55/2017[41], §24).

Thus, according to the provisions of the subparagraph 1.5 of paragraph 1 of the Appendix no.3 to the Law on state social insurances budget for 2014, in order to benefit from the minimum age pension (contributory periods), individual entrepreneurs, lawyers, public notaries, officers of justice and mediators who have obtained the right to carry out their activity in the manner established by the law, irrespective of the legal form of organization, are obliged to pay to the state social insurance budget the amount of MDL 5748 annually for the individual insurance (the aforementioned amount representing the compulsory tariff for compulsory national social insurance contributions) (DCC 55/2017, §21).

At the same time, given that these categories of people pay only a fixed contribution for the compulsory national social insurance, and not a percentage contribution depending on the amounts received for the services provided, they only benefit from the minimum age pension (contributory periods) and death grants (DCC 55/2017, §22).

Thus, the principle of equality enshrined in the Constitution does not mean uniformity, it implies equal treatment in equal situations, as different situations require different legal treatment only (DCC 55/2017, §26).

The Court noted that fixing the tariff for compulsory national social insurance contributions by the annual law on state social insurances budget is an option for the legislator, the latter being free to determine the types of social benefits insured herein (DCC 55/2017, §28).

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[41] Decision no.55 of 27.06.2017 on the inadmissibility of the complaint no. 66g/2017 referring to the exception of unconstitutionality of certain provisions of the subparagraph 1.5 of paragraph 1 of the Appendix no.3 to the Law on state social insurances budget for 2014, no.329 of 23 December 2013 (*compulsory national social insurance contributions)*

2.14.2. State social assistance benefits for elderly people

The Court has held that social guarantees does not have an unconditional character, the legislator being entitled to lay down specific conditions for the exercise of social rights. In this respect, the method of calculating the state social assistance benefits is an option of the legislator, the latter being free, depending on the financial resources available, to determine the granting of this right, its content and its limits, as well as the conditions under which it may be granted when economic and social realities impose it (DCC 24/2017, §23).

2.14.3. Recalculation of social security allowances

Through social protection guarantees set forth in art.47 of the Constitution, the state protects the health and well-being of citizens by granting them social assistance in the cases provided for by law *(JCC 20/2017, §43).*

In the area of social rights, the state is obliged to take positive measures to ensure the protection of these rights so that each member has a guaranteed minimum of social security *(JCC 20/2017, §44).*

Thus, in order to carry out the policy in the field of state social insurance, the legislator, within the limits of his attributions and constitutional principles, has the right to opt for various solutions for regulating and concretizing the content of social rights *(JCC 20/2017, §48).*

According to legislation, a form of social security allowances, granted for loss of work capacity, is the **maternity allowance** *(JCC 20/2017, §52).*

The rationale for establishing "the maternity allowance" by law comes from the guarantees enshrined in articles 47, 49 and 50 of the Constitution, by virtue of which **maternity benefit from special protection on the part of the state** *(JCC 20/2017, §53).*

In order to benefit from social security provided for by law, the person must **participate** in the public social insurance system and **make contributions** to the social security fund *(JCC 20/2017, §56).*

In accordance with art.7 of the Law no.489/1999, social security allowances are **benefits in cash** or in kind intended for the insured persons, under the conditions laid down by

law, **which are linked to social security contributions** granted in the form of pensions, allowances, aids as well as in other forms provided for by law *(JCC 20/2017, §57).*

For the purpose of granting social security allowances, the legislator set up a basis for calculating them by the Law on allowances for temporary work disability and other social security benefits *(JCC 20/2017, §58).*

Considering the contributory principle, the Court has pointed out that by transferring the correlated contributions to the income earned, the beneficiary indirectly forms the amount of the social security allowance *(JCC 20/2017, §62).*

The Court therefore held that, in the case of a prohibition on the recalculation of social security allowances, as a result of an error, the insured person bears an excessive burden, which exceeds the margin of appreciation of the state when applying its social policies. Or, as recalculation is not allowed in case of an error, the size of the non-included income could be considerable, which would significantly affect the amount of the allowance. As a consequence, the amount of the allowance and, respectively the amount of the means of subsistence of the insured person during the period of appearance of the insured risk could be suppressed *(JCC 20/2017, §63).*

Thus, when the beneficiary has been established and paid a higher allowance than the law provides, the state's rights are restored, since the undue amounts are refunded either by the persons in charge for the transmission of the data or the payment of the allowance, or by the beneficiary in the case of submission of false documents *(JCC 20/2017, §65).*

The Court noted that the legislator did not regulate the situation where, depending on the paid contributions, certain amounts due to the beneficiary in the form of allowance were not paid due to the errors committed by the competent authorities *(JCC 20/2017, §66).*

In the case of *Stec and others v. the United Kingdom,* the European Court has held, in principle, that: "[...] 54. Where a State Party puts into effect a legislation providing for the automatic payment of a social benefit – regardless of whether the grant of such benefit depends or do not depend on prior payment of contributions – this legislation must be regarded as constituting a patrimonial interest falling within the scope of the article 1 of the Protocol no.1 for persons fulfilling their requirements [...]" *(JCC 20/2017, §71).*

Having regard to the case-law of the European Court on the application of art.1 of the Protocol no.1, the Court held that by means of the rules prohibiting the recalcula-

tion for the purposes of correcting the established social security allowances, there has been allowed an interference in the legitimate expectation of benefiting effectively from a right to property *(JCC 20/2017, §70).*

2.14.4. Maternity pay

The constitutional obligation of the state is to take appropriate measures to ensure the vital needs of its citizens, including in exceptional situations (JCC 6/2017[42], *§42*).

The rationale for social assistance and protection is to respond to people's livelihoods and to maintain a certain standard of living in the event of certain objective circumstances (JCC 6/2017, *§43*).

The Court noted that social insurance is a subsystem of the social protection system which is instituted and guaranteed by the state and which is grounded on the principle of contributivity (JCC 6/2017, *§44*).

At the same time, in its case-law, the Court held that the Supreme Law does not guarantee individuals a specific level of social insurance. Social guarantees have an unconditional character, the legislator being entitled to establish specific conditions for the exercise of social rights. At the same time, the legal provisions established cannot be in conflict with constitutional principles (JCC 6/2017, *§46*).

Thus, in order to carry out the policy in the field of state social insurance, the legislator, within the limits of his powers, has the right to opt for various solutions to regulate and materialize the content of social rights, observing the principles of social equity and equality, enshrined through article 16 of the Constitution (JCC 6/2017, *§47*).

The Court found that under the law, a form of social insurance benefits – provided for the loss of working capacity – is the maternity pay. (JCC 6/2017, *§51*).

The Court noted that, raison d'être of prescribing by law for "maternity pay" derives from the constitutional guarantees enshrined in articles 47 and 49 of the Constitution, thereby **maternity enjoys a special protection from the state** (JCC 6/2017, *§53*).

[42] Judgement no.6 of 09.02.2017 referring to the exception of unconstitutionality of the art. 16 paragraph (5) of the Law no. 289 of 22 July 2004 on allowances for temporary work disability and other social security benefits, as well as section 49 of the relevant Regulation, approved by the Government Decision no. 108 of 3 February 2005 *(maternity pay)*

Having analysed the legal provisions, the Court found that the maternity pay is granted to *(1) women who are compulsory insured by the law; (2) the wives who are dependent on the maintenance of the insured husbands and (3) the unemployed women who were on the records of the medical-sanitary institutions* (JCC 6/2017, *§54*).

The Court observed that, according to the contested statutory rule, the maternity pay calculated from the size of the insured husband's salary is granted only when (1) the wife **during the 9 months preceding the occurrence of the insured risk** has **lost her job due to reasons that cannot be imputable on her** or, (2) during that period, the wife is unemployed. The same provisions are also found in section 49 of the Regulation approved by the Government Decision no. 108 of 3 February 2005 (JCC 6/2017, *§55*).

Therefore, the Court found that, according to the contested legal provisions, **a woman who only had a part-time job during the aforementioned period and was dismissed from her own initiative is not considered to be at the maintenance of her insured husband and is not granted maternity pay** calculated out of the husband's salary (JCC 6/2017, *§56*).

The Court noted that this social policy option creates discriminatory treatment between wives who have not participated in the public social insurance system, but are considered to be at the maintenance of their husbands and benefit from a maternity allowance calculated from the size of their salary and the wives who had a part-time job during the last 9 months preceding maternity leave and have contributed through payments to the state social security fund but do not benefit from such guarantees (JCC 6/2017, *§57*).

The Court has held that the rationale for determining the maternity pay is to grant it for the loss of work capacity, and at the time of the occurrence of the insured risk, both persons – and those who did not contribute to the social insurance system, and the one who contributed partially – lost their work capacity and are in fact at the maintenance of the employed husband (JCC 6/2017, *§58*).

The Court has pointed out that the differential treatment established for obtaining maternity pay without any objective and reasonable justification is contrary to articles 16, 47 and 49 of the Constitution (JCC 6/2017, *§60*).

2.15. Protection of persons with disabilities

2.15.1. Beneficiaries of the Social Service "Protected Home"

The Court found that art. 51 of the Constitution enshrines the right of persons with disabilities to enjoy a special form of protection, where the state shall ensure the establishment of a policy of equality of chances, prevention and treatment of disability with a view to the effective participation of the people with disabilities in the life of the community. Therefore, this constitutional norm refers to the state's obligation to ensure the equal opportunities of a person with disability vis-à-vis the rest of the community, without forbidding in certain special circumstances the establishment of specific means of protection for all categories of persons with disabilities (JCC 8/2017[43], *§49*).

According to art. 12 paragraph 4 of the UN Convention on the rights of persons with disabilities (hereinafter referred to as – CRPD), **states parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law**. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. (JCC 8/2017, *§51*).

Also, according to international acts, respect for the dignity of the human being, for individual autonomy, including the right to make own choices, as well as for the independence of the person, is a fundamental principle (JCC 8/2017, *§54*).

In this respect, according to the provisions of art. 19 of the CRPD, States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, **and shall take effective and appropriate**

[43] Judgement no. 8 of 07.03.2017 referring to the exception of unconstitutionality of certain provisions of the Framework Regulation on the organization and functioning of the Social Service „Protected Home", approved by the Government Decision no. 711 of 9 August 2010 *(beneficiaries of the Social Service „Protected Home")*

measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community (JCC 8/2017, *§55*).

In compliance with the international provisions, the Law no. 60 of 30 March 2012 on the social inclusion of persons with disabilities states that **persons with disabilities receive primary, specialized and highly specialized social services for social rehabilitation and social inclusion** (JCC 8/2017, *§57*).

The Court held that, **in order to socially and professionally integrate people with mental disabilities in the community, creating the conditions for developing the necessary skills for an autonomous life**, the Government approved the Framework Regulation on the organization and functioning of the Social Service "Protected Home" (JCC 8/2017, *§58*).

The Court noted that, in accordance with the provisions of the Framework Regulation on the organization and functioning of the Social Service "Protected Home", **persons with mental disabilities who are aware of their actions and are able to manage their actions and who have not been declared incapable by the court** are eligible to benefit from the aforementioned service (JCC 8/2017, *§59*).

At the same time, the Court held that, while the objectives of the service are the integration into the community of persons with mental disabilities, **the persons declared incapable by court decision were deprived of the possibility to benefit from this service** (JCC 8/2017, *§61*).

In this context, the Court stressed the need to differentiate the institution of the declaration of incapacity on the one hand and social services on the other. While the purpose of the first is to protect a person with disability against his or her own actions or actions of third parties, which may harm the rights and interests of a person with mental disabilities, social services aim at developing the autonomy of the person and the social inclusion of persons with disabilities (JCC 8/2017, *§62*).

Moreover, in the present case, the Court found that the **applicant, although declared incapable by the court's decision, originally benefited from this service** (JCC 8/2017, *§63*).

Section 15 of the Regulation states that the community social assistant draws up the complex assessment report of the applicant for social services, with **the conclusions and**

recommendations of the specialists concerning the placement of the person in the Service, including the psychiatrist, attesting that the person with mental disabilities is aware of his/her actions and is able to manage them (JCC 8/2017, *§65*).

Accordingly, the Court found that **each case was individually assessed by the Commission established in this respect** (JCC 8/2017, *§66*).

At the same time, the Court noted that also in the situation of establishing guardianship, **the legal representative must take into account the person's preferences** (JCC 8/2017, *§70*).

The Court reiterated that, according to art. 16 of the Constitution, all citizens of the Republic of Moldova are equal before the law and the public authorities. In addition, the provisions of the CRPD establish the obligation for states to ensure **the equal right of all persons with disabilities to live in the community**, with choices equal to others, and **shall take effective and appropriate measures to their full inclusion in the community** (JCC 8/2017, *§74*).

In this context, the Court observed that by the disputed rule, which excludes persons declared to be incapable from the category of social service beneficiaries, it is established a differentiated treatment between persons with disabilities declared incapable and persons with disabilities with full exercise capacity without pursuing a legitimate purpose and without any objective and reasonable justification (JCC 8/2017, §75).

In view of the above, the Court held that limiting the access of a person declared to be unfit for the Social Service "Protected home" does not correspond to the positive obligation of the state to take the necessary measures to ensure the effective participation of persons with mental disabilities in life of the community, fact which is contrary to the provisions of articles 16 and 51 of the Constitution (JCC 8/2017, *§76*).

2.16. The right of a person aggrieved by a public authority

2.16.1. Preserving the effects of the acts of the National Bank of Moldova

Thus, the Court found that, according to the provisions of art. 38 paragraph (7) let. a) of the Law on Financial Institutions, the measures and sanctions applied by the National Bank may be appealed in the competent court of law. Concurrently, if the court

decides that the actions applied by the National Bank towards the bank and/or persons/shareholders are illegal, the National Bank shall pay all material damages and all the effects made based on the repealed act of the National Bank shall be maintained, which was issued in order to apply the art.15, 15/1 and 15/6 of the Law on Financial Institutions and any other act or subsequent operation pertinent to the enforcement of the repealed act, including the withdrawal of license shall remain valid *(JCC 29/2017[44], §57).*

In its case-law, the Court held that in certain sensitive issues, that carry a greater importance for the society, such as the stability of the banking system, the State enjoys a greater margin of appreciation. This margin of appreciation determines the right of the State to institute distinct regulations for other fields of regulation. The fact that banks operate with financial resources belonging both to individuals and legal entities makes it for their viability and credibility to constitute a major public interest and imposes higher requirements upon the regulation and oversight of banking activities *(JCC 29/2017, §59).*

The Court mentioned that a determining role in upholding the financial stability lies with the National Bank of Moldova, which by virtue of its regulatory and supervision powers is in charge of the safety and well-functioning of commercial banks and of the whole banking system *(JCC 29/2017, §47).*

Examining the challenged provisions, the Court noted that repealing an act of the National Bank of Moldova – which provided for certain sanctions to be applied – by a court of law, there shall be distinguished between *(1) sanctions applied/executed and, subsequently,* ***the legal situation of "facta praeterita"****,* and *(2) correlative sanctions regarding to the disposal of banking shares which* ***may have their enforcement under way or that have already been enforced****.* Subsequently, in any case, **we are witnessing a process that has already commenced** *(JCC 29/2017, §63).*

Therefore, on the effect of the acts, the EU Directive 2014/59 of 15 May 2014 on bank recovery and resolution provides the following: "Where necessary in order to protect third parties who have acquired assets, rights and liabilities of the institution under resolution in good faith […] **the annulment of a decision taken by a resolution au-**

[44] Judgement no. 29 of 06.11.2017 on the control of constitutionality of certain provisions of the article 38 paragraph (7) of the Law on financial institutions no.550-XIII of 21 July 1995 (*preserving the effects made by the acts of the National Bank of Moldova*)

thority does not affect any subsequent administrative act and no transaction subsequently concluded by the resolution authority concerned on the basis of its annulled decision. In such cases, remedies for a wrongful decision […] **should therefore be limited to the award of compensation for the damages suffered by the affected person as a result of such decision or measure**" *(JCC 29/2017, §65).*

Therefore, considering the abovementioned, the Court noted that when sanctions applied by NBM constitute a facta praeterita, and the commenced process is irreversible, implicitly the liquidation process of a bank, the challenged legal provisions – which read that declaring illegal by the court of law of actions undertaken by NBM does not affect the effect of the issued acts – pursue the goal of ensuring legal certainty *(JCC 29/2017, §66).*

The Court underlined that legal certainty shall be approached with greater caution, considering the crucial importance of banking reputation *(JCC 29/2017, §67).*

Concurrently, although the court of law is limited in its decisions on restoring the rights annulled by NBM, the Court considers that the remedy provided by the law on the payment of damages by a fair material compensation strikes **a fair balance between the public interest and the interests of the bank/shareholders** *(JCC 29/2017, §68).*

Taking into account the above considerations, the Court noted that, under the limitations provided by article 54 of the Constitution, the provisions of let. a) paragraph (7) of art. 38 of the Law on financial institutions **are not disproportionate to the goals pursued of protecting the rights of the creditors and safeguarding the public interest for a proper administration of the banks** *(JCC 29/2017, §71).*

For the above reasons, the Court found that the provisions subject to constitutional review are in line with articles 20 and 53 paragraph (1) of the *Constitution (JCC 29/2017, §72).*

2.17. Devotion to the country

2.17.1. Possession of multiple citizenships by contract military members

Citizenship designates the legal relationship between the person and the state. The quality of citizenship requires commitment and fidelity to the interests of the people, as

well as fulfilment of all obligations enshrined in the Constitution and other laws (JCC no.3/2017[45], *§39*).

The Court noted that the Republic of Moldova ratified the European Convention on Nationality (ECN) in 1999, without making reservations about the prohibition on holding multiple citizenship. In this respect, one of the fundamental principles of international law is that states are bound to exercise in good faith the international treaties to which they are party (JCC no.3/2017, *§41*).

Art. 17 of the European Convention on Nationality establishes the **obligation of the Republic of Moldova to ensure its citizens in possession of another nationality same rights and duties as other citizens of the Republic of Moldova** (JCC no.3/2017, *§42*).

In the case of *Tanase v. Moldova*, the European Court found the infringement of the conventional provisions by the authorities of the Republic of Moldova, by adopting the Law no. 273-XVI of 7 December 2007, and namely the infringement of the applicant's right to be elected in Parliament, as guaranteed by article 3 of the Protocol no. 1 of the Convention. The provisions of the law have imposed restrictions on the occupation of public positions for persons holding the citizenship of a state other than the Republic of Moldova (JCC no.3/2017, *§44*).

In this case, the European Court considered that there were other means of protecting the laws, institutions and national security of the Republic of Moldova (JCC no.3/2017, *§45*).

The European Court also noted that the state should have regard to relevant international instruments and reports, in particular those of Council of Europe bodies, in interpreting conventional safeguards and establishing a general consensus. The European Court noted that both the Commission against Racism and Intolerance, the Parliamentary Assembly of the Council of Europe, the Compliance Monitoring Committee, the Venice Commission were unanimous in their criticism on the interference (JCC no.3/2017, *§46*).

[45] Judgement no.3 of 31.01.2017 on the control of constitutionality of certain provisions of Law no. 162-XVI of 22 July 2005 on the status of military members (*prohibition on holding multiple citizenship by contract military members*)

Taking into account the conclusions of the European Court in the case of *Tanase v. Moldova*, the Constitutional Court has adopted the Judgement no. 31 of 11 December 2014 on the review of the Judgement of the Constitutional Court of 26 May 2009, declaring as unconstitutional the provisions of the Law no.273- XVI of 7 December 2007, prohibiting occupation of public positions for persons holding the citizenship of a state other than the Republic of Moldova (JCC no.3/2017, *§47*).

The Court found that art. 28 paragraph (6) let. e) and art. 35 paragraph (3) let. g) of the Law on the status of military members establishes the prohibition on holding multiple citizenships by contract military members, fact distinguishing the terms of employment of military members from other categories of persons holding public functions and having the right to hold more citizenships (JCC no.3/2017, *§48*).

The European Court has determined that states enjoy a wide margin of appreciation in the field of national security in general and in the armed forces, in particular – *Smith and Grady v. the United Kingdom* and *Lustig-Prean and Beckett v. the United Kingdom* (JCC no.3/2017, *§55*).

In the case-law of the European Court it has been mentioned that, by embracing the military career, members of the armed forces **become voluntarily bound to a system of military discipline and certain limitations of the rights and freedoms entrusted on the system hereof** – *Kalac v. Turkey* of 1 July 1997 and *Larissis and others v. Greece* of 24 February 1998 (JCC no.3/2017, *§56*).

At the same time, such restrictions are only acceptable if there is a real threat to the operational effectiveness of the armed forces, and the allegations of the existence of this risk must be "**supported by examples**" – *Smith and Grady v. the United Kingdom* and *Lustig-Prean and Beckett v. the United Kingdom* of 27 September 1999 (JCC no.3/2017, *§57*).

According to article 56 paragraph (1) of the Constitution, **devotion to the country is sacred**. The Court has held that the devotion to the country is a duty which, by significance and importance, is the foundation of the other constitutional duties, as it **expresses the essential obligation resulting from the citizenship report**. Thus, between the citizen and the state a sustainable connection accompanied by mutual responsibilities is born (JCC no.3/2017, *§60*).

At the same time, the Court held that the devotion to the country of the military members is also assured by the oath taken by them. The military oath given to the Republic of Moldova represents the assumption of responsibility for the observance of military laws and regulations. The Court pointed out that **taking the oath is not a mere formality** (JCC no.3/2017, *§63*).

The Court held that breach of constitutional and legal duty entails legal liability (JCC no.3/2017, *§64*).

Thus, the military member can be held liable for homeland betrayal (art. 337 of the Criminal Code), disclosure of the state secret (art. 344 of the Criminal Code), voluntary surrender to imprisonment (article 387 of the Criminal Code), abandonment of the battlefield without any permission or refusal to act with the gun (article 386 of the Criminal Code) (JCC no.3/2017, *§65*).

At the same time, the Court found that while such prohibition is only imposed on contract military members, the military members in term are entitled to hold citizenship of another state, both categories having loyalty obligations toward the state. Similarly, it cannot be said that the Minister of Defence, the President of the Republic of Moldova, who is the supreme commander of the Armed Forces, and other persons whose activity is related to the defence of the homeland and who may hold the citizenship of another state, do not have similar obligations (JCC no.3/2017, *§66*).

The Court has held that such a restriction, imposed on a group of persons without objective justification, goes beyond the scope of an acceptable margin of appreciation of the state, affecting the right to work and study, which is contrary to articles 16, 35 and 43 of the Constitution (JCC no.3/2017, *§67*).

3 PUBLIC AUTHORITIES

3.1. The Parliament. Internal organization

3.1.1. Revocation of the chairmen of standing committees of the Parliament

Regarding the issue of revocation of the chairmen of standing committees of the Parliament, the Court has held that the Parliament has the exclusive authority to lay

down provisions on its governing bodies, whilst non-compliance with certain statutory provisions can be ascertained and resolved through exclusive parliamentary ways and procedures (DCC 32/2017[46], § 21).

3.2. The President of the Republic of Moldova

3.2.1. Obligation of constitutional loyalty of the President of the country

The Court has found that the obligation of constitutional loyalty derives from the oath that the President of the state shall take, according to article 79 of the Constitution stating as follows: „I solemnly swear to devote all my personal strength and abilities to the prosperity of the Republic of Moldova, to always abide by the Constitution and laws of the country, to defend democracy, the fundamental human rights and freedoms, the sovereignty, independence, unity and territorial integrity of Moldova" (*JCC no.2/2017[47], §25*).

By taking the oath, the President of the Republic of Moldova unconditionally, publicly and solemnly undertakes the obligation to act exclusively in the spirit of loyalty towards the Constitution and not to violate the oath under any circumstances (*JCC no.2/2017, §27*).

The obligation of constitutional loyalty of the President of the Republic of Moldova shall become effective upon taking of the oath. Thus, without taking the oath, the President of the Republic of Moldova **is unable to take office**, therefore new Presidential elections needing to be called (*JCC no.2/2017, §29*).

The Court has held that the oath of the President of the Republic of Moldova is not a formal or symbolic act, is not just the solemn proclamation for taking the oath and signing the text of the oath**. The oath administered by the President of the Republic of Moldova has the value of a constitutional legal act**, which produces legal constitutional effects (*JCC no.2/2017, §30*).

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[46] Decision no.32 of 31.03.2017 on the inadmissibility of the complaint no. 47a/2016 for the control of the constitutionality of certain judgements of the Parliament on the nominal composition of standing committees and delegations of the Parliament in international parliamentary organizations and bilateral parliamentary organisations.

[47] Judgement no. 2 of 24.01.2017 on the interpretation of the provisions of article 98 paragraph (6) of the Constitution of the Republic of Moldova (*co-decision on governmental reshuffle*)

The Court reiterated that **violation of the oath is, on the one hand, a serious violation of the Constitution, and a serious violation of the Constitution is, on the other hand, a violation of the oath**. The severity of this violation may raise an issue of incompatibility of the President with his position (*JCC no.2/2017, §32*).

Responsibility is a value enshrined in the Constitution (JCC 28/2017[48], §71).

The Court emphasized that the President of the country is not omnipotent and is just under the obligation of constitutional devotion to observe the limits imposed by the Constitution and bears responsibility for the fulfilment of his attributions in good faith (JCC 28/2017, §72).

3.2.2. Constitutional duty of the head of state

The Constitution regulates the legal status of the President of the Republic of Moldova, **his duties**, **the oath**, **immunities and incompatibilities** (JCC 35/2017[49], §51).

The Court has held that the Constitution attributes to the President of the Republic of Moldova a number of important powers in various fields, which determine his direct participation in the formation of state powers (JCC 35/2017, §52).

According to article 77 of the Constitution, the President of the Republic of Moldova is assigned two primary functions: (1) to represent the state and (2) to be the guarantor of national sovereignty, independence of the unity and territorial integrity of the state. In its case-law, the Constitutional Court noted that both functions do not allow the President to take action without regard to the will of Parliament and the relations already established by the supreme representative body of the people of the Republic of Moldova. To represent the state does not mean imposing your own will. Or, representing the interests of a person (in the given case, the interests of the State) presupposes the obligation of the representative to take into account the will of the person whose interests are being represented – JCC no. 17/2010, § 6 (JCC 35/2017, §53).

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[48] Judgement no. 28 of 17.10.2017 on the interpretation of the provisions of article 98 paragraph (6) in conjunction with articles 1, 56, 91, 135 and 140 of the Constitution (*failure of the President to carry out constitutional duties*)

[49] Judgement no.35 of 12.12.2017 on the control of constitutionality of certain provisions of article 112 paragraph (2) of the Electoral Code (*prohibition of being a party member for the President of the Republic of Moldova*)

In the same perspective, the second function of the President, which prescribes the assurance of national values already enshrined herein, and not the establishment of unipersonal will can also be seen in this context. Thus, the second function of the President requires the assurance of the sovereignty enshrined in the acts of the supreme representative body of the people of the Republic of Moldova, the assurance of the national independence, unity and territorial integrity of the State within the boundaries and limits established, according to the international acts and treaties by which the Republic of Moldova was recognized by the international community – JCC no. 17/2010, § 6 (JCC 35/2017, §54).

3.2.3. Areas in which the President of the Republic of Moldova is not entitled to initiate a referendum

The provisions of art. 88 of the Constitution empowers the President of the Republic of Moldova with the task to request the people to express their will on matters of national interest by way of referendum *(JCC 24/2017[50], §89).*

The Court has found that on 28 March 2017, the President of the Republic of Moldova has issued the Decree no.105–VIII on holding a consultative republican referendum, comprising four questions *(JCC 24/2017, §90).*

In its case-law, the Court has mentioned that, in view of the fact that free formation of the opinion is an essential precondition for the referendum to be able to effectively and actually express the will of the citizens, constituting the prerequisite for a genuine democratic manifestation of sovereignty, in accordance with the principle set forth in art. 2 of the Basic Law, a balance will have to be found between the need to protect the citizen's right to decide to participate in the referendum as a fundamental right and to ensure the free formation of the will of the electorate and the honesty of the ballot *(JCC 24/2017, §91).*

The Court underlined that having recourse to a referendum **necessarily implies the observance of the legal order as a whole**. In particular, a referendum cannot be held unless it is stipulated in the Constitution or in a law compliant with the Consti-

[50] Judgement no. 24 of 27.07.2017 on the control of constitutionality of the Decree of the President of the Republic of Moldova no. 105-VIII of 28 March 2017 on holding a consultative republican referendum on certain matters of national interest (*consultative republican referendum*)

tution, for example, **if the text subject to the referendum falls under the exclusive competence of the Parliament** *(JCC 24/2017, §92).*

The Court therefore has examined separately whether the questions contained in the President's Decree may be subject to a referendum and whether they can be correlated with each other in terms of content and nature, in order to ensure that the right is taken as a whole *(JCC 24/2017, §93).*

– On repealing a law

The constitutional right of the President to resort to a referendum however, did not confer to him the possibility of law-making, since, pursuant to the provisions of the Constitution, the President is not entitled to initiate a „legislative referendum", but only a „consultative one". It is clear from the provisions of art. 60 paragraph (1) of the Constitution, or, the Parliament is the only legislative authority in the State. Otherwise, this would raise a recognition of the President's legislative competence *(JCC 24/2017, §95).*

The Court has held that adopting/repealing a law by referendum may be the subject of a legislative referendum and cannot be subjected to a consultative referendum *(JCC 24/2017, §96).*

– On granting to the President of the Republic of Moldova additional constitutional rights regarding the dissolution of Parliament, as well as, modification of the number of deputies

a) If the President is entitled to subject to the referendum matters involving the amendment of the Constitution

The Court has examined separately the following facts (a) whether the President is entitled to subject to the referendum matters involving the amendment of the Constitution and (b) to establish new grounds for the dissolution of the Parliament *(JCC 24/2017, §99).*

Constitutional rigidity is an important corollary to the supremacy of the Basic Law. The rigidity of the Constitution is a guarantee for its stability, on the latter largely depending also the stability of the entire state normative system, the certainty and the predictability of human conduct being necessary for the legal certainty (and not only) of the members of the community *(JCC 24/2017, §100).*

For that purpose, the Court has held that **any matter related to the amendment of the Constitution is to be circumscribed to the procedure for the review of the Constitution, strictly determined by the Supreme Law** *(JCC 24/2017, §101).*

The Court has reiterated that the subjects empowered with the constitutional right to initiate the amendment of the Supreme Law are exhaustively set forth in art.141 paragraph (1) of the Constitution. **According to the constitutional provision, the President of the Republic of Moldova is not entitled to initiate the amendment of the Constitution** *(JCC 24/2017, §102).*

At the same time, in its case-law, the Court has mentioned that under the text of the art.88 let. f) of the Constitution, which provides for the right of the President of the Republic of Moldova to request the people to express their will on matters of national interest by way of referendum, the constituent legislator has foreseen the possibility of the President to address to the electorate only for major issues, **which the nation may face at a determined point in time, but not also in connection with the approval or rejection of a law amending the Constitution** – Judgement no. 57 of 3 November 1999 *(JCC 24/2017, §103).*

Therefore, the Court has highlighted that the **matters related to the amendment of the Constitution cannot fall within the scope of issues that could be subjected to a consultative referendum by the President**. **Or, such an amendment would imply implicitly granting the President of the Republic of Moldova the right of initiative for the amendment of the Constitution, which is contrary to article 141 of the Supreme Law** *(JCC 24/2017, §104).*

In the meantime, having examined the complaint, the Court observed that, although the art.148 of the Electoral Code provides for the initiation of the referendum on the revision of the Constitution to be carried out under the terms set forth in art.141 of the Constitution, equally, the provisions of art.144 paragraph (2) stipulate that the subjects mentioned in paragraph (1), including the President of the Republic of Moldova, may initiate **any** type of referendum. In this respect, the Court notes that the provisions of art.144 paragraph (2) of the Electoral Code are contrary to the provisions of art.141 of the Constitution *(JCC 24/2017, §106).*

b) On the establishment of new grounds for the dissolution of the Parliament

The Court has held that the **right of the President to dissolve the Parliament must be understood as a counterbalance mechanism, and not as a one that would unbalance the powers in a state and would generate political crises** *(JCC 24/2017, §110).*

Or, formerly namely such crises were due to a constitutional provision contained in article 78, which allowed the President of the Republic of Moldova to dissolve the Parliament in case of non-election of the head of state by Parliament, generating a vicious circle of elections and dissolutions *(JCC 24/2017, §111).*

The situation has been remedied by the Judgement of the Constitutional Court no.7 of 4 March 2016, which resulted in the election of the President of the Republic of Moldova by a universal, equal, direct, secret and free vote expressed by citizens, **under a parliamentary regime**. The judgement of the Court, motivated by the necessity to avoid repeated dissolutions of the Parliament, rather than to multiply them, concerned only the way of choosing the President of the Republic of Moldova, not his powers, modified by the Law no. 1115-XIV of 5 July 2000, in the sense of configuring the parliamentary governing regime *(JCC 24/2017, §112).*

The court has held that the election of the President by popular vote does not require the need for turning him into an opposing party of the Parliament. Although the election by popular vote tends to strengthen the position of the President, in similar constitutional systems, the presidents elected by popular vote continue to play the role of *neutral power* and do not have broad powers, whilst the necessary balances and counterbalances are being guaranteed by parliamentarism *(JCC 24/2017, §113).*

In this respect, within parliamentary systems the head of state plays the role of a neutral arbitrator, or a *neutral power,* being detached from political parties. Even if no one can prevent the head of state from having his political opinions and sympathy, his mandate is limited. The president is an important element of the political system, but he is not a partisan of politics. *(JCC 24/2017, §114).*

The authority of the President to dissolve the Parliament is defined by his neutral position, whilst its purpose is to prevent the institutional bottlenecks. As demonstrated by the comparative analysis, most states with new democracies and a parliamentary system have opted for enumerations of specific cases in which the President is entitled to

dissolve the Parliament, and not for the introduction of a general clause on discretional dissolution *(JCC 24/2017, §115).*

The Court pointed out that **cumulating the existing specific cases on dissolution with new ones could be interpreted as conferring upon the President the right to use the tool for dissolution of the Parliament as a tool for the promotion of the party politics, in contradiction with his role of *neutral power* within the current parliamentary regime. This may cause unnecessary political conflicts** *(JCC 24/2017, §116).*

This opinion is also supported by the Venice Commission, being exposed in the Opinion on the proposal by the President of the Republic of Moldova to amend the Constitution with a view to expand the President's powers to dissolve Parliament, adopted at its 111th plenary session of 16-17 June 2017, CDL-AD(2017)014 *(JCC 24/2017, §117).*

Also, in the aforementioned Opinion, the Venice Commission has underlined that granting the President discretionary power to dissolve Parliament makes the other grounds listed in the proposal entirely superfluous. It could be even taken to mean that the general power of dissolution is not linked to the times of institutional crisis (which are covered by the specific cases of dissolution), but adds the possibility for the President to dissolve Parliament for purely political reasons, for example, if s/he disagrees with a policy choice made by Parliament and wants new elections. Such interpretation of the President's power to dissolve Parliament changes the neutral role of the President and turns him into a political player. **This is not compatible with the logic of a parliamentary regime** *(JCC 24/2017, §118).*

Discretional dissolution powers in the hands of the Head of state may be dangerous in countries lacking an established democratic tradition and where it is not subject to certain restrictions, precisely because it **risks being interpreted as a tool of party politics** *(JCC 24/2017, §119).*

Similarly, this can serve as a basis for a confrontation between a personality and a collective institution. The reason why such a situation is avoided in constitutions is that, in one way or another, such a confrontation of trust may involve demagogic behaviour (which a person may manifest better than an institution) and can generate risks to the institutional system not only in a particular case, but also over a long term *(JCC 24/2017, §120).*

The Court stated that the **popular mandate itself does not change the powers of the head of state and does not imply granting him the discretionary power to dissolve the Parliament** *(JCC 24/2017, §121).*

No amendment of the Constitution could be adopted that would affect the harmony of the provisions of the Constitution or the harmony of the values enshrined therein – JCC no.7 of 4 March 2016, section 70 *(JCC 24/2017, §124).*

In this regard, the Venice Commission also stresses that „each constitution is the result of balancing various powers. If a power is given to one state body, other powers need to be able to effectively control the exercise of this power. The more power an institution has, the tighter control mechanisms need to be constructed. Comparative constitutional law cannot be reduced to identifying the existence of a provision the constitution of another country to justify its democratic credentials in the Constitution of one's own country. Each Constitution is a complex array of checks and balances and each provision needs to be examined in view of its merits for the balance of powers as a whole" *(JCC 24/2017, §125).*

Thus, in the light of the foregoing, the Court has held that conferring upon the President of the Republic of Moldova extensive and discretional powers to dissolve Parliament **does not ensure the equilibrium of constitutional matter in a parliamentary regime where the duties of the President are limited and tends to obstruct the legislative activity by generating constitutional crises** *(JCC 24/2017, §126).*

Moreover, the Court has underlined, as a matter of principle, that any amendment targeting the competences of the President are to have effect only for the successor's mandate and cannot affect the duties of the President in office. This opinion is also shared by the Venice Commission in the *aforementioned* Opinion *(JCC 24/2017, §127).*

- On the study of some school subjects in educational institutions

Regarding the study of the school subject „History of Moldova" in educational institutions, the Court recalled that in its case-law it stated that scientific assessment of an issue, being the task of the academic community, and not of the political one, is to be dealt with by experts and scholars – JCC no. 36 of 5 December 2013 *(JCC 24/2017, §128).*

The Court found that this issue is related to research in the light of rules specific to scientific methods, which are based only on evidence of historiographical analysis *(JCC 24/2017, §129).*

For the reasons stated above, the Court has highlighted that the matters relating to the subject of science cannot be politicized and cannot be subjected to political and/or popular vote *(JCC 24/2017, §130).*

3.2.4. Establishment of interim office of the President for the appointment of ministers

In case of formation of the Government a tripartite relationship between the designated Prime Minister, the Parliament and the President, as well particular complex procedures inherent to the Government's investiture are in place. The core element of the government's investment in Parliament is its activity program and not the people (ministers), although they are subject to parliamentary scrutiny (JCC 28/2017[51], §59).

On the contrary, governmental reshuffle does not imply the exercise of the Parliament's competence, since any changes in its composition take place within the executive power. Each member of the Government individually bears political responsibility in front of the Prime Minister. The Parliament cannot withstand the recall of a member of the Government; however, if loses its confidence in the Government, it can make use of the instrument of vote of no confidence against the entire Government (JCC 28/2017, §60).

As a symmetry to the fact that the President has no constitutional power regarding the selection by the appointed candidate for the position of Prime Minister of the members of the government team, consequently the head of state has no power from the constitutional perspective to change the composition of the Government, i.e. in case of reshuffle. The real decision-making power regarding the recall or appointment of a member of the Government belongs exclusively to the Prime Minister. Only the Prime Minister may have an initiative in this respect, and despite the fact that the Constitution provides that the proposal to recall or appoint a member of the Government is addressed to the head of state, the latter cannot refuse it. Consequently, the President's decree on the appointment or recall a member of the Government repeatedly proposed by the

[51] Judgement no. 28 of 17.10.2017 on the interpretation of the provisions of article 98 paragraph (6) in conjunction with articles 1, 56, 91, 135 and 140 of the Constitution (*failure of the President to carry out constitutional duties*)

executive is a formal act that merely „authenticates" the will of the Prime Minister to make changes in the composition of the government team. (JCC 28/2017, §61).

The Court, therefore, has found that the deliberate refusal of the President of the state to fulfil his constitutional duty to nominate the candidate for Prime Minister proposed repeatedly constitutes a serious breach of both his constitutional obligations and oath administered by him, this one being a circumstance justifying the initiation by Parliament of the procedure to suspend the President, in accordance with article 89 of the Constitution (JCC 28/2017, §84).

At the same time, the Court has held that the President's dismissal mechanism is a parliamentary option, being a complex and lengthy procedure that does not promptly address the issue of full functionality of fundamental institutions deliberately obstructed by the President (JCC 28/2017, §85).

The Court has found that the **President of the state, flagrantly breaching the oath administered when taking up the office, refused to fulfil his constitutional obligations, as provided for in the Constitution and relevant judgements of the Constitutional Court**, **with which he is related to as a whole. The President's refusal to exercise** his duties not only blocked the nomination of the defence minister, but also created a dangerous precedent threatening the functionality of the procedure of governmental reshuffle as a whole and the authority of the Constitutional Court (JCC 28/2017, §100).

Having analysed the Constitution as an integral whole as well as the objective hereof, aimed at avoiding the creation of the power vacuum and ensuring fully functioning institutions, the Court has pointed out that in the event of institutional bottlenecks, where the powers of some institutions are not being exercised by their holders, regardless of the reasons of these bottlenecks, constitutional provisions provide for their replacement by the establishment of the interim office (JCC 28/2017, §101).

The Constitution contains rules that provide for the **temporary** or **definite impossibility** of continuing to exercise the mandate hereof (JCC 28/2017, §104).

It clearly results from the contents of articles 90 and 91 of the Constitution that the Supreme Law distinguishes between two different situations of impossibility to exercise the office of President:

(a) **temporary impossibility**, case in which the President may resume his activity, the interim office shall be instituted without making the position vacant;

(b) **definite impossibility** (other than death), a situation in which the President cannot resume his activity anymore for **more than 60 days**, thus occurring the vacancy of the office and elections for a new President, the interim office being instituted for this period (JCC 28/2017, §105).

All these situations, provided for both in article 90 and article 91 of the Constitution, result in the establishment of the interim office (JCC 28/2017, §106).

The Constitution does not specify the hypothesises in which the impossibility may intervene (JCC 28/2017, §107).

Logically, ***the temporary impossibility*** to exercise the office of the President is generated by ***any circumstance incompatible with the exercise of duties***, other than death (JCC 28/2017, §108).

The Court held **that the inaction of the presidential institution, by failing to perform its duties either on *objective* or *subjective* grounds, by deliberately refusing to exercise its competences, has *identical* consequences**, i.e. deadlock of other institutions (JCC 28/2017, §109).

In this context, given that, in the case of deliberate refusal to exercise the duties, the consequences are identical to those which arise in the case of impossibility to exercise the duties on objective grounds, the Court held that the **solution for these situations must be identical, that is to say, the establishment of the interim office** (JCC 28/2017, §110).

Thus, by deliberately refusing to execute one or more constitutional duties, the President has removed himself from their exercise (JCC 28/2017, §111).

In this context, his deliberate inaction constitutes, for the purposes of article 91 of the Constitution, a temporary impossibility on subjective grounds (lack of desire) to exercise his/her competence in question, which **justifies the establishment of the interim office in order to ensure the exercise of this (these) constitutional duty(duties) of the President** (JCC 28/2017, §112).

In this respect, the Court held that, under article 91 of the Constitution, in the event the President of the Republic of Moldova **finds himself/herself in temporary impos-**

sibility to execute his/her duties, the interim office shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister (JCC 28/2017, §113).

In accordance with article 135 paragraph (1) let. f) of the Constitution, the Constitutional Court is the sole authority competent to ascertain the **circumstances justifying the interim office of the President, by issuing an opinion in this regard** (JCC 28/2017, §114).

In case of deliberate constitutional inaction to carry out the duties, the duration of the impossibility has no occurrence for the establishment of the interim office, unlike the case of objective impossibility when the 60 day term is exceeded, for which the vacancy of the position is ascertained under article 90 of the Constitution (JCC 28/2017, §115).

The establishment of the interim office, caused by the deliberate refusal to execute one or more constitutional duties, **and the circumstances justifying the interim office of the President** shall be determined in each particular case by the Constitutional Court in accordance with the competence assigned to it by article 135 para. (1) let. f) of the Constitution, upon the referral of the subjects provided by article 38 para. (1) and (2) let. c) of the Code of Constitutional Jurisdiction, according to their area of competence (JCC 28/2017, §116).

Thus, in the given order, the President of the Parliament or the Prime Minister, acting as Interim President, will issue the decrees which failed to be unissued by the holder who deliberately refused to exercise his/her constitutional duties (JCC 28/2017, §117).

3.3. The Government

3.3.1. Co-decision on governmental reshuffle

a) Division of competences within governmental reshuffle

Pursuant to article 98 paragraph (6) of the Constitution, in the event of the governmental reshuffle or vacancy of office, the President of the Republic of Moldova revoke and appoint, upon the proposal of the Prime Minister, some members of the Government (*JCC no.2/2017*[52], §33).

[52] Judgement no. 2 of 24.01.2017 for the interpretation of the provisions of article 98 paragraph (6) of the Constitution of the Republic of Moldova (co-decision on governmental reshuffle)

In its case-law, the Court has held that, in regulating the relations between the Prime minister and the President, the Constitution provides for their cooperation in the decision-making process, so that these competences could balance each other, in the sense of avoiding discretionary decisions and abuses. All of these participants are subjected to constitutional provisions, having to comply with the legal rules on how to interact and to act jointly in order to fulfil the mission of revoking or nominating ministers – *JCC no.7/2013* (*JCC no.2/2017, §35*).

The Court noted that within the parliamentary regime of the Republic of Moldova, the President of the Republic of Moldova has a volume of powers expressly established by the Constitution. Since the President has no political responsibility for the work of the Government, his role in the composition of the Government is limited. (*JCC no.2/2017, §36*).

The Court held that, while exercising its power under article 98 paragraph (6) of the Constitution, **the President of the Republic of Moldova may refuse** the proposal advanced by the Prime minister to appoint a person to a vacant position of minister and **may ask him to advance another proposal** (*JCC no.2/2017, §38*).

However, the political will of the President cannot be a source for institutional deadlocks, on the one hand and cannot, on the other hand, override the powers of the Prime minister within the co-decision procedure in the process of governmental reshuffle (*JCC no.2/2017, §39*).

b) The right of the President to request the Prime minister to advance him/her another proposal for the vacant position of the minister

The Court found that **the President of the Republic of Moldova is entitled to verify the compliance of the candidate nominated by the Prime minister for a position, however he has no right to veto the Prime Minister's proposal**. In all cases **the rejection of the candidate must be motivated, thus excluding the validity of an arbitrary refusal** (*JCC no.2/2017, §46*).

The Court pointed out **that the President of the Republic of Moldova may refuse** the proposal of the Prime minister to appoint a person to a vacant post of minister and **ask him/her to make another proposal, without constituting a source of institutional deadlock or cancelling the competences of the Prime minister within the co-decision procedure in governmental reshuffle** (*JCC no.2/2017, §47*).

c) How many times can the President ask for another nomination?

In order to answer this question, the Court has recourse to an analogy on the constitutional mechanism for resolving the legal conflict in the law-making procedures (*JCC no.2/2017, §49*).

In its previous case-law, the Court held that the President of the Republic of Moldova, in the event he/she has objections toward a law, is entitled to send it to the Parliament for re-examination, **but only once** – JCC no.9 of 26 February 1998 (*JCC no.2/2017, §50*).

The Court has found that **such solution has constitutional value in principle in settling legal disputes between two or more public authorities that have joint responsibilities in procedures provided for by the Basic Law and that this principle is of general application in similar cases** (*JCC no.2/2017, §51*).

The Court held that, being applied in the case of the governmental reshuffle process, **such solution is likely to eliminate the deadlock that would arise from the eventual repeated refusal of the President of the Republic of Moldova to swear in a minister at the proposal of the Prime minister** (*JCC no.2/2017, §52*).

Thus, the President of the Republic of Moldova **can only refuse once the proposal of the Prime minister in appointing a person to the vacant post of minister, providing a reason in this respect** (*JCC no.2/2017, §53*).

At the same time, the limitation to a single refusal of the proposal is justified by the fact that the responsibility for another nomination rests exclusively with the Prime minister (*JCC no.2/2017, §54*).

In this regard, the Court noted that out of both constitutional and legal provisions, the Court deducts the primary role of the Prime minister in the procedures for the revocation or appointment of ministers. The Court deduced the importance of maintaining the government team for the duration of the mandate offered by the Parliament. This conclusion is also crystallized from the provisions of art.103 paragraph (1) of the Constitution, according to which, the mandate of the Government and the mandate of the Parliament cease to have effect at the same time – JCC no. 7 of 18 May 2013 (*JCC no.2/2017, §55*).

As a result, the rejection of the candidacy for the vacant position of minister proposed by the Prime-minister **may take place only once and must be based on** the ob-

servance of the legal requirements for the exercise of the position of a member of the Government (*JCC no.2/2017, §56*).

At the same time, the Court noted that the Constitution does not set a concrete deadline for the appointment of the Government after Parliament has given it a vote of confidence. At the same time, in order not to affect the entry of the Government in the exercise of its functions in general and of the general management positions of the public administration, in particular, the Court held that this deadline should be reasonable – JCC no. 15 of 23 March 1999 (*JCC no.2/2017, §57*).

3.3.2. Armed forces. Military contingent participation in training sessions

The Court held that out of the analysis of duties of the President of the Republic of Moldova in the field of defence, provided for by the Constitution, the President does not have the exclusive competence to take certain decisions, this being shared with the Parliament, therefore the head of the state not having full discretion in the field of defence. Similarly, certain competencies established by law are shared between the President of the Republic of Moldova and the Government (DCC 94/2017[53], § 25).

Moreover, given that the President of the Republic of Moldova is also the supreme commander of the armed forces, by Judgement no. 15b of 16 December 1996 on the interpretation of article 87 of the Constitution of the Republic of Moldova, the Court ruled that the President of the Republic of Moldova is in charge of the Ministry of Defence within the limits of the defence duties provided by the Constitution of the Republic of Moldova and the normative acts that do not contradict the Supreme Law (DCC 94/2017, § 26).

The Court found that Law No.136 of 7 July 2017 on the Government provides in art. 4 let. k) that one of the main areas of Government activity is national defence and security. The same law, by article 6, assigns to the Government the competence to ensure the execution of the normative acts of the Parliament and of the provisions of the international treaties to which the Republic of Moldova is a party, as well as the fulfilment

[53] Judgement no. 94 of 28.09.2017 on the inadmissibility of complaint no. 119a/2017 on the control of constitutionality of the Government Decision no. 709 of 6 September 2017 on the participation of a certain military contingent of the National Army in the training session organized in Ukraine (*delegation of military officers for training*)

of other attributions provided by the normative framework or arising from the role and functions of the Government (DCC 94/2017, § 30).

Also, the provisions of art. 27 paragraph (1) of the Law no.345-XV of 25 July 2003 on the national defence state that the Government is responsible for the organization of activities and the implementation of the measures regarding the national defence within the limits of the powers stipulated by the law, and according to paragraph (2) let. j) of the same article, the Government ensures the accomplishment of the international treaties in the military field (DCC 94/2017, § 31).

In the present case, the Court noted that Judgement no. 709 of 6 September 2017, according to the preamble, was approved by the Government under the Cooperation Agreement between the Ministry of Defence of the Republic of Moldova and the Ministry of Defence of Ukraine signed on 19 February 1993, article 13 of the Law no. 219 of 3 December 2015 on the participation of the Republic of Moldova in international missions and operations and article 27 of the Law no.345-XV of 25 July 2003 on national defence (DCC 94/2017, § 32).

The Court found that art. 4 of the Cooperation Agreement between the Ministry of Defence of the Republic of Moldova and the Ministry of Defence of Ukraine stipulates that, for the purpose of implementing the provisions of the Agreement, by 1 December of each year, the Parties shall sign the Cooperation Program for the following year containing the envisaged actions, the time of their deployment, the number of participants, forms of action as well as other issues (DCC 94/2017, §33).

It clearly results from the aforementioned that the action on the "participation of a certain military contingent of the National Army, without armament, munitions and military technique in the training session "Rapid Trident", within the Yavoriv Combat Training Center, Ukraine, in the period of 7-23 September 2017" is foreseen in the Cooperation Program for 2017 between the Ministry of Defence of the Republic of Moldova and the Ministry of Defence of Ukraine (DCC 94/2017, §34).

The Court considered that the provisions regarding the participation of a military contingent of the National Army at the training session in Ukraine does not have a primary character and the Government, respectively, approving the Judgement no. 709 of 6 September 2017, did not abrogate powers that, according to the Constitution, belong

to other public authorities. Or, according to the provisions of article 23 paragraph (4) of the Law no.595-VIX of 24 September 1999 on international treaties of the Republic of Moldova, the Ministry of Defence, whose direct duties are to carry out the provisions of the *above* Agreement, shall inform the Government about the issues involved in the application of the Treaty, and according to paragraph (1) of the same article, the Government has the obligation to take the necessary measures to ensure the implementation of international treaties (DCC 94/2017, § 35).

The Court found that the Government approved the participation of a military contingent of the National Army in the number of 57 soldiers at the training session without armament, munitions and military technique, and not of the military units (DCC 94/2017, § 36).

3.4. Local Public Administration

3.4.1. Exercise of the mandate by the acting mayor

By analysing the Constitution as a unitary one and its specific objective, which is to avoid the creation of a vacuum and to ensure fully functioning institutions, the Court emphasized that in the case of institutional deadlocks, when the duties of some institutions are not exercised by their holders, regardless of the grounds of such deadlocks, the constitutional provisions provide for their replacement by the establishment of the interim (DCC 112/2017[54], §26).

The Court found that the legislator did not limit the volume of the acting mayor's duties. Thus, the Court held that the law does not establish any distinction between the attributions of the mayor and the acting mayor, which means that they have the same attributions – *ubi lex non distinguit nec nos distinguere debemus* (where the law does not distinguish, neither should we distinguish) (DCC 112/2017, §27).

Thus, the Court held that the *ipso jure* assumption by the acting mayor of the fullness of the duties of the title holder is to ensure the continuity of the exercise of the duties

[54] Decision no.112 of 04.12.2017 on the inadmissibility of complaint no. 145a/2017 on the control of constitutionality of the article 17 paragraph (2) of the Law no. 136 of 17 June 2016 on the status of Chisinau municipality (*appointment of deputy mayors*)

of the mayor if there arise circumstances that would make his activity impossible (DCC 112/2017, §28).

The only difference between the mandate of the holder and the interim one is that the exercise of the mandate by the acting mayor is provisional, that means limited in time (DCC 112/2017, §29).

3.4.2. Suspension of the mayor from office

The Court found that the suspension of the mayor from office is a common mechanism provided by the European legal systems. Thus, an analysis of the status of the local elected in European law shows that the suspension of the mayor's mandate is regulated by the legislation of the European states (DCC 89/2017[55], §30).

Thus, the application towards the mayor of the procedural measure of constraint - temporary suspension from the office – is not automatically dispensed by the law (ope legis) but will be subject to appreciation of the court. Or, it is its duty to establish the grounds and justify the opportunity to suspend the mayor from the office, as well as to motivate its decision, taking into account the particular circumstances of each case, without being limited to general and abstract formulations (DCC 89/2017, §35).

Moreover, the Court found that the suspension of the mayor from the office cannot take place in the absence of an intrinsic link to the alleged criminal act committed with the function held – see mutatis mutandis JCC no. 6 of 3 March 2016 (DCC 89/2017, §36).

The right to undisturbed exercise the position acquired as a result of the electoral option is not an absolute right, being protected by the provisions of the Constitution as long as it is accomplished in compliance with the conditions provided by it and by the law (DCC 89/2017, §37).

Moreover, the court in applying this procedural constraint measure does not rule on the mayor's guilt or innocence, nor on its criminal responsibility. The Court held that the statutory provisions on suspension from office may be of a necessary nature when they are determined by temporary situations which make it impossible to carry out its

[55] Decision no.89 of 06.09.2017 on the inadmissibility of complaint no. 116g/2017 referring to the exception of unconstitutionality of the article 33 of the Law no.436-XVI of 28 December 2006 on the Local Public Administration (*suspension of the mayor from office*)

duty. In fact, the suspension from office could be dictated by the need to ensure the protection of the public institution against the danger of continuing the illicit activity and the extension of the dangerous consequences of the criminal deed (DCC 89/2017, §40).

Similarly, according to the case-law of the European Court of Human Rights, the purpose of the suspension measure is not punitive, but rather cautious and provisional, in so far as it concerns the defence of the public interest by suspending from office a person accused of committing a criminal offense service, and thus preventing other possible similar acts or consequences of such acts – see *mutatis mutandis* the case of Tehanciuc v. Romania, decision of 22 November 2011 (DCC 89/2017, §41).

At the same time, the Court pointed out that the suspension from office does not amount to revocation (DCC 89/2017, §42).

3.4.3. Referendum on the revocation of the mayor

The Court pointed out that when the decision to hold a local referendum on the revocation of the mayor, both the local council and the court, if the initiative to hold the local referendum to revoke the mayor comes from the citizens, it should not be limited to reiterating the formal grounds stipulated in the Electoral Code, but it has the task of motivating the concrete application of these grounds, circumscribed to each particular case (DCC 96/2017[56], §35).

The Court held that the decision of the Central Electoral Commission to determine the date of the local referendum on the revocation of the mayor should be based on a reasoned decision containing relevant and sufficient factual arguments justifying the revocation of the mayor from office (DCC 96/2017, §36).

In addition, the Court noted that the decision of the local council and of the electoral body may be the subject of an action in the administrative litigation, so it is within the jurisdiction of the court to verify and decide on the merits of the motives of the mayor's revocation in each individual case (DCC 96/2017, §37).

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[56] Decision no.96 of 04.10.2017 on the inadmissibility of complaint no. 123a/2017 on the control of constitutionality of the articles 33 and 34 of the Law on Local Public Administration and art. 177 para. (2) of the Electoral Code (*revocation of the mayor by referendum*)

3.5. Judicial Authority

3.5.1. Statute of Judges

3.5.1.1. Independence of Judges

The constitutional norms on the statute of the judge set the same requirements and principles enshrined in the international instruments governing the statute and rights of judges, guarantees of their independence, based on the importance of justice in defending the rule of law (JCC 12/2017[57], *§46*).

Thus, according to the *Bangalore* Principles *of Judicial Conduct*, "the judge must exercise his judicial function independently on the basis of his own appreciation of the facts and in accordance with the spirit of the law, without external influences, suggestions, pressures, threats and without any direct or indirect interferences, whichever comes from and for what reason" – UN Resolution 2003/43 of 29 April 2003 (JCC 12/2017, *§47*).

The Judges' independence dimension is also outlined in the Opinion no.1(2001) of the Consultative Council of European Judges of the Council of Europe (CCJE), according to which, a judge is in the performance of his or her functions no-one's employees; he or she is holder of a State office. He or she is thus servant of, and answerable only to, the law. It is axiomatic that a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary (JCC 12/2017, *§49*).

Judicial independence is also to be dealt with through the notion of "independent tribunal" enshrined in the article 6 of the European Convention. The European Court has highlighted the importance of judges' independence not only in relation to unjustified influences outside the judicial system, but also within that system – the case of *Parlov-Tkalčić v. Croatia*, judgement of 22 December 2009 (JCC 12/2017, §52).

Starting from the fact that the concepts of objective independence and impartiality are closely linked between them, the European Court has determined that in certain circumstances they could be considered together – the case of *ParlovTkalčić v. Croatia*, judgement of 22 December 2009; the case of *Oleksandr Volkov v. Ukraine*, judgement

[57] Judgement no. 12 of 28.03.2017 referring to the exception of unconstitutionality of the article 307 of the Criminal Code (*criminal liability of judges*)

of 9 January 2013; the case of *Findlay v. the United Kingdom*, judgement of 25 February 1997 (JCC 12/2017, §53).

Thus, with reference to the guarantees of a fair trial, the European Court has determined that the judge's impartiality is appreciated both by a subjective approach that takes into account the personal beliefs or interests of the judge in a case, and according to an objective test which determines whether the judge has provided sufficient guarantees to exclude any reasoned doubt in this respect (the case of *Demicoli v. Malta*, no.13057/87, judgement of 27 August 1991, §40). As a matter of principle, in the case of *Padovani v. Italy* (26 February 1993) the European Court ruled that it is fundamental in a democratic society that the courts should inspire trust in the parties, art. 6 paragraph 1 of the Convention requiring each court to be impartial (JCC 12/2017, §54).

The European Court has highlighted on several occasions that the personal impartiality of a magistrate shall be presumed in the absence of proof to the contrary – *Hauschildt v. Denmark*, 24 May 1989 (JCC 12/2017, §55).

In the view of the Venice Commission, in order to guarantee the independence of the judicial power, judges must be protected from any induced external influence, and to this end they should only benefit from functional immunity (Report on the Independence of the Judicial System Part I: The Independence of Judges). The Venice Commission also noted that "**it is essential to ensure that judges can properly exercise their functions without jeopardizing their independence from the fear of initiating criminal proceedings or initiating civil action by the injured party, including the authorities of the states**" [CDL-AD (2014) 018, section 37] (HCC 12/2017, §56).

3.5.1.2. Impartiality of the Court

The Court underlined that, according to the EC Recommendation (2010) 12 on judges: independence, efficiency and responsibilities, the executive and the legislature should avoid criticism that would undermine the independence of the judicial power or weaken public confidence in the judiciary (DCC 79/2017[58], §29).

[58] Decision no. 79 of 27.07.2017 on the inadmissibility of complaint no. 103g/2017 referring to the exception of unconstitutionality of the section 14 of the sole article of the Law no. 244-XVI of 21 July 2006 amending and supplementing the Code of Civil Procedure of the Republic of Moldova (*competence in the field of administrative law*)

The Court noted that an essential attribute of a fair trial is the principle of impartiality of the judge. In this respect, Article 116 of the Constitution establishes that judges of the courts of law are independent, impartial and irremovable under the law (DCC 79/2017, §32).

By enacting legal provisions on incompatibility, not only the protection of the interests of litigants are being targeted, but also the achievement of an optimal administration of justice, by pronouncing judgments based on truth and on the complete impartiality of judges (DCC 79/2017, §34).

The existence of impartiality must be determined by a test of subjectivity in which personal beliefs and behaviour of a particular judge must be taken into account, in other words, whether the judge has personal prejudices or manifests a biased attitude in relation to a particular case; and also by an objectivity test, that is to say, whether the court itself and, inter alia, the composition of the panel provide sufficient guarantees to rule out any legitimate doubts as to its impartiality – see, for example, the case of Kyprianou v. Cyprus [MC], judgement of 15 December 2005, §118; Micallef v. Malta [MC], judgement of 15 October 2009, §93 (DCC 79/2017, §37).

3.5.2. The inner conviction of a judge

Under the challenged criminal procedural provisions, the judge shall assess the evidence according to his inner conviction *(JCC 18/2017[59], §62).*

The Court held that ***the free assessment of evidence is closely linked to the rule of research in all aspects, complete and objective, of the circumstances of the case and of the evidence*** *(JCC 18/2017, §64).*

Thus, the challenged provisions shall be interpreted in that the inner conviction of the judge ***is formed following a research on all the adduced evidence*** *(JCC 18/2017, §65).*

The notion of "inner conviction" does not bear the meaning of a subjective opinion, but that of a certitude acquired by the judge following the examination of all the evidence as a whole, multifoldedly, objectively, and being guided by the law *(JCC 18/2017, §66).*

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[59] Judgement no.18 of 22.05.2017 referring to the exception of unconstitutionality of certain provisions of the Code of Criminal Procedure (*the inner conviction of a judge*)

The Court held that the free assessment of the evidence precludes the possibility of providing a pre-established probationary power in relation to a certain evidence. No evidence can be assessed in advance, but the assessment of each evidence is done by the court following a concurrent examination of all the evidence administered in order to find out the truth *(JCC 18/2017, §68).*

Or, the assessment of evidence from one's own conviction should not be confused with the assessment based on impression, which is the product of certain emotional perceptions *(JCC 18/2017, §69).*

Similarly, the Court noted that the free assessment of evidence does not mean arbitrariness, but the freedom to assess the evidence reasonably and impartially, the results of the evidence assessment being laid down by the court of law in procedural acts, that shall be objectively reasoned under all respects according to the law. ***The reasoning is expressed by the fact that when admitting evidence and rejecting others, the judge is obliged to state the reasons for such a solution*** *(JCC 18/2017, §70).*

As regards the reasons for the judgments, the European Court has held that the role of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision gives the party the opportunity to challenge it, as well as the possibility for the decision to be reviewed by a higher court. Only by adopting a reasoned decision can there be public control over the administration of justice – judgement *Suominen v. Finland* of 1 July 2003 *(JCC 18/2017, §71).*

The Court held that, in line with art.389 of the Code of Criminal Procedure, the sentence of conviction is only delivered under the condition that following the judicial research, ***the guilt of the accused in perpetrating the offence is confirmed by a set of evidence investigated by the court of law.*** The sentence of conviction cannot be based on assumptions or, exclusively or principally, on statements filed by witnesses during the prosecution and read in court in their absence *(JCC 18/2017, §72).*

Also, in line with art.101 para.(5) of the Code of Criminal Procedure, the conviction decision cannot be based, to a decisive extent, on the statements of the protected witness or on the evidence obtained following performance of special investigative measures *(JCC 18/2017, §73).*

The Court therefore held that ***a sentence of conviction may only be given when all evidence in the defence has been countered by the inculpatory evidence, removing all the doubts about the innocence of the person.*** For this reason, insofar as the judge cannot reach a firm conclusion, the Code of Criminal Procedure sets forth in art.383 the right of the judge to resume the judicial inquiry if he finds that a certain circumstance requires materialization for the fair settlement of the case *(JCC 18/2017, §74).*

At the same time, under art.119 of the Constitution, the interested parties may make an appeal, under the law, against judicial judgments. In this regard, the provisions of art.409 para.(2) of the Code of Criminal Procedure, in the light of the devolutive effect, provide that ***the court of appeal is under the duty to examine the factual and legal aspects of the case apart from the arguments brought forward and requests made by the appellant***, but without worsening the situation of the appellant. Additionally, the Court observed that art.414 para.(4) of the Code of Criminal Procedure provides for the right of the court of appeal to undertake a new assessment of the evidence, in the event the first instance made an error when finding the guilt of a person. Subsequently, erroneous decisions may be redressed by the means of appeal, under the law *(JCC 18/2017, §75).*

Moreover, the European Court has retained in its case-law that only when a judicial review court is competent to analyse both factual and legal issues and to study the problem of guilt as a whole, it cannot, for reasons be concerned with the fairness of the proceedings, to deal with those matters without a direct appreciation of the statements of the person claiming to have failed to commit the act classified as an offense – judgement *Ekbatani v. Sweden* of 26 May 1988; judgement *Constantinescu v. Romania* of 27 June 2000 *(JCC 18/2017, §76).*

The European Court also noted that, in the context of an appeal proceedings against an acquittal sentence which was the subject of an appeal, it is necessary to proceed to its own assessment of the facts in order to ascertain whether there are sufficient grounds for the applicant's conviction. As a result, the court of appeal had to be aware of the facts and the law and to study in its entirety the matter of guilt or innocence – judgement of *Danila v. Romania* of 8 March 2007 *(JCC 18/2017, §77).*

At the same time, the Court recalled the standard of proof "***beyond a reasonable doubt***" enshrined in the case-law of the European Court of Human Rights, which pre-

sumes that in order for a sentence of conviction to be delivered, the accusation has to be proved beyond a reasonable doubt *(JCC 18/2017, §78).*

The existence of an evidence beyond a reasonable doubt is an essential component of the right to a fair trial and imposes on the plaintiff the duty to adduce evidence pertaining to all elements of the guilt, in a manner that would remove any doubts – ECHR Judgement *Bragadireanu v. Romania*, of 6 December 2006; ECHR Judgement *Orhan v. Turkey* of 18 June 2002; ECHR Judgement *Ireland v. the United Kingdom* of 18 January 1978 *(JCC 18/2017, §79).*

Additionally, the Court mentioned that this standard of proof may be fully understood only when related to the principle *in dubio pro reo*, which in turn constitutes a safeguard of the presumption of innocence. Therefore, under art.8 of the Code of Criminal Procedure, conclusions on the guilt of a person in committing an offence may not be based on presumptions, and ***all the doubts in proving the accusation which cannot be removed, are to be interpreted in favour of the suspect, indicter or the accused*** *(JCC 18/2017, §80).*

3.5.3. Limitation of judges' immunity

The independence of the judge is not regulated as an end in itself, and even less so as a privilege of the judge but serving to the realization of justice. From this perspective, the independence of the judge is a fundamental aspect of the rule of law *(JCC 23/2017*[60]*, §46).*

At the same time, as a constitutional guarantee, the independence of the judge cannot be interpreted as such as to determine the lack of responsibility of the judge. Thus, however important the freedom of judges in the exercise of their judicial functions, it does not mean that judges are not responsible *(JCC 23/2017, 47§).*

In the brief *Amicus Curiae*, adopted at its 110th plenary session, the Venice Commission has mentioned that a balance needs to be struck between immunity as a means

[60] Judgement no. 23 of 27.06.2017 referring to the exception of unconstitutionality of the article 23 para.(2) of the Law no.947-XIII of 19 July 1996 on the Superior Council of Magistracy (*limitation of judges' immunity*)

to protect the judge against undue pressure and abuse from state powers or individuals (immunity), on the one hand, and the fact that a judge is not above the law (accountability), on the other. The Venice Commission has consistently pointed out that judges should not be granted general immunity, but functional immunity for acts performed in the exercise of their judicial functions. This is because, in principle, a judge should only benefit from immunity in the exercise of his or her lawful functions. If he or she commits a criminal offense in the exercise of his or her office, he or she should have no immunity from criminal liability. – CDLAD(2017)002), §17 *(JCC 23/2017, §49).*

The Court notes that the Basic Law enshrines the principle of the independence and irremovability of judges. Among the safeguards to ensure effective enforcement of such principles is the special condition for starting criminal prosecution, applying certain procedural measures or carrying out certain procedural actions against the judge *(JCC 23/2017, §57).*

In this respect, the legislator set up a distinct and rigorous procedure of drawing the judge to criminal responsibility, the **decisive role** being attributed in this process to the Superior Council of Magistracy as a guarantor of the independence of the judiciary *(JCC 23/2017, §58).*

Therefore, the Court held that, as a rule, a *sine qua non* condition for initiating criminal prosecution as well as for temporary detention, forced taking, arrest or search of the judge is **the consent of the Superior Council of Magistracy**, representing a legal guarantee of the consolidation of the constitutional principles on the independence of judges *(JCC 23/2017, §61).*

Having analysed the challenged provisions [article 23 para.(2) of the Law no.947-XIII of 19 July 1996], the Court observed that the proposal of the Prosecutor General or of the Primary Deputy on expressing the consent to initiate criminal proceedings against the judge, as well as for his detention, forced taking, arrest or search is being examined by the Superior Council of Magistracy **in compliance with the terms or the circumstances set forth in the Code of Criminal Procedure** for its initiation, **without appreciating the quality and veracity of the materials submitted** *(JCC 23/2017, §63).*

The Court notes that, in the light of article 274 of the Code of Criminal Procedure, criminal proceedings may be initiated if there is a **reasonable suspicion that an offen-**

ce has been committed and there are no circumstances excluding the criminal proceedings *(JCC 23/2017, §64).*

Ex aequa, the Code of Criminal Procedure provides for the **grounds** for the detention of the person suspected of committing the offense (article 166), as well as for the **circumstances** under which the search may be started (article 125) and forced taking of the person (article 199) *(JCC 23/2017, §65).*

Having regard to the application of arrest, in the Judgement no.3 of 23 February 2016, the Court held that the arrest, **being an exceptional measure, can only be applied in certain cases and only for certain reasons, which must be shown concretely and convincingly in the judgment of the body initiating it.** Preventive arrest can only be ordered if it is impossible to apply any other milder precautionary measure *(JCC 23/2017, §66).*

The Court has also held that reasons for depriving of liberty of the accused of committing a crime may be considered the risk of: his/her removal from the court, the risk of affecting the performance of justice, the risk of committing other offenses, the risk of causing public disorder. **However, such threats or risks must be supported by evidence** *(JCC 23/2017, §67).*

The Court noted that the **Prosecutor General is to argue and prove** (*onus probandi*) the existence of the conditions or circumstances provided for in the Code of Criminal Procedure for initiating, as the case may be, the criminal proceedings against the judge, as well as his detention, forced taking, arrest or search. Correlatively, **the Superior Council of Magistracy has the task**, under article 23 para.(2) of the Law no.947-XIII of 19 July 1996, **to verify compliance with these requirements** *(JCC 23/2017, §69).*

From the criticized provisions, it is clear that when expressing the consent for the initiation of criminal proceedings against the judge, applying procedural measures or performing procedural actions, the Superior Council of Magistracy verifies the merits of the proposal of the Prosecutor General or of the Primary Deputy, **without giving appreciation to the quality** and **the veracity of the materials submitted** by the latter *(JCC 23/2017, §70).*

The Court therefore pointed out that by excluding *ab initio* the possibility of assessing the quality and veracity of the materials submitted by the Prosecutor General,

the Superior Council of Magistracy is limited and compelled to proceed to **a *quasi*-automatic approval of** the initiation of the criminal proceedings, application of certain procedural measures or performance of certain procedural actions against judges *(JCC 23/2017, §71).*

Such a situation obviously leads to the diminution of the importance of the consent of the Superior Council of Magistracy, which in fact constitutes a special requirement under the law and has the legal nature of an **act-condition** for the initiation of the criminal proceedings, application of procedural measures or performance of procedural actions against the judge *(JCC 23/2017, §72).*

Considering the constitutional role of the Superior Council of Magistracy, namely that of the guarantor of the independence of the judicial authority, it is under its obligation to examine in all material aspects the initiation of criminal proceedings, detention, forced taking, arrest or search of the judge in order to avoiding possible abuses, which would increase the risk of its functional independence being affected *(JCC 23/2017, §73).*

In the context of the foregoing, the Court noted that, in order to allow for the understanding of the *ratio decidenti* that led to the adoption of the judgement by which the Superior Council of Magistracy limits or refuse to limit the judges' immunity, it is imperative to analyse and appreciate the materials submitted by the prosecutor for the purposes of ascertaining whether the conditions or circumstances set forth in the Code of Criminal Procedure for the procedural measure or action have been complied with, as set out in the article 23 para.(2) first thesis of the Law no.947-XIII of 19 July 1996. Or, naturally, the conclusion of the Superior Council of Magistracy must result from the premises, which implies a factual examination of the materials submitted. Otherwise, the conclusion would be nothing more than a *non sequitur (JCC 23/2017, §75).*

Where the Superior Council of Magistracy is required to give its consent for the initiation of the criminal proceedings, the application of procedural measures or performance of procedural actions against the judge, it has the **obligation** to **motivate** its judgement, taking into account the particular circumstances of each case, without being limited to general and abstract formulations *(JCC 23/2017, §76).*

There is no doubt that the decision to limit or not to limit the judge's immunity falls within the margin of appreciation of the Superior Council of Magistracy, but that assessment must be accompanied by appropriate reasoning so as to overcome any suspicion of arbitrariness. In order to achieve this goal, the Court has considered it necessary to assess the materials submitted, even if there is to be ultimately carried out an examination by the independent and impartial tribunal [obliged *ope legis* to ensure compliance with the safeguards resulting from the article 6 of the European Convention], with the possibility of appealing against the pronounced judicial act *(JCC 23/2017, §77).*

In addition, the Court points out that, when expressing its consent or refusal to initiate the criminal proceedings against the judge, as well as to the detention, forced taking, arrest or search of the judge, the Superior Council of Magistracy **has the right and the obligation to appreciate the materials submitted, without drawing any conclusion on the guilt of the judge** *(JCC 23/2017, §78).*

Thus, summarizing the *aforementioned*, the Court concluded that the wording *"without appreciating the quality and veracity of the materials submitted"* of the article 23 paragraph (2) of the Law no.947-XIII of 19 July 1996 on the Superior Council of Magistracy brings prejudice to the principles of the independence and inviolability of the judge, being contrary to the article 116 para.(1) of the Constitution *(JCC 23/2017, §79).*

At the same time, since the procedure for limitation of judges' immunity is not covered by the guarantees of a fair trial, provided for by article 20 of the Constitution and article 6 of the European Convention, but constitutes an instrument to guarantee the independence of the judge, this judgment does not automatically imply revision of judgements of the Superior Council of Magistracy to limit the judge's immunity. The Court has highlighted that the verification of all aspects of ensuring a fair trial falls within the competence of the courts *(JCC 23/2017, §80).*

3.5.4. Criminal Liability of Judges

The Court noted that the constituent legislator, in stating that judges of the courts are independent, impartial and immovable, according to the law, enshrined the independence of the judge in order to ensure the exclusion of any influence from other autho-

rities. However, such a guarantee cannot be interpreted as such as to cause the lack of responsibility on the part of the judge. The Supreme Law, according to article 116 para. (1), does not only confer the prerogatives that underlie the concept of independence but also establishes certain limits, which are circumscribed to the term "according to the law" (JCC 12/2017[61], *§60*).

Also, the article 116 para. (6) of the Constitution establishes that the sanctioning of judges is done in accordance with the law (JCC 12/2017, *§61*).

The Court mentioned that given in a democratic society the judge may not enjoy an absolute immunity, there emerges the issue of conditions and ways for a judge to be held liable. Therefore, there shall be noted that **although European standards allow for judges' criminal liability in performing their judicial duties, the threshold is quite high** (JCC 12/2017, *§63*).

In this respect, the Court held that according to the Recommendation CM/Rec(2010)12: **"68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.** [...]**. 70. Judges should not be personally accountable where their decision is overruled or modified on appeal.** [...]"(JCC 12/2017, *§64*).

At the same time, in the Opinion no.18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, CCJE stated that **the duty performed by a judge in interpreting the law, examining evidence and assessing facts when solving cases, shall not give rise to civil, criminal or disciplinary liability of the judge, save for cases involving bad faith, intentional guilt or proved gross negligence** (JCC 12/2017, *§67*).

Thus, the Court held that the simple interpretation of law, establishment of facts or assessment of evidence by judges in order to solve the cases must not give rise to civil, criminal or disciplinary liability, even in the case of ordinary negligence. Judges must have unrestricted freedom to resolve impartial causes, according to their own convic-

[61] Judgement no.12 of 28.03.2017 referring to the exception of unconstitutionality of the article 307 of the Criminal Code (*criminal liability of judges*)

tion and interpretation of the facts, and in accordance with the applicable law. Civil (or criminal) liability may limit a judge's discretion to interpret and enforce the law. Therefore, the liability of judges should not extend to the legal interpretation they adopt in the judicial review process. Only errors committed intentionally, with deliberately abuse or, no doubt, with repeated or serious negligence should result in disciplinary action and sanctions, criminal liability or civil liability (JCC 12/2017, *§68*).

The Court found that, although there is a certain discretion in the interpretation of laws, the establishment of facts and the assessment of evidence, **the judge's inner conviction is to operate within the legal framework. The judge's inner conviction in making a decision does not have the meaning of a mere subjective opinion of the judge, but of the certainty he has acquired objectively, on the basis of unambiguous evidence** (JCC 12/2017, *§69*).

The Venice Commission has stated that it is possible to find the judge's lack of professionalism **only in the case of an insistent manifestation of resistance to a consolidated practice**, that will repeatedly lead to separate solutions in cases where clear and well-established case law already exists – The opinion on normative acts and disciplinary accountability and assessment of judges in the "former Yugoslav Republic of Macedonia" (2015) (JCC 12/2017, *§72*).

In this context, the European Court has also held in its case-law that, there is no right to constant jurisprudence, so that the change in the case-law required by a dynamic and progressive approach is admissible and does not breach the principle of legal certainty (*Unedic v. France*, 2008, § 74; *Legrand v. France*, 2011), if two conditions are met: the new approach to be consistent with the level of such jurisdiction and the court which has decided to change the interpretation to give detailed reasons for such decision – *Atanasovski v. Macedonia*, 2010, § 38 (JCC 12/2017, *§73*).

Also, according to the reasoning of the European Court set out in the case of *Chevrol v. France*, the exercise of full jurisdiction by a court presupposes not to give up any of the components of the function of judging. Therefore, the refusal of a court or the impossibility to decide independently on certain crucial aspects of the settlement of the dispute before it could be a violation of art. 6 § 1 of the European Convention (JCC 12/2017, *§74*).

The conclusion that is required on the basis of European standards on the independence of judges is that the trial of the case is not and was never a purely mechanical activity. For this reason, European standards on justice protect the right and duty of each judge, regardless of the level of the hierarchy of the court, to exercise his/her functions of hearing the causes free from any interference, whether external or internal (JCC 12/2017, *§75*).

The non-mechanical aspect of the case presupposes that **individual accountability for the exercise of judicial functions should not depend only on the solution given in this case in the higher court**. Accountability should be related to compliance with the standards of professional conduct, ethics and compliance with legal procedures by the judge. **The mere fact that a court decision is set aside in the higher court does not mean that the judge in the lower court violated professional standards or violated the law** (JCC 12/2017, *§76*).

The Court held that the independence of the judiciary implies a special status of judges, which must be protected against the subjectivism of competent criminal prosecution bodies, which could affect their credibility. That is why **the legislator has established a distinct and rigorous procedure for attracting the judge to criminal responsibility, the decisive role being attributed in this process to the Superior Council of Magistracy as a guarantor of the independence of the judiciary** (JCC 12/2017, *§78*).

The Court noted that **judicial independence imposes the condition of protection of judges against influences of other powers of the state and that each judge shall enjoy professional liberty in interpreting the law, in assessing facts and evidence, in each case individually**. Therefore, it shall be possible for erroneous decisions to be corrected by way of appeal and cannot have as a consequence individual accountability of the judges. Or, the role of remedies is precisely to correct possible mistakes of lower courts. As exceptions may only serve cases where, upon taking the decision, the judge acted in bad faith or his actions led to a serious omission. This opinion is also shared by the Venice Commission (JCC 12/2017, *§79*).

The Court found that the criminalisation/decriminalisation of acts or reconfiguration of constitutive elements of an offence fall into the margin of appreciation of the

lawmaker - this margin being not absolute, as it is limited by constitutional principles, values and exigencies. (JCC 12/2017, *§82*).

In this regard, the Court held that **the lawmaker shall seek to use criminal measures depending upon the protected social value**, the Court enjoying the competence to censure options of the lawmaker in case it infringes upon principles and exigencies of constitutional order (JCC 12/2017, *§83*).

In this context, the Court held that in fulfilling its legislative competence in criminal matters, the lawmaker shall consider the principle which provides that the incrimination of an act as an offence shall come into play as a last resort in safeguarding a social value, guided by the principle of *„ultima ratio",* which means that the criminal law is the sole measure to achieve the pursued goal, other than measures of civil, administrative, disciplinary nature etc. which may be inefficient in achieving the desired goal (JCC 12/2017, *§84*).

In this vein of ideas, the Court stressed that from the perspective of the *„ultima ratio"* principle in criminal matters, it is not sufficient for the incriminated offences to be found as affecting the protected social values, but this damage shall present a certain degree of intensity and seriousness, that would justify criminal sanctioning (JCC 12/2017, *§85*).

The Court underscored that judges may not be constrained to perform their duties under the threat of a sanction, which may adversely affect the decision to be rendered. In other words, in performing their duties, judges shall enjoy unfettered freedom to solve cases impartially, in line with legal provisions in force and with his own assessment, without it being affected by bad faith. It is for these reasons, **the arguments of a judge which determined the rendering of a decision on a case, this judicial decision being overturned or reversed, may not serve as a determining ground in sanctioning a judge. The application of normative acts, being the primary task of the courts, if it contradicts the observance of the fundamental rights of the person, becomes imputable to the judge only as a consequence of the exercise of the duties in bad faith or negligence in performing the act of justice** (JCC 12/2017, *§86*).

The Court noted that according to article 307 of the Criminal Code, a judge may incur criminal liability resulting from a wilful rendering of a judgment, sentence, decision or ruling in breach of the law (JCC 12/2017, *§87*).

The Court found that by inserting into art. 307 of the Criminal Code the phrase „wilful rendering" the lawmaker has expressly provided for the judges to be held criminally liable for this criminal component, exclusively **in case there is proved his *intention*** to deliver **the judgment, sentence, decision of the ruling *in breach of the law*** (JCC 12/2017, *§88*).

The Court has held that the fact of using a court decision which has been quashed by a higher court as a reason for determining the illegality and making the judge to be held criminally liable **does not in itself correspond to European standards** (JCC 12/2017, *§90*).

The Court mentioned, as a matter of principle, that responsibility to refrain from **unjustified** application of article 307 of Criminal Code against judges and to avoid a **labelling effect** in their regard, does not apply only to the Prosecutor General and courts of law, but especially to the **Superior Council of Magistrates**, as a guarantor of independence of the judiciary. Subsequently, the Superior Council of Magistrates, when authorising the launch of criminal prosecution under article 307 of the Criminal Code, is under the duty to consider the fact that criminal liability shall always be a measure which is to be applied as a last resort. Subsequently, an analysis must be undertaken each time on whether other measures than that of criminal nature, for instance disciplinary sanctions, may be more appropriate (JCC 12/2017, *§91*).

The Court held that **the criminal liability of the judge under article 307 of the Criminal Code may be compatible with the principle of independence of the judge only following a strict interpretation and only on the basis of indisputable evidence that would prove the intention of the judge in issuing a judicial act in breach of the law** (JCC 12/2017, *§92*).

In this context, the Court recalled that in the ECtHR's case-law was shaped the standard of „**beyond a reasonable doubt**", meaning that, for a sentence of conviction to be delivered, **the charge must be proven beyond a reasonable doubt** – see the case of *Bragadireanu v. Romania*, judgement of 6 December 2006; *Orhan v. Turkey*, judgement of 18 June 2002; *Ireland v. the United Kingdom*, judgement of 18 January 1978 (JCC 12/2017, *§93*).

The existence of evidence beyond a reasonable doubt is an essential component of the right to a fair trial and imposes on the prosecution **the burden of proving all the elements of guilt in a manner that would remove the doubt** (JCC 12/2017, *§94*).

In this respect, the Court noted that, according to legal principles of criminal procedure, the burden of proof lies with the prosecution, **and the situation of doubt is interpreted in favour of the accused** (*in dubio pro reo*). Upon the commencement of criminal proceedings under article 307 of the Criminal Code and the pronouncement of the sentence of conviction, the criminal prosecution bodies and the court must base their conviction on the guiltiness of the judge on the basis of reliable and certain evidence that leaves no doubt about the guilt of the accused. Or, whilst imputing the wilful intention of the judge to deliver a judgment, sentence, decision of the ruling in breach of the law, it is necessary to prove the understanding of the prejudicial nature of the deed, the foreseeability of the prejudicial effects and the desire to make it happen (JCC 12/2017, *§95*).

The Court held, as a matter of principle that, **the provisions on the criminal accountability of judges should be interpreted in such a way as to protect judges from any arbitrary interference in their judicial functions** (JCC 12/2017, *§97*).

The Court noted that the judges of the courts of law, the courts of appeal and the Supreme Court of Justice may incur criminal liability under art. 307 of the Criminal Code only for *wilfully* rendering a judgement, a sentence, a decision or a ruling, in breach of the law (JCC 12/2017, *§98*).

The Court has pointed out that criminal prosecution of judges under art. 307 of the Criminal Code itself is not contrary to constitutional principles, as long as the safeguards inherent in the independence of the judges are respected by the mechanism of criminal liability, any situation of doubt being interpreted in favour of the judge (JCC 12/2017, *§99*).

3.5.5. Disciplinary offences committed by judges

The Court noted that the challenged provisions establish as disciplinary offense the manifestations of judges who are prejudicial to the honour or professional probity or the

prestige of justice committed in the exercise of their duties or outside of them (DCC 99/2017[62], §20).

The Court held that the judge is obliged to refrain from any acts or deeds that might compromise his/her dignity in office and in society (DCC 99/2017, §26).

The Court found that the judge's obligation to refrain from actions that would harm the honour and prestige of the profession is also enshrined in international standards in the field of ethics and deontology of judges (DCC 99/2017, §22).

Thus, according to section 2.2 of the London Declaration on Judicial Ethics (2010), adopted by the European Network of Councils for the Judiciary: "Professional honour requires a judge to ensure, through his professional practice and person, that he does not jeopardise the public image of the judge, the court and of justice system" (DCC 99/2017, §23).

Also, as far as professional probity is concerned, section 2.1 of the *aforementioned* Declaration states that probity leads the judge to refrain from any tactless or indelicate behaviour, and not just behaviour which is contrary to law (DCC 99/2017, §24).

In the same vein the Bangalore Principles of Judicial Conduct also set out that integrity is essential to the proper discharge of the judicial office. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary (DCC 99/2017, §25).

Therefore, the Court has emphasized that the actions of the judge which "prejudice the professional honour or probity or the prestige of justice committed in the exercise of his or her duties or outside them" and which, in line with art.4 para. (1) let. p) of the Law no. 178 of 25 July 2014, constitute grounds for disciplinary accountability are to be examined, in each particular case, by reference to national legal provisions and international standards in the field, which establishes principles and rules determining the judge's behaviour (DCC 99/2017, §27).

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[62] Decision no. 99 of 17.10.2017 on the inadmissibility of complaint no. 126g/2017 referring to the exception of unconstitutionality of the article 4 para.(1) let.p) of the Law no.178 of 25 July 2014 on disciplinary liability of judges

3.5.6. The budget of the courts, compensation and other rights

3.5.6.1. Salaries of judges

The principle of judge's independence has two aspects: functional independence and personal independence (JCC 15/2017[63], *§37*).

Functional independence implies, on the one hand, that judges are not influenced by the executive or the legislative and, on the other hand, that the courts are not subject to interference by the legislative, the executive power or the judiciary (JCC 15/2017, *§38*).

Personal independence refers to the status of the judge, which must be granted to him under law. In principle, the criteria for assessing personal independence are the following: judges recruitment procedure; the duration of the appointment; irremovability; **determination of the amount of the salary of judges under law**; the freedom of expression of judges and the right to form professional organizations designed to defend their professional interests; incompatibilities; prohibitions; continuous training; the liability of judges (JCC 15/2017, *§39*).

Thus, the Court mentioned that the independence of the judiciary cannot be achieved without a financial independence of the judges (JCC 15/2017, *§40*).

According to article 121 para.(1) of the Constitution, the budget of the courts of law is approved by Parliament and is included in the national budget (JCC 15/2017, *§41*).

The Court held that the requirement of financial security for judges is also provided in international standards governing the independence of judges (JCC 15/2017, *§43*).

Hence, the European Charter on the Statute for Judges provides for as follows: "6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from **pressures aimed at influencing** their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality" (JCC 15/2017, *§44*).

The Consultative Council of European Judges (CCJE) in the Opinion no. 1 (2001) stipulated that: "62. While some systems (e.g. in the Nordic countries) cater for the situation by traditional mechanisms without formal legal provisions, the CCJE considered

[63] Judgement no. 15 of 02.05.2017 on the control of constitutionality of certain provisions of the article 101 para.(1) of the Law no.328 of 23 December 2013 on salaries of judges and prosecutors

that **it was generally important (and especially so in relation to the new democracies) to make specific legal provision guaranteeing judicial salaries against reduction and to ensure at least de facto provision for salary increases in line with the cost of living"**(JCC 15/2017, *§48*).

The CCJE in the Opinion no. 2 (2001) also mentioned that, although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence (section 5) (JCC 15/2017, *§49*).

Assessing the material guarantees of the judges as one of the pillars of their **independence**, the Parliament adopted on 23 December 2013 the Law no. 328, entered into force on 1 January 2014 (JCC 15/2017, *§52*).

Unitary standards and procedures for determining the amount of salaries are being established under the aforementioned law. The Law does not establish a fixed amount of the salary, but a mere formula (basis for) of its calculation (JCC 15/2017, *§53*).

Therefore, article 1 of the above-mentioned law provides as a matter of principle that **the unitary system of salaries of judges and prosecutors is based *on the average salary raised in the previous accounting year as a reference unity*** (JCC 15/2017, *§54*).

The Court noted that, under article 1 of the aforesaid Law, **the amount of the salary of a judge shall be recalculated annually depending on the amount of average salary raised in the previous accounting year as a reference unity** (JCC 15/2017, *§55*).

At the same time, the Court mentioned that on 16 December 2016 the Parliament passed the Law no. 281 on amending and supplementing certain legislative acts, thereby, *inter alia*, amending the Law no. 328 of 23 December 2013 with article 10/1, under which: "The basic official salary of the judges and prosecutors provided under the conditions of art. 1 is re-examined annually as of 1st April, **within the limits of the amounts envisaged for these purposes in the public national budget**" (JCC 15/2017, *§56*).

The Court found that although a legal provision (art. 1 para. (1)) provides as a matter of principle that the salaries of judges and prosecutors are calculated based on ***the average salary raised in the previous accounting year***, at the same time this unit of reference becomes inoperable. In other words, adopting the provision, **the lawmaker has entirely conditioned the amount of the salary of a judge by the decision to be taken annually by the executive and legislative powers in allocating financial means for the salary fund of the judiciary** (JCC 15/2017, *§57*).

The Court held that under such conditions, **the amount of the salary of a judge has been rendered uncertain, contingent on the discretion of the decision-makers, which may damage the independence of judiciary** (JCC 15/2017, *§58*).

In the Judgement no. 27 of 20 December 2011, the Constitutional Court held that the constitutional statute of the judge is not his personal privilege, but an asset of the whole society, being called upon to ensure the effective protection of the rights of every member of society. **The remuneration of a judge, which comprises any means of financial or social security, represents one of the basic components of his independence**, it being a counterbalance to the restrictions, prohibitions and responsibilities imposed on them by the society. Only maintaining this balance allows individuals to show confidence in the competence, independence and impartiality of judges (JCC 15/2017, *§60*).

In a genuine democracy, both the government and the people should admit that the judge who ultimately decides on human lives, freedoms and rights, along with a high professional level and sound reputation, should also enjoy **financial independence and a sense of security with regards to his future. It is the State's duty to establish the judge's remuneration so that it compensates for his effort and responsibilities** being in line with the statute and functions exercised by him, as **the maintenance of remuneration shall be one of the guarantees of the judge's independence** (JCC 15/2017, *§62*).

The Court held that the incompatibilities and prohibitions established for the judges in the Basic Law and developed in special laws, as well the responsibilities and risks of this job, impose the requirement that the salary of the judges would be regulated in line with their status, **in a way that would ensure the foreseeability of its amount**.

For this purpose, the provisions comprised in article 10/1 para. (1) of the Law no. 328 of 23 December 2013 on the salary of judges and prosecutors, in the part relating to the conditioning of the amount of the salary by the limit of the allocations envisaged in the public national budget, is in breach of articles 6 and 116 of the Constitution of the Republic of Moldova (JCC 15/2017, *§64*).

3.5.6.2. Special Pension of the Judges

The constitutional principle of the independence of the judge finds its conscience in the *infra-constitutional* legislative acts. In this respect, the Law no. 544 of 20 July 1995 on the status of judge includes a system of guarantees of the independence of the judge, which is ensured through the procedure for the performance of justice, by prohibiting any interference in the activity of justice, through the procedure of appointment and dismissal of a judge, by declaring the principle of inviolability of the judge, **by both financial and social security of the judge** *(JCC 25/2017[64], §39).*

It is undisputable that the principle of the independence of the judiciary cannot be limited to the amount of remuneration (including both salary and pension) of judges, this principle involving a number of guarantees, such as: the status (access conditions, appointment procedure, solid guarantees to ensure the transparency of the procedures for the appointment of judges, the promotion and transfer, the suspension and the cessation of office), their stability or irremovability, financial guarantees, administrative independence, as well as the independence of the judiciary from other state powers. On the other hand, **the independence of the judiciary includes the financial security of judges, which also implies the provision of a social security guarantee, such as the special pension of judges** *(JCC 25/2017, §40).*

Therefore, **the principle of the independence of the judiciary defends the special pension of the judges as an integral part of their financial stability, in the same way as defends the other guarantees of this principle** *(JCC 25/2017, §41).*

[64] Judgement no. 25 of 27.07.2017 on the control of constitutionality of Art. II of the Law no. 290 of 16 December 2016 on amending and supplementing certain legislative acts (*special pension of the judges*)

The Court found that amending art. 32 of the Law on the status of judges by the Law no. 290 of 16 December 2016, commencing with 1 January 2018, the special pension of the judges is to be eliminated, the latter being included in the general retirement category according to the Law on the public pension system, which will also lead to a decrease in the pension's size *(JCC 25/2017, §44)*.

The Court noted that in line with the data provided by the National Bureau of Statistics, in 2016 the authorities reported a growth of 4.1% of the Gross Domestic Product (GDP) as compared to 2015 year, and 3.1% for the first quarter of 2017 year as compared to the same period of the last year *(JCC 25/2017, §46)*.

Additionally, whereas the special pension of the judges was ruled out, the authorities increased the salaries of a number of categories of employees (i.e. prosecutors, who were provided with salaries amounting to those of the judges), as well as maintained the special pensions of other categories of employees *(JCC 25/2017, §47)*.

In this context, the Court did not accept the reasoning of the Government, as there is no existent economic and financial crisis objectively declared and officially recognised – an indispensable condition referring to the diminution of social guarantees, according to the principle of solidarity provided by the Court in its case-law *(JCC 25/2017, §48)*.

Furthermore, the Court recalled that even under such conditions, the lawmaker is under the duty to consider the specificity and importance of the judiciary, so that the independence of the judges would not be affected *(JCC 25/2017, §49)*.

In this respect, the Court has held that the constitutional provisions according to which judges are independent and subject only to the law are not declaratory, but constitute constitutional norms binding on the Parliament, which has the duty to legislate the establishment of proper mechanisms to ensure real independence of judges, without which it is impossible to conceive the existence of the rule of law provided for in article 1 para. (3) of the Constitution *(JCC 25/2017, §51)*.

The remuneration of a judge, which comprises any means of material or social insurance, represents a core component of his independence, it being a counterbalance to the limits, prohibitions and responsibilities imposed on him by society. Only maintaining this balance allows individuals to have confidence in the competence, independence and impartiality of judges *(JCC 25/2017, §52)*.

Although constitutional provisions do not provide *expressis verbis* for a duty to provide for a special pension for the judges, the latter constitutes an element of the principle of independence of the judges. In other words, the financial stability of judges is one of the guarantees of the independence of the judiciary *(JCC 25/2017, §53).*

The Court noted that *the special pension of the judges* was established aiming at stimulating the stability at work and at making a career in the judiciary. Enjoying a special pension by the judges is not a privilege, it being justified objectively, as it constitutes a partial compensation for the incompatibilities resulting from the exigency of the special status they are bound by. Thus, this special statute established by Parliament by law is much more severe, more restrictive, imposing on judge's obligations and prohibitions which other categories of insurers do not have. They are forbidden to have activities that could provide them with additional income to provide them with an effective opportunity to create a material situation that would offer them after retirement the maintenance of a life level as close as possible to the one they had during their activity *(JCC 25/2017, §54).*

Therefore, the special pension of the judges is a compensation for incompatibilities established at constitutional level throughout their professional careers. In other words, according to article 116 para.(7) of the Constitution, the office of judge is incompatible with holding any other public or private remunerated position, except in the area of teaching or scientific research. To these constitutional incompatibilities are added the incompatibilities and prohibitions provided by article 8 of the Law on the status of judges *(JCC 25/2017, §55).*

On the other hand, the determination of the special pension of the judge takes into account the responsibilities and risks of the profession of judge, which concern the entire duration of his/her career *(JCC 25/2017, §56).*

The Court held that the requirement of adequate material assurance for the judge is also enshrined by international instruments that guarantee his/her independence. Thus, the Resolution of the General Assembly of the United Nations no. 40/32 of 29 November 1985 provides that: "[…] whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens, […] The term of office of judges,

their independence, security, adequate remuneration, conditions of service, **pensions and the age of retirement shall be adequately secured by law**" *(JCC 25/2017, §57).*

Corresponding provisions contain standards in the field drafted under the aegis of the Council of Europe, such as the European Charter on the statute for judges, according to which: "[…] the level of remuneration should be fixed so as to shield the magistrates from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality. […] **the amount of the retirement pension of the judge must be as close as possible to the level of their final salary as a judge**. […] The member states of the Council of Europe must aim at increasing the social guarantees of the judge and **under no circumstances shall the reduction of the social security guarantees already admitted by law be allowed**." *(JCC 25/2017, §58).*

Also, according to the Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted on 17 November 2010, at the 1098th meeting of the Ministers' Deputies): "53. The principal rules of the system of remuneration for professional judges should be laid down by law. 54. Judges' remuneration should be commensurate with their profession and responsibilities and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as **for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working**. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges." *(JCC 25/2017, §59).*

In the same vein, the Opinion no.1 (2001) of the Consultative Council of European Judges on standards concerning the independence of the judiciary and the irremovability of judges provided for in its conclusions, that "judges' remuneration should be commensurate with their role and responsibilities and should provide appropriately for sickness pay and retirement pay. It should be guaranteed by specific legal provision against reduction and there should be provision for increases in line with the cost of living" *(JCC 25/2017, §60).*

The Court noted that the establishment of substantive guarantees of the judge's independence lies, first, in the fact that they must reflect the high status of the judge. That is why, the material guarantees of the judge's independence, established by the state, must be ensured and respected unconditionally. **It is absolutely inadmissible to diminish the legal protection of the judge's status in the process of adopting new laws. The status of the judge shall not be compared or assimilated to that of other public authorities, irrespective of thereof hierarchy in the State** *(JCC 25/2017, §63).*

The Court held that ruling out the provisions regulating the special pension of the judges affects the principle of independence of a judge enshrined in article 116 of the Constitution *(JCC 25/2017, §64).*

3.6. General Prosecutor's Office

3.6.1. Annual Report of the Prosecutor General

The Court ruled that the annual report of the Prosecutor General is of a general nature, which does not provide details about the individual cases on the court roll, and precisely because of this reason the Court could not withhold the allegations made by the author of the complaint that the hearing of the report in the Parliament plenary constitutes an interference in the activity of the General Prosecutor's Office (DCC 71/2017[65], § 31).

The Court has held that a number of international legal instruments have enshrined and developed the principle of independence of prosecutor general (DCC 71/2017, §21).

Thus, according to UN Guidelines on the role of prosecutors, Member States shall ensure that prosecutors are able to perform their professional functions without intimi-

[65] Decision no. 71 of 27.07.2017 on the inadmissibility of complaint no. 93a/2017 on the control of constitutionality of certain provisions of paragraph (3) of article 11 of the Law no. 3 of 25 February 2016 on General Prosecutor's Office (*annual report of the Prosecutor General*)

dation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability (DCC 71/2017, §22).

In the Recommendation (2000)19 on the role of public prosecution in the criminal justice system, the Committee of Ministers of the Council of Europe pointed out that: "States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability" (DCC 71/2017, §23).

At the same time, Recommendation (2000)19 section 11 of the second thesis states that the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out (DCC 71/2017, §24).

In the explanatory memorandum to the Recommendation (2000)19 it is mentioned that these regular accounts are necessary to ensure the transparency of the activity of the General Prosecutor's Office, given that this body acts on behalf of the society. These must be made to the general public - either directly through the media or a published report, or before an elected assembly and may include statistics indicating work done, aims achieved, ways in which crime policy was implemented, sums of public money spent and setting out priorities for the future (DCC 71/2017, §25).

In the same context, the Venice Commission has mentioned in the Report "on European Standards as regards the independence of the judicial system: Part II – the prosecution service" CDL-AD(2010)040 that: "44. Some specific instruments of accountability seem necessary especially in cases where the prosecutor's office is independent. The submitting of public reports by the Prosecutor General could be one such instrument. Whether such reports should be submitted to Parliament or the executive authority could depend on the model in force as well as national traditions. […]" (DCC 71/2017, §26).

Also, in its case-law, the Court emphasized that the only legal way of discussing in the Parliament the activity of the [...] General prosecutor's office is to examine […] the report on the state of law and order of law in the country and on the measures taken to

rectify it, submitted annually to the Parliament by the Prosecutor General [...] – JCC no. 29 of 23 September 2013, §90 (DCC 71/2017, §27).

In this regard, the Venice Commission asserted in its Opinion on the draft law on the Public Prosecutor's Office of Ukraine that, given the importance of securing the independence or autonomy of the public prosecution service, it would be desirable for there to be greater emphasis on the reporting obligation of the Prosecutor General's Office to the Verkhovna Rada being of a general character and thus not extending to the provision of details about individual cases – CDL-AD(2013)025, §46 (DCC 71/2017, §28).

At the same time, the Court noted that although the Parliament has the power to hear the report of the Prosecutor General, according to the provisions of art. 122 para. (3) of the Law about adoption of Regulations of Parliament, members of Parliament are not entitled to formulate questions that lead to interference in the performance of justice and criminal prosecution. Thus, the responsibility of the General Prosecutor's Office to individual cases concerning decisions on criminal prosecution or non-prosecution is excluded (DCC 71/2017, §29).

Furthermore, in the Judgement no. 29 of 23 September 2013, the Court emphasized that any statutory provision involving the possibility of a judge, prosecutor being summoned to a parliamentary inquiry commission clearly violates the constitutional provisions stating the separation of powers in the state, the independence of judges and prosecutors and their subordination to the law only (DCC 71/2017, §30).

4 NATIONAL ECONOMY AND PUBLIC FINANCES

4.1. Credit and financial system

4.1.1. Legal accountability for failure to comply with the contract concluded with a budgetary institution

The Court established that the financial mechanism of the state – an integral part of the economic mechanism, consists of all the economic and financial structures, forms, methods, principles and levers, through which public financial funds necessary for the performance of its functions and task, geared, in particular, to sustainable economic

development and to ensure an adequate standard of living are being formed, managed and used (JCC 10/2017[66], *§36*).

Public finances of the state generate a whole system of economic relations, expressed in money form, by means of which the general needs of society are being satisfied. The establishment, allocation and use of public funds is carried out according to specific methods and techniques, based on the principle of reimbursability or non-reimbursability, which subsequently obtains different destinations (JCC 10/2017, *§37*).

The violation of budgetary discipline attracts, according to the financial legislation in force, the legal liability of all subjects of law, regardless of whether they are natural or legal persons governed by public or private law (JCC 10/2017, *§39*).

The Court noted that, according to art. 80 para. (2) first thesis of the Law on public finances and budgetary-fiscal responsibilities, **from natural and legal persons who have received financial means in the form of prior payment from the budgetary authorities/institutions**, including goods and services (with the exception of construction works, capital repairs and purchase of anti-hail missiles), **for the period exceeding the term provided for in the contract, an amount calculated based on the basic rate applied by the National Bank of Moldova to the main short-term monetary policy operations shall be charged to the concerned budget** (JCC 10/2017, *§45*).

Having analysed the technical-legislative framing of the rule challenged under law, the Court found that the amount calculated for failure to comply with the contract within the legal term established is charged **as a legal penalty** (JCC 10/2017, *§48*).

At the same time, art. 81 of the law states that violation of its provisions will entail disciplinary, **civil**, administrative or criminal **liability** in accordance with the legislation in force (JCC 10/2017, *§49*).

In essence, the Court noted that the sanction provided in the challenged law text is a modality of civil liability in the form of a penalty laid down by law. Such sanction is a way of anticipating the damage caused to the budgetary institution by the late performance of contractual obligations by natural and legal persons (JCC 10/2017, *§50*).

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[66] Judgement no.10 of 16.03.2017 referring to the exception of unconstitutionality of art. 80 para. (2) of the Law on public finances and budgetary-fiscal responsibilities no. 181 of 25 July 2014 (*legal accountability for failure to comply with the contract concluded with a budgetary institution*)

In accordance with art. 2 para. (1) of the Civil Code, **contractual obligations** as well as other obligations, and other patrimonial relations are governed by the civil law (JCC 10/2017, *§51*).

Simultaneously, in art. 5 para. (1) of the Code is mentioned that, in case of non-regulation by law or by agreement of the parties and lack of usability, the relations provided for in art. 2 are being applied, if not contrary to their essence, **the norm of civil law regulating similar relations** (JCC 10/2017, *§52*).

The Court emphasized that, as the sanction provided for in art. 80 para. (2) of the law is charged as a **legal penalty**, it must correspond both to the concept and legal nature of the criminal clause **provided by the Civil Code** (JCC 10/2017, *§53*).

In accordance with the provisions of art. 624 of the Civil Code, the criminal clause is a contractual provision by which **the parties assess the prejudice in advance**, stipulating that in the event of non-performance of the obligation or inappropriate or delayed performance of obligation, the debtor will remit to the creditor a sum of money or another asset (JCC 10/2017, *§54*).

Thus, as a form of contractual civil liability, the application of the legal penalty must meet the same general conditions set out by law for the engagement of contractual liability (JCC 10/2017, *§55*).

The Court noted that one of the conditions for the engagement of contractual liability is the debtor's guilt. Thus, art. 602 para. (1) of the Civil Code provides that if the debtor fails to perform the obligation, the debtor is obliged to compensate the creditor for the damage caused thereby if he does not prove that the non-performance of the obligation is not imputable to him (JCC 10/2017, *§56*).

Also, according to art. 603 para. (1) of the Code, the debtor bears sole responsibility for the dow (intention) or the fault (imprudence or negligence) unless the law or the contract provides otherwise or if the content or nature of the report does not show otherwise (JCC 10/2017, *§57*).

In this regard, the Court mentioned the art. 624 para. (5) of the Civil Code, according to which the debtor **is not obliged to pay a penalty** if **non-performance is not due to his guilt** (JCC 10/2017, *§58*).

As a consequence, the penalty cannot be demanded when the performance of the obligation has become impossible due to causes unreasonable to the debtor. Thus, if the contract becomes impossible to be executed due to unforeseeable circumstances, a major force or the culpability of the creditor or a third party that totally or partially excludes the liability of the debtor, the penalty will not be paid (wholly or in proportion to the size of the unexecuted obligation for reasons not imputable to the debtor) (JCC 10/2017, *§59*).

The Court has therefore held that the legislator may impose sanctions on the basis of a legal penalty provided that it complies with the general principles and provisions of the civil law on liability. At the same time, these principles and general provisions are to be taken into account both by the authority empowered to verify the execution of contracts concluded with a budgetary institution and the court in the settlement of disputes on the roll (JCC 10/2017, *§60*).

According to art. 624 para. (3) of the Civil Code, the criminal clause may be stipulated in a **fixed amount** or **in the form of a share of the value of the obligation guaranteed** by the criminal clause **or non-executed part** (JCC 10/2017, *§61*).

Having examined the challenged provisions, the Court held that the legislator merely establishes that **the amount** charged **to be calculated depending on the basic rate applied by the National Bank of Moldova to the main short-term monetary policy operations** (JCC 10/2017, *§64*).

The Court found that the law does not determine the amount of the penalty to be calculated, i.e. whether the base rate of the NBM is calculated **from the value of the entire obligation or only from the non-executed part of the obligation** (JCC 10/2017, *§65*).

Thus, in the absence of certain criteria laid down by the legislator, which would allow the determination of the amount of the penalty, the Court held that **the challenged rule does not meet the quality requirements of the law**. In other words, the natural or legal person who is to conclude a contract with a budgetary institution must be able to calculate and provide, even roughly, the amount which he/she will owe in the event of late performance of the contract (JCC 10/2017, *§66*).

Consequently, the Court observed that the entire challenged text of the law is formulated imprecisely and unclearly, which does not correspond to the rigor of clarity and predictability enshrined in article 23 para. (2) of the Constitution (JCC 10/2017, *§69*).

5 THE CONSTITUTIONAL COURT

5.1. Exception of unconstitutionality

5.1.1. Ratione materiae *scope of the exception of unconstitutionality*

The Court emphasized that the administrative acts approved by the local councils, both of a normative and individual nature, fall within the scope of administrative litigation and are to be subject to legality control (DCC 84/2017[67], §16).

The court hearing the case is bound to admit the raising of the exception only if the challenged rules are applicable to the settlement of the dispute (DCC 105/2017[68], §20).

5.1.2. Ratione personae *scope of the exception of unconstitutionality*

The Court noted that if a rule is found to be unconstitutional, it has not only a preventive function, but a remedy one as well, as it primarily concerns the concrete situation of the party infringed on its rights by the challenged rule. Consequently, an exception of unconstitutionality must be invoked first of all by its author, otherwise such instrument risks becoming a simulated one by abstract law, in which case the specific nature of the exception is lost (DCC 56/2017[69], §25).

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[67] Decision no. 84 of 6.09.2017 on the inadmissibility of complaint no. 110g/2017 referring to the exception of unconstitutionality of certain provisions of section 4.1 of the Regulation on issuance of authorizations to operate commercial units and provide social services on the territory of Chisinau municipality, approved by Decision of Council of Chisinau municipality no. 13/4 of 27 December 2007

[68] Decision no. 105 of 31.10.2017 on the inadmissibility of complaint no. 17g/2017 referring to the exception of unconstitutionality of certain provisions of articles 4 para. (6) and 25 para. (1) of the Law no. 947 of 19 July 1996 on the Superior Council of Magistracy (challenging normative judgements adopted by the SCM)

[69] Decision no. 56 of 27.06.2017 on the inadmissibility of complaint no. 67g/2017 referring to the exception of unconstitutionality of certain provisions of article 407 para. (1) of the Code of Criminal Procedure (*withdrawal of appeal*)

5.2. Judgements of the Constitutional Court

5.2.1. Value of judgements of the Constitutional Court

Compliance with the judgments of the Constitutional Court is a prerequisite and essential condition for the good functioning of public authorities and asserting the rule of law (HCC 28/2017[70], §76).

Thus, any non-compliance with the judgments of the Constitutional Court is equivalent to non-observance of the Constitution and represents gross disregarding of the fundamental elements of the rule of law (JCC 28/2017, §80).

In this regard, the declaration of the President, according to which he swore on the Constitution, not on the judgements of the Constitutional Court, shows legal nihilism, or, failure to carry out a certain constitutional duty, deliberate defiance of the Constitution and non-execution of a judgement delivered by the Constitutional Court being a **serious breach of the oath and of the Constitution** (JCC 28/2017, §81).

B | COURT FINDINGS

1. PROVISIONS RECOGNIZED CONSTITUTIONAL

The Court recognized as constitutional:

- article 362[1] of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no.4/2017)*;
- articles 82 para. (2), 102, 103 para. (3) let. g) and h), 104, 105 para. (3), (4), (6), (7), (8), (9,) (10), (11), (15), (17), 106 para. (8), 107 para. (l) let. d), 108 para. (6) let. a) and c) of the Education Code of the Republic of Moldova no. 152 of 17 July 2014 *(JCC no.5/2017);*
- article 364/1 of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV as of 14 March 2003 *(JCC no.9/2017);*

[70] Judgement no. 28 of 17.10.2017 on the interpretation of the provisions of article 98 paragraph (6) in conjunction with articles 1, 56, 91, 135 and 140 of the Constitution (*failure of the President to carry out constitutional duties*)

- article 307 of the Criminal Code of the Republic of Moldova no.985-XV of 18 April 2002, where judges of courts of law, courts of appeal and Supreme Court of Justice may incur criminal liability only for willful rendering of a judgment, sentence, decision or ruling in breach of the law *(JCC no.12/2017);*
- – the phrase "*and his own belief*" of the paragraph (2) of the article 26;
  – the phrase "*the judge and the person conducting the criminal proceedings assess the evidence in accordance with their own belief*" of the paragraph (1) of the article 27;
  – the phrase "*the representative of the criminal prosecution body or the judge assesses the evidence according to his/her own belief*" of the paragraph (2) of the article 101 of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV of 14 March 2003 *(JCC no. 18/2017);*
- the phrase "*from drug abuse*" from the provisions of article 67 letter f) of the Family Code no. 1316-XIV of 26 October 2000, in so far as deprivation of parental rights is not automatically applied by the court but is decided in the best interests of the child *(JCC no.19/2017);*
- article 7 para. (17) of the Law no. 289 of 22 July 2004 on indemnities for temporary work incapacity and other social insurance benefits and section 89 of the Regulation on the conditions of establishing, procedure of calculating and making the payment of indemnities for temporary work incapacity, approved by the Government Decision no. 108 of 3 February 2005, *in so far as* the prohibition on recalculating the indemnities of social insurance is not applicable in the event of errors in determining the basis of calculation for the indemnity of social insurance *(JCC no.20/2017);*
- the phrase "*provided that such an action caused considerable damage to […] the legally protected rights and interests of the individuals or legal entities*" of the paragraph (1) of the article 328 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no.22/2017);*
- the phrase "*The Superior Council of Magistracy examines the proposal of the Prosecutor General or of the First Deputy, and in the absence thereof - of the deputy appointed by the order issued by the Prosecutor General only in respect of the observance of the conditions or the circumstances stipulated by the Code of Criminal Procedure for ordering*

the initiation of the criminal prosecution, arrest, forced taking or search of the judge" of the article 23 paragraph (2) of the Law no.947-XIII of 19 July 1996 on the Superior Council of Magistracy *(JCC no.23/2017);*

- the wording "*in the last five years*" of the paragraph (1) of article 109 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no.27/2017);*
- article 38 para.(7) let. a) of the Law on Financial Institutions no.550-XIII of 21 July 1995 *(JCC no.29/2017);*
- – article 369 paragraphs (2), (3) and (4) of the Labour Code no. 154-XV of 28 March 2003;
  – article 21 paragraphs (2) and (3) of the Code on railway transportation no. 309-XV of 17 July 2003;
  – provisions of sections 5, 6, 7, 8, 9, 13, 14, 15 of the Nomenclature of Units, Sectors and Services which employees cannot participate in strikes, approved by Government Decision no.656 of 11 June 2004;
  – the wording "all employees" of sections 2, 3 and 4 of the Nomenclature of Units, Sectors and Services which employees cannot participate in strikes, approved by Government Decision no.656 of 11 June 2004, in so far as it concerns only persons responsible within central public authorities;
  – the wording "all collaborators" of sections 10, 12, 16, 17, 19, 20 of the Nomenclature of Units, Sectors and Services which employees cannot participate in strikes, approved by Government Decision no.656 of 11 June 2004, in so far as it concerns only employees responsible for ensuring public and legal order and state security;
  – the wording "entire system" of the section 11 of the Nomenclature of Units, Sectors and Services which employees cannot participate in strikes, approved by Government Decision no.656 of 11 June 2004, in so far as it concerns judges of courts *(JCC no.30/2017);*
- the wording "*of the employment status*" of paragraph (1) of the article 327 of the Criminal Code of the Republic of Moldova no.985-XV of 18 April 2002, *in so far as* it concerns the employment duties granted by *law (JCC no.33/2017);*

- the wording "*is not a member of any political party and*" of the paragraph (2) of article 112 of the Electoral Code of the Republic of Moldova no. 1381-XIII of 21 November 1997 *(JCC no.35/2017);*
- – article 21/2 of the Law no.355-XVI of 23 December 2005 on the salary system in the budgetary sector;
  – Government Decision no. 172 of 22 March 2017 for the approval of the Regulation on the financial incentive procedure for investigating agents within the General Police Inspectorate of the Ministry of Internal Affairs *(JCC no.37/2017);*
- – articles 25 paragraph (1) letter c), 26 paragraph (4) and 27 paragraph (5) of the Law no. 245-XVI of 27 November 2008 on State Secrets;
  – article 47 paragraph (1) letter s) of the Law no. 320 of 27 December 2012 on on police activity and the policeman statute [*repealed by Law no. 94 of 2 June 2017 on amending and supplementing certain legislative acts*];
  – section 109 of the Regulation on ensuring the secret regime within Public Authorities and other legal entities, approved by Government Decision no. 1176 of 22 December 2010 *(JCC no.38/2017);*
- article 38 paragraph (4) let. f) of the Enforcement Code no. 443-XV of 24 December 2004 *(JCC no.39/2017);*
- article 232 paragraph (2) of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV of 14 March 2003, insofar as the way of calculating the deadlines for the acts of the prosecutor does not apply in relation to the applications for which the law establishes mandatory deadlines for submission to the court *(JCC no.40/2017).*

2. PROVISIONS DECLARED UNCONSTITUTIONAL

The Court declared unconstitutional:

- – letter e) paragraph (6) of article 28;
  – letter g) paragraph (3) of article 35;
  – paragraph (2) of article 38 of the Law no. 162-XVI of 22 July 2005 on the Status of Military Personnel *(JCC no.3/2017);*
- article 16 para. (5) of the Law no. 289 of 22 July 2004 on indemnities for temporary work incapacity and other social insurance benefits and section 49 of the

Regulation on the conditions of establishing, procedure of calculating and making the payment of indemnities for temporary work incapacity, approved by the Government Decision no. 108 of 3 February 2005 *(JCC no.6/2017);*

- article 41 paragraph (4) of the Education Code of the Republic of Moldova no. 152 of 17 July 2014, on ensuring pupils of 5th to 9th grades with school books according to the rental scheme approved by the Ministry of Education *(JCC no.7/2017);*
- – the wording *"is not declared incapable by the court"* of the section 3 subsection 1);
  – section 56 subsection 2);
  – the phrase *"to limit the capacity or to declare the incapacity of the beneficiary by the court" of the section 57 of the Framework Regulation on the organization and functioning of the Social Service „Protected Home",* approved by the Government Decision no. 711 of 9 August 2010 *(JCC no.8/2017);*
- article 80 para. (2) of the Law on public finances and budgetary-fiscal responsibilities no. 181 of 25 July 2014.
  Until Parliament adopts the new legal provisions, sanctions for non-performance in time of contracts concluded with a budgetary institution are to be applied in accordance with the provisions of civil law and contractual clauses *(JCC no.10/2017);*
- the wording *"within the limits of the allocations provided for this purpose in the national public budget"* of the paragraph (1) of article 10/1 of the Law no.328 of 23 December 2013 on salaries of judges and prosecutors *(JCC no.15/2017);*
- the phrase *"the ban on issuing civil status documents, identity acts or driving licenses is applied exclusively by the court"* of the article 22 para. (1) let. v) of the Enforcement Code of the Republic of Moldova no. 443-XV of 24 December 2004 *(JCC no.17/2017);*
- the wording *"to public interests or"* of the paragraph (1) of the article 328 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no.22/2017);*
- the phrase *"without appreciating the quality and veracity of the materials submitted"* of the article 23 paragraph (2) of the Law no.947-XIII of 19 July 1996 on the Superior Council of Magistracy *(JCC no.23/2017);*
- The Decree of the President of the Republic of Moldova no. 105-VIII of 28 March 2017 on holding a consultative republican referendum on issues of national interest *(JCC no.24/2017);*

- paragraph (2) of article 144 of the Electoral Code no. 1381-XIII of 21 November 1997 *(JCC no.24/2017)*;
- Art. II of the Law no. 290 of 16 December 2016 on amending and supplementing certain legislative acts *(JCC no.25/2017)*;
- The wording "*to the public interests or*" of the paragraph (1) of the article 327 and at letter d) of the paragraph (2) of the article 361 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no.33/2017)*;
- first thesis "*The dismissal of employees – trade union members in cases stipulated in art.86 para.(1) let. c), e) and g) is admitted only with the preliminary written consent of the trade union body (administrator) of the unit.*" of the article 87 paragraph (1) of the Labour Code 154-XV of 28 March 2003, in the earlier redaction of the Law no. 188 of 21 September 2017 *(JCC no.34/2017)*;
- article 15 paragraph (2) let. d) of the Enforcement Code no. 443-XV of 24 December 2004 *(JCC no.39/2017)*.

3. INTERPRETATION OF CONSTITUTIONAL PROVISIONS

The Court interpreted the following constitutional provisions:

- In the meaning of article 98 paragraph (6) of the Constitution:
  – The President of the Republic of Moldova can only refuse once the proposal of the Prime Minister in appointing a person to the vacant post of minister, when he/she considers that the proposed person does not meet the legal requirements for exercising the function of a member of the Government;
  – The Prime Minister can advance another proposal to the President or reiterate the same candidacy for the office of Minister, which the President is obliged to accept *(JCC no.2/2017)*.
- In the meaning of article 11 of the Constitution in conjunction with articles 1 para.(1), 3 and 8 of the Constitution:
  – the military occupation of a part of the territory of the Republic of Moldova at the moment of declaring neutrality, as well as the lack of international recognition and guarantees of this status, **do not affect the validity of constitutional provisions on neutrality**;

– in the event of **any threats to constitutional fundamental values, as well as national independence, territorial integrity or state security, the authorities of the Republic of Moldova are obliged to take all necessary measures, including military ones that would allow it to efficiently defend against these threats**;

– stationing of any military troops or bases on the territory of the Republic of Moldova, *managed and controlled by foreign states*, is unconstitutional;

– the participation of the Republic of Moldova in collective security systems, such as the United Nations security system, peacekeeping operations, humanitarian operations, etc., which would impose collective sanctions against aggressors and international law offenders, is not in contradiction with the neutrality status *(JCC no.14/2017).*

- – In the meaning of article 91 of the Constitution, the refusal of the President to carry out his/her constitutional duties constitutes *temporary impossibility to execute his/her duty (duties) and justifies the establishment of the interim office, which shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister for carrying out this (these) constitutional duty (duties) of the President.*

  – **Establishment of the interim office**, caused by deliberate refusal to execute one or more constitutional duties and **the circumstances justifying the interim office of the President** shall be determined in each particular case by the Constitutional Court in accordance with the competence assigned to it by Article 135 para. (1) let. f) of the Constitution *(JCC no.28/2017).*

4. VALIDATION OF THE MANDATES OF MEMBERS OF PARLIAMENT

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

- Mr. Alexandru Barbarosie, on the list of the Liberal Democratic Party of Moldova *(JCC no.11/2017);*
- Mr. Eugen Bodarev and Mr. Iurie Chiorescu, on the list of the Liberal Democratic Party of Moldova *(JCC no.13/2017);*

- Mr. Nicolae Olaru, on the list of the Liberal Democratic Party of Moldova *(JCC no.16/2017);*
- Mr. Oleg Cuciuc and Mr. Sergiu Groza on the list of Party of Socialists from the Republic of Moldova *(JCC no.21/2017);*
- Mr. Petru Corduneanu, on the list of Party of Socialists from the Republic of Moldova *(JCC no.26/2017)*;
- Mrs. Alla Mironic, on the list of the Party of Communists of the Republic of Moldova (JCC no.31/2017);
- Mrs. Aliona Babiuc, on the list of the Party of Communists of the Republic of Moldova (JCC no.36/2017).

5. COURT DECISIONS

In the process of exercising constitutional jurisdiction in 2017 the Court issued **125** *decisions on inadmissibility.*

The grounds for declaring the inadmissibility of complaints are provided in Section 28 of the Rules on the examination of complaints submitted to the Constitutional Court[71]. Thus, the complaint shall be declared inadmissible if:

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

Also, according to art.29 of the aforementioned Rules, the complaint shall be restituted by a letter to the author, thus being inadmissible for examination on the merits, if:

a) the complaint is not motivated and fails to contain the object on which the requirements are based;
b) there has not been demonstrated the causal link between the challenged provisions and constitutional norm invoked;
c) the complaint fails to meet the conditions of form;

[71] Approved by the Decision of the Constitutional Court no. AG-3 of 3 June 2014 (Official Gazette of the Republic of Moldova no.185-199 of 18.07.2014) http://constcourt.md/public/files/file/Baza%20legala/D_AG3.pdf

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

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

Following a retrospective analysis of *the decisions on inadmissibility of complaints concerning the review of constitutionality,* submitted to the Court in 2017, the most frequently mentioned reasoning was related to the following:

a) *settlement of the complaint does not fall within the competence of the Court*: in DCC 32/2017, DCC 36/2017, DCC71/2017. At the same time, in DCC 51/2017 non-acceptance of the complaint for examination on the merits was determined by the lack of *ratione materiae* competence of the Court, since the challenged provisions have not been adopted by the legislative in the final reading, and as a consequence, not having the status of law, cannot be subject to the review of constitutionality;

b) *there exists already a judgement/decision/opinion of the Court* having as object the challenged provisions: in DCC 33/2017, 42/2017, 51/2017, 96/2017, since no new elements were introduced which could lead to a reconsideration of the case-law of the Court, both the solution and the previous considerations remained relevant, so the complaints, being repetitive, could not be accepted for examination on the merits;

c) the complaint is *manifestly unfounded,* fact stated in DCC 94/2017, DCC 112/2017.

5.2. Decisions on the inadmissibility of exceptions of unconstitutionality

As far as the decisions on the inadmissibility of exceptions of unconstitutionality are concerned, the Court upheld both the general grounds for inadmissibility and the grounds for opposing the exception of unconstitutionality as well as those that did not meet the conditions set out in section 19/2 of the Rules on the examination of complaints submitted to the Constitutional Court.

The established conditions are as follows:

a) the object of the complaint falls within the category of normative acts indicated in art. 135 para.(1) let. a) of the Constitution;

b) the exception is raised by the parties to the dispute or by their representatives or by the court ex officio;

c) the challenged provisions shall be applied to resolve the dispute;

d) there is no previous judgment of the Court referring to the challenged provisions.

Among the grounds for declaring inadmissibility of exceptions of unconstitutionality prevailed the unfounded nature of the complaint and lack of *ratione materiae*. Thus,

a) *the complaint was unfounded* ground invoked in DCC 8/2017, 10/2017, 7/2017, 2/2017, 4/2017, 9/2017, 11/2017, 23/2017, 28/2017, 29/2017, 31/2017, 27/2017, 46/2017, 54/2017, 66/2017, 55/2017, 52/2017, 79/2017, 89/2017, 101/2017, 111/2017. The unfounded nature was found in the absence of a causal link between the challenged provision and the constitutional provision invoked; either the author has not formulated a true criticism of unconstitutionality; or when the author misinterpreted the normative provisions; comparing the provisions of several legislative acts among themselves and reporting the conclusion resulting from provisions or principles of the Constitution; the complaint must be founded and include the subject and circumstances under which the author grounds his/her requirements; lack of arguments;

b) *settlement of the complaint does not fall within the competence of the Court,* this ground was invoked in DCC 30/2017, 35/2017, 37/2017, 47/2017, 58/2017, 57/2017, 70/2017, 64/2017, 109/2017, in which the author's allegations fell into the sphere of an issue that goes beyond the review of constitutionality; in DCC 39/2017 the author of the exception of unconstitutionality sought control over the way the norms were applied, without challenging certain legal provisions in relation to constitutional dispositions; in DCC 109/2017 the issue addressed derives from the assessment of the evidence in question, which is the exclusive competence of the courts; in DCC 108/2017 in the present case, the issue addressed was the misinterpretation and misapplication of the law, and not its blurring. The Court pointed out that possible inappropriate application of the legal provisions cannot serve as grounds for unconstitutionality;

c) *the challenged provisions have been amended or repealed,* the Court terminating the process on the review of constitutionality in DCC 18/2017. In this case, the legislative omission invoked by the author of the exception has been solved by the legislator, so that the raised exception remained without any object, being regulated by another provision other than the challenged one;

d) *the challenged act cannot constitute the subject matter of the review of constitutionality*, the exception of unconstitutionality being *an actio popularis* (for example, in DCC 3/2017, 6/2017, 10/2017, 49/2017, 53/2017). The Court relied on that ground whenever the challenged norm did not fall within the scope of acts included in article 135 para. (1) let. a) of the Constitution, such as the orders of the Minister of Justice, or the acts approved by the Association of Lawyers, which are not susceptible to the review of constitutionality. In DCC 84/2017 the Court underlined that the administrative acts approved by local councils, both of normative and individual nature, constitute the subject matter of the administrative law and are to be subject to legality control;

e) *challenged provisions were not to be applied to resolve the dispute*, the complaint targeting a *in abstracto* approach, which is unrelated to the substance of the main dispute, such as in DCC 15/2017, 49/2017, 53/2017, 56/2017, 97/2017. For example, in DCC 48/2017 the provisions challenged by the author, which regulated the injurious consequences of the incriminated offences, had no impact on the settlement of the case on the court roll;

f) *there was a previous judgement or decision of the Court* having as object the challenged provisions, being thus repetitive, or the findings in the previous case-law were applicable *mutatis mutandis*, such as in DCC 9/2017, 43/2017, 57/2017, 95/2017, 106/2017;

g) *the challenged provisions became inapplicable to the dispute*, for example, in DCC 105/2017.

5.3. Decisions on inadmissibility of complaints on the interpretation of the Constitution

During 2017 the Court delivered a decision on inadmissibility requesting the interpretation of certain provisions of the Constitution. The inadmissibility (in the same complaint being also requested in part the review of constitutionality) was determined by the fact that the questions raised by the author aimed at a general approach of certain issues that cannot be solved by reference to constitutional norms (DCC 51/2017).

At the same time, the Court held in that decision that the choice for one or two rounds of voting or the possible establishment of quotas for representation for the terri-

tories with special status or for voting abroad is a matter of political opportunity, which is left to the discretion of the legislative body, taking into account democratic standards and the faithful reflection of the voter's choice.

5.4. Decisions on inadmissibility of complaints on the endorsement of constitutional amendments

During 2017, the Court delivered the DCC no.41 of 02.05.2017 on inadmissibility of complaint no. 56c/2017 on the **endorsement of amendments** to the draft law on amending the article 70 of the Constitution (immunity of the member of Parliament). The Court has held that if the Constitutional Court repeatedly approves a draft law revising the Constitution, substantially amended at the second reading in Parliament, this draft is to go through all the procedures set out in article 143 para. (1) of the Constitution. At the same time, the Court pointed out that, under article 143 para. (2) of the Constitution, if the Parliament has not adopted the relevant constitutional law for a year after submitting its initiative for amending the Constitution, the proposal shall be considered null and void.

C | ADDRESSES

In 2017 the Court has issued 10 addresses to the Parliament, as follows:

• ***Address no. PCC-01/126a-3 of 31.01.2017, JCC no. 3 of 31.01.2017***

The Court found that, by Law no.65 of 7 April 2011, article 14 of the Law no.753-XIV of 23 December 1999 was exposed in a new wording, at para.(5) of the aforementioned article imposing a ban on collaborators of the Security and Intelligence Service to hold the citizenship of other states.

Taking into account the fact that by the Judgement no.31 of 11 December 2014 have been **declared as unconstitutional** the provisions of art.14 of the Law on the Security and Intelligence Service of the Republic of Moldova, introduced by the Law no.273-XVI of 7 December 2007, prohibiting the holding of multiple citizenship, the Court considers it necessary to revise the current provisions in order to exclude the existing ban. Amendments are also to be made in art.7 of the Law no.170-XVI of 19 July 2007 on the status of the security and intelligence officer.

• ***Address no. PCC-01/140a-5 of 07.02.2017, JCC no.5 of 07.02.2017***

On 7 February 2017, the Constitutional Court delivered the Judgement no.5 on the constitutional review of certain provisions of the Education Code of the Republic of Moldova no.152 of 17 July 2014 and appendixes no.3 and no.4 to the Government Decision no.390 of 16 June 2015 regarding the plans (state command) for the training of specialists, in line with their professions, specialty and general fields of study in both vocational-technical schools and higher education institutions for the academic year 2015-2016.

When examining the complaint, the Court found confusing and incoherent regulations in the Education Code regarding the way of setting up the higher education institutions as well as the procedure for designating the members of the Council for Institutional Strategic Development.

In particular, the Court mentioned that, pursuant to art.21 para.(4) of the Code, **private higher education institutions** may be established, reorganized and liquidated in the manner provided for by civil law and the Education Code. At the same time, regarding the setting up of **public higher education institutions**, the provisions of art.139 let.f) stipulate that the Government decides on the proposals of the Ministry of Education, other central administrative authorities and public institutions regarding their establishment, reorganization or liquidation.

Having examined the challenges on unconstitutionality, the Court observed that art.82 para.(2) of the Code, which contains general provisions on higher education, expressly provides that higher education institutions are established, reorganized and liquidated by the Government at the initiative of the founder. There is, therefore, a discrepancy between the provisions of art.21 para.(4) and dispositions of art.82 para.(2) of the Education Code, creating confusion as to the applicability of the latter. In this context, the Court has highlighted the need to legislate on identified issues to address existing deficiencies.

The Constitutional Court also found inconsistencies in the provisions of art.104 of the Education Code in the part related to the members of the Council for Institutional Strategic Development designated by the founder of the higher education institution. As it results from the article 104 para.(8), **the members of the Council for Institutional Strategic Development designated by the founder** and the relevant ministries shall receive a monthly allowance, which is paid from the founder's budget. However, the reference to

the members designated by the founders is not contained in paragraph (2) let.a) of the same article, which governs the procedure for designating the members of the Council.

Therefore, the Court has highlighted the need for Parliament's express regulation in art.104 para.(2) let.a) of the Education Code as regards the designation of a member of the Council by the founder. In other words, the notion "*by the relevant ministries*" of art.104 para.(2) let.a) of the Code is confusing in this respect.

• ***Address no. PCC-01/162a-7 of 16.02.2017, JCC no.7 of 16.02.2017***

By its Judgement no.7 of 16 February 2017, the Constitutional Court declared unconstitutional the article 41 para.(4) of the Education Code no.152 of 17 July 2014, in the part on ensuring pupils of 5th to 9th grades with school books according to the rental scheme approved by the Ministry of Education.

When examining the complaint, the Court found confusing and incoherent regulations in the Education Code in the part of compulsory education cycles.

In this respect, the Court mentioned that, in accordance with the provisions of article 35 of the Constitution, **compulsory general education comprises primary and gymnasium education**, whilst the state secondary, vocational and higher education shall be accessible to everyone on the basis of personal merits.

At the same time, the Court observed that the provisions of article 13 para.(1) of the Education Code stipulate that the compulsory education starts with the preparatory group in pre-school education and is completed with high school or vocational and post-secondary education, whilst article 20 stipulate that general education includes early education, primary education (1st to 4th grades), gymnasium (5th to 9th grades) and high school (10th to 12th (13th) grades).

Therefore, in view of the existing inconsistencies, the Court has highlighted the need to implement the necessary changes in the Education Code in order to comply with constitutional provisions.

In addition to the subject under consideration, the Constitutional Court considered it necessary to draw the attention of Parliament to the inconsistency of the provisions of article 13 para. (2) of the Education Code, which requires compulsory education up to the age of 18 in relation to the duration of compulsory general education.

• ***Address no. PCC-01/156g-9 of 09.03.2017, JCC no.9 of 09.03.2017***

By its judgement no.9 of 9 March 2017, the Constitutional Court has issued its opinion on the exception of unconstitutionality of the article 364/1 of the Code of Criminal Procedure no.122-XV of 14 March 2003.

When examining the complaint, the Court found inconsistent regulations in the Code of Criminal Procedure regarding the civil party's participation in judicial debates in the trial of the case on the basis of evidence administered during the criminal investigation phase.

In particular, the Court observed that, although the article 62 para.(1) subpara. 9) of the Code of Criminal Procedure states that for the purpose of supporting his/her application, the civil party has the right to plead in judicial proceedings in respect of his/her civil action, however, the provisions of article 364/1 paragraph (5) provide that judicial proceedings consist of only from the speeches of the prosecutor, lawyer and defendant, who may once again take the word in the form of a reply.

There is therefore a discrepancy between the provisions of art.62 para.(1) subpara. 9) and provisions of art.364/1 para.(5) of the Code of Criminal Procedure, creating confusion regarding the right of the civil party to plead in judicial proceedings. In this context, the Court has highlighted the need to legislate on identified issues to address existing deficiencies.

• ***Address no. PCC-01/113g/8g - 22 of 27.06.2017, JCC no.22 of 27.06.2017***

On 27 June 2017 the Constitutional Court delivered the Judgement no.22 on the exception of unconstitutionality of certain provisions of article 328 paragraph (1) of the Criminal Code of the Republic of Moldova no.985-XV of 18 April 2002.

By this Judgement, the Court declared unconstitutional the phrase "to public interests or" of the paragraph (1) of article 328 of the Criminal Code and declared constitutional the phrase "provided that such an action caused considerable damage […] to the legally protected rights and interests of the individuals or legal entities".

The Court observed that art.328 para.(1) of the Criminal Code, providing for an overt infringement, includes "public interest" in its harmful consequences, but the referral rule (art.126 para.(2) of the same code), which constitute a ground when assessing in concreto the damage caused in each case, did not provide expressis verbis for "public interest"

as a social value that may be assessed. Thus, the Court mentioned that the attribution of concrete criminal offenses as prejudicing the "public interest", in abstracto, cannot satisfy the requirement of clarity and predictability and also constitutes both an extensive and having an adverse effect interpretation of the criminal law upon the person.

With regards to determining the amount of the caused damage, the Court found that art.126 para.(1) and (1/1) of the Criminal Code provide for a quantum in the following terms (1) large scale damage and (2) especially large scale damage. Therefore, when determining the large scale and especially large scale damage, the lawmaker provided as a basis of calculation the forecasted average national monthly salary, established by a Government Decision, which is in force at the moment the act is committed, as follows:

– large scale – more than 20 salaries;

– especially large scale – more than 40 salaries.

The small damages caused, that trigger liability under Contraventions Code (art.18), are the damages that when committing the offence, do not exceed 20% of the quantum of the forecasted average monthly national salary, approved by the Government for the year when the offence was committed.

Thus, the Court found that in line with the mentioned legal provisions, damages that fall within the limits between small and large scale damages **shall qualify, where appropriate, as essential or considerable**.

At the same time, the Court observed that the lawmaker provided in art.126 para.(2) of the Criminal Code subjective criteria on delimiting between "considerable" and "essential" damage, which is decided upon depending on the significance the victim attributes to the goods and upon other circumstances that have an influence on their financial condition.

The Court found that an express regulation with regards to the quantum of "essential" and "considerable" damages was provided in the initial wording of the Criminal Code in force on 18 April 2002, but it was excluded by the Law no. 211 of 29 March 2003.

Subsequently, given that it remains for the lawmaker to regulate the gravity of the damage resulted from the committed criminal offence and the value of the damage, the Court considered it necessary to issue an Address to the Parliament in order to institute in criminal law the use of a threshold **of the considerable and essential damage** hereby precluding subjective estimations.

Also, given the fact that the concept of "public interest" is found in several components of offenses and contraventions and, for this purpose there are to be made the relevant amendments, taking into account the arguments exposed in the judgement of the Court.

• ***Address no. PCC-01/40a - 24 of 27.07.2017, JCC no.24 of 27.07.2017***

On 27 July 2017 the Constitutional Court delivered the Judgement no.24, by which it declared unconstitutional the Decree of the President of the Republic of Moldova no.105-VIII of 28 March 2017 on holding a consultative republican referendum on issues of national interest.

Concurrently, examining the complaint, the Court observed that although art.148 of the Electoral Code provides that the initiation of a referendum on the amendment of the Constitution is governed by art. 141 of the Constitution, at the same time, the provisions of art. 144 para. (2) of the Code provide that the subjects enumerated in para. 1 – where the President of the Republic is also included – may initiate **any type of referenda**. In this regard, the Court found that the provisions of art. 144 para. (2) of the Electoral Code are in breach of article 141 of the Constitution.

At the same time, during the examination of the file, the Constitutional Court found some discrepancies on the referenda in the Electoral Code.

Thus, while the Constitutional Court in its case-law stated that mandatory legal effects are produced only by constitutional and legislative referenda, at the same time art.143 para.(4) of the Electoral Code provide that the competent authorities are to adopt final judgments as a result of the holding of the consultative referendum. To this end, in order to ensure the clarity of the stipulated provisions, it is necessary to determine which authorities are competent to issue the judgements hereof (electoral bodies or other public authorities), the regulatory scope and their legal effects.

The Court has also held that in line with art.66 let.b) of the Constitution, **it is the competence of the Parliament to declare a referendum**. The Court noted that when providing for the cited constitutional norm, the framers of the Constitution did not provide for the type of the referendum to be declared by Parliament. Concurrently, art.88 let.f) of the Constitution only provides that the President of the Republic of Moldova "may request the people to express their will on matters of national interest by way of

referendum". Subsequently, underpinning the mentioned constitutional provisions, the Court held that **the provisions of art.66 let.b) concern all types of referendum.**

Moreover, the Court found that according to art.150 para.(2) and art.151 of the Electoral Code, the President initiates by a Decree a consultative national referendum setting its date and the questions subject to the referendum, whilst art.150 para.(1) provides that the Parliament, by a decision, calls a referendum **for all the types of proposals to initiate a referendum by the entitled subjects.**

Therefore, in order to exclude contradictory interpretations in the part of Parliament's competence to call for a referendum, amendments should be made in articles 150 and 151 of the Electoral Code, taking into account the reasoning set out in the Court's judgment.

Additionally, the Court found that, according to article 89 para.(3) of the Constitution, the referendum on the dismissal of the President is held within 30 days, whilst the article 150 of the Electoral Code does not provide for similar regulations. Thus, the legislator is to bring the provisions of article 150 of the Electoral Code into line with the constitutional provisions regarding the term of calling for a referendum on the dismissal of the President of the Republic of Moldova.

At the same time, the Court underlined that upon the adoption of the Judgement no.22 of 23 September 2010, and the Opinion no.1 of 22 September 2014 the Constitutional Court has issued two addresses, indicating to Parliament the existence of gaps in the electoral legislation with reference to democratic referendums. The Court noted that so far the reported gaps have not been remedied by the legislative.

• ***Address no. PCC-01/124b of 17.10.2017, JCC no.28 of 17.10.2017***

On 17 October 2017 the Constitutional Court delivered the Judgement no. 28 interpreting the provisions of article 98 para. (6) in conjunction with articles 1, 56, 91, 135 and 140 of the Constitution (*failure of the President to carry out constitutional duties*).

In the aforementioned judgement, the Court emphasized that the President of the country is not omnipotent and is just under the obligation of constitutional devotion to observe the limits imposed by the Constitution and bears responsibility for the fulfilment of his attributions in good faith.

The Court pointed out that failure to fulfil a constitutional duty, deliberate contempt of the Constitution and non-execution of a Constitutional Court's judgment constitutes a **serious violation of the oath and the Constitution**.

The Court reiterated that compliance with the constitutional order, including Constitutional Court judgements, is a necessary and essential condition for the proper functioning of the state's public authorities and for the rule of law.

The Court recalled that the acts of the court are official and binding throughout the country, for all public authorities and for all legal persons and individuals. The Constitutional Court's interpretative judgements are constitutional texts, being an integral part of the Constitution and making a joint body with the provisions they interpret. They apply directly without any other formality. Thus, non-compliance with Constitutional Court judgements is equivalent to non-observance of the Constitution and grossly disregarding the fundamental elements of the rule of law.

At the same time, the Court found **the lack of coercive enforcement or sanctioning instruments for failing to comply with constitutional duties deriving from the provisions of the Constitution and the Constitutional Court's acts**.

For these reasons, the Court considers it necessary for Parliament to regulate liability [including criminal one] for failure to comply with constitutional duties and Constitutional Court judgements.

• ***Address no.2 PCC-01/124b of 17.10.2017, JCC no.28 of 17.10.2017***

On 17 October 2017 the Constitutional Court delivered the Judgement no. 28 interpreting the provisions of the article 98 para. (6) in conjunction with articles 1, 56, 91, 135 and 140 of the Constitution (*failure of the President to carry out constitutional duties*).

In the aforementioned judgement, the Court noted that according to article 91 of the Constitution, refusal of the President to execute his/her constitutional duties constitute **temporary impossibility to exercise his/her duty (duties) and justifies the establishment of the interim office, which shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister, in order to ensure the exercise of these constitutional duties of the President**.

The establishment of the interim office, caused by deliberate refusal to execute one or more constitutional duties and **the circumstances justifying the interim office of the President** shall be determined in each particular case by the Constitutional Court in accordance with the competence assigned to it by art. 135 para. (1) let. f) of the Constitution, upon the referral of the subjects provided by art. 38 para. (1) and (2) let. c) of the Code of Constitutional Jurisdiction, according to their area of competence.

At the same time, the Court finds that while the representatives of the executive and legislative powers are subjects with right of referral, the Superior Council of Magistracy does not have this right, although it is an authority of self-administration and guarantor of the independence of the judiciary.

For these reasons, the Court considers it necessary for the Parliament to complete the Law on the Constitutional Court in order to assign the Superior Council of Magistracy the right of referral to the Constitutional Court.

• ***Address no. PCC-01/145a of 04.12.2017, DCC no.112 of 04.12.2017***

On 4 December 2017 the Constitutional Court delivered the Decision no.112, by which it rejected on a ground of inadmissibility the complaint on the review of constitutionality of certain provisions of para. (2) of the article 17 of the Law no. 136 of 17 June 2016 on the status of Chisinau municipality.

In the above-mentioned decision, the Court found that there were no provisions regarding the temporal limitations of the suspension of the mayor's office, which led to the establishment of the interim office.

In this context, the Court recalled that the interim, being a provisional situation, which aims to avoid creating a void of power and to ensure the organization of mechanisms for the formation of plenipotentiary functional institutions, must be removed as soon as possible. However, in its previous case-law, the Court emphasized **the inadmissibility of the interim cases** (JCC no. 9 of 21 May 2013, §78).

The Court observed that, by virtue of the cumulative effect of the provisions on the election of deputy mayors, the suspension of the mayor's office as part of criminal prosecution and the establishment of the interim office, there is a risk that in practice the permanent function of mayor may be exercised by a person not elected by citizens'

vote, contrary to the principle of local autonomy enshrined in articles 109 and 112 of the Constitution.

Therefore, in order to exclude the risks of permanence of the interim mayor's office, the Court considered it necessary to establish a periodic judicial review mechanism to verify the justification of maintaining the mayor's suspension from the office.

• ***Address no. PCC -01/88g of 08.12.2017, JCC no.34 of 08.12.2017***

On 8 December 2017 the Constitutional Court delivered its Judgement no. 34 on the exception of unconstitutionality of certain provisions of article 87 para. (1) of the Labour Code, in the previous wording of Law no. 188 of 21 September 2017.

By the aforementioned judgement, the Court declared as unconstitutional the first thesis: *„the dismissal of employees - trade union members in cases provided for by art.86 para. (1) let. c), e) and g) is admitted only with the preliminary written consent of the trade union body (administrator) of the unit"* of the art. 87 paragraph (1) of the Labour Code, in the previous wording of Law no. 188 of 21 September 2017.

The Court ascertained that **the veto right** of trade union bodies in the decisions to dismiss the employees **infringes** the provisions of articles 9, 46 and 126 of the Constitution, which enshrine the free economic initiative, the free entrepreneurial activity and the ownership of the employer.

At the same time, the Court noted that the obligation of the trade union body to dismissal is provided for also by articles 29 para. (3), 87 para. (2) – (4), 89 para. (2) of the Labour Code, as well as by article 33 of the Law on trade unions no. 1129 - XIV of 7 July 2000.

Therefore, taking into account the reasoning set out in the Judgement no. 34 of 8 December 2017, the Court underlines the need to review all the provisions of the Labour Code and related laws that enshrine a similar legislative solution on the right of veto of trade union bodies in the dismissal of employees.

TITLE III

ENFORCEMENT OF ACTS OF THE CONSTITUTIONAL COURT

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

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

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

The judgments of the Constitutional Court are intended primarily for the legislature, and to other subjects participating in the legislative process. The result of the work performed by the legislative and other subjects involved in legislative drafting is appreciated within the procedure of constitutional justice; moreover, the judgments of the Constitutional Court often impose the duty to undertake appropriate legislative measures.

The judgments of the Constitutional Court are final, cannot be challenged, including by the legislator, and are binding. Given this reason, mainly the legal factors, and not political or emotive ones or other kind thereof, should determine the reactions to the court's decisions, especially if they involve specific obligations for the relevant subjects.

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

The legislator shall mandatorily eliminate the gaps reported. The unconstitutional vacuum that appears in a field of activity or the legal problem, toleration of an imperfect law or other normative act indicate that the Parliament, the political institution to which the constitution has given the power to legislate, fails to properly fulfil its constitutional mission. The legislator's obligation to remove the legal regulation gap is established based on the principles of the rule of law and separation of powers[72].

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

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

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

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

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

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

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

With a view to monitor the process of amending the legislative acts which provisions were declared unconstitutional by the judgments of the Constitutional Court, the Court is requesting the Government and the Parliament on regularly basis to be informed on the level of enforcement of the adopted acts. In their answers both the Legislature and the Executive reflected the situation on the enforcement of Court judgments and addresses, indicating the phase of the legislative procedure of the developed draft laws. Thus, during 2017 the Court delivered **15** judgements in which at least one of the

challenged provision was declared unconstitutional, the Parliament or the Government having to interfere with a view to settle the legislative gaps created. Out of the aforementioned judgments which were due for enforcement on the date of approving of this Report, **11** judgements were liable for enforcement. Out of which **3** judgements have been enforced, **1** is still not enforced, whilst **7** are in the process of enforcement.

Following a comparative analysis, in **2016,** out of the total number of 17 judgements, 4 judgements are still not enforced, the other being enforced *(see chart no.13*).

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

2 LEVEL OF ENFORCEMENT OF ADDRESSES OF THE CONSTITUTIONAL COURT

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

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

Therefore, when performing constitutional review and based on addresses delivered to public authorities in respect of the challenged acts, the Court acted as a passive legislator. In 2017 the Court issued 10 addresses. Based on the information available to the Court, on the day of approval of this report out of the 6 addresses due for enforcement,

one is still unenforced, whilst 5 are in the process of enforcement. As a comparison, in 2016 the Court issued 17 addresses, out of which, on the day of approval of this report, 10 addresses have been enforced, 5 addresses are in the process of enforcement and 2 addresses are still unenforced. Out of the 5 addresses issued in 2015, one address has been enforced, 3 addresses are in the process of enforcement while one address is still unenforced *(see chart no. 14).*

TITLE

IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

TITLE IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

Besides the basic judicial activity, intensively exercised by the Constitutional Court, the institution maintains fruitful collaboration relations in the area of constitutional law with regional and international institutions, with constitutional courts and similar institutions in other states.

Thus, during 2017, the Court's international cooperation priorities focused on the following areas.

4.1. Participation of the Court in international organizations

4.1.1. The XVIIth Congress of the Conference of European Constitutional Courts (CECC)

On 29 - 30 June 2017, the delegation of the Constitutional Court of the Republic of Moldova (CCM) participated at the XVIIth Congress of the Conference of European Constitutional Courts (CECC), held in Batumi, Georgia, being hosted by the Constitutional Court of Georgia as the institution which held the presidency of CECC during 2014-2017. The Congress took place under the generic *"Role of the Constitutional Courts in upholding and applying the constitutional principles"* and reunited presidents and judges of the constitutional courts and similar institutions from the European continent.

The President of CCM, Tudor Panțîru, in his presentation focused on the interpretation of constitutional norms in light of the Constitution and the Declaration of Independence. In this context, the President of CCM underlined that constitutional case-law,

as well as the context of the legal system in its generality shall rely on unchangeable values, and in this respect the Declaration of Independence appears as the core of the paradigm of such principles and standards.

At the initiative of the former President of CCM, Alexandru Tănase, taken over by the current President of CCM, Mr. Tudor Panțîru, the Constitutional Court of the Republic of Moldova was elected by unanimity of votes to hold the presidency of the Conference of European Constitutional Courts for the period 2020-2023. In this context, the election of the Constitutional Court of the Republic of Moldova by unanimity of votes represents a recognition of the Court independence, as well as the quality of its activity which corresponds to European standards.

4.1.2. IVth Congress of the World Conference on Constitutional Justice

Between 11-14 September 2017 the delegation of the Constitutional Court attended the IVth Congress of the World Conference of Constitutional Justice (WCCJ)), held in Vilnius, Lithuania. CCM was represented by the President Tudor Panțîru, judges Aurel Băieșu and Igor Dolea, and by the chief assistant-judge Rodica Secrieru.

The goal of the IVth Congress of the WCCJ was to promote dialogue at international level, which is beneficial to judges of constitutional justice institutions, and to strengthen constitutional justice as a key element for democracy, protection of human rights, and the rule of law.

The IVth Congress took place under the generic *"The Rule of Law and Constitutional Justice in the Modern World"*. During the five sessions, participants will discuss the diversity of the concepts of the rule of law in different countries, the role of constitutional courts in ensuring the rule of law, protection of human constitutional rights, and independence of constitutional courts.

The WCCJ is an organisation uniting constitutional control institutions from all over the world. It unites 111 constitutional justice institutions from Europe, Africa, the Americas, Asia, and Australia. The congresses of the WCCJ have been held every three years in a different continent, starting with 2009, the year of founding the organization: Cape Town, Republic of South Africa (2009), Rio de Janeiro, Brazil (2011), Seoul, Republic of Korea (2014).

4.1.3. The 16th meeting of the Joint Council on Constitutional Justice of the Venice Commission

Between 18-19 May 2017, in Karlsruhe, Germany, took place the XVIth meeting of the Joint Council on Constitutional Justice of the Venice Commission, event hosted by the Federal Constitutional Court of Germany. The chief assistant-judge of the CCM, Mrs. Rodica Secrieru, in her capacity as the liason officer of the Constitutional Court of the Republic of Moldova with the Venice Commission, presented a briefing on the experience of the CCM within the mini-conference under the generic "Courageous Courts: security, xenophobia, fundamental rights", highlighting the jurisprudence of the CCM in the areas of national security, access to justice in the control of national security acts etc.

4.1.4. Celebration of the 20th anniversary of the Association of Constitutional Courts using the French Language partially (ACCPUF)

Between 15-19 November 2017, the delegation of CCM attended the conference dedicated to the 20th ACCPUF, held in Paris, France, under the generic "Drafting of judgements". In opening remarks, the President of the Constitutional Council of France, Mr. Laurent Fabius, ACCPUF President, Mr. Ulrich Meyer, the President of the Swiss Federal Court, and Mrs. Michaëlle Jean, Secretary-General of the International Francophonie Organization, underlined the role and importance of ACCPUF for the development of law in the francophone states - members of the Association.

Further, the conference also focused on organizing the way in which the judgements of the constitutional courts were drafted in the context of relations between the constitutional judge and his/her assistant; drafting and argumentation techniques, and so on. The exponents of the Belgian Constitutional Court and the French Constitutional Council presented the case studies to the participants, thus illustrating the experience of these courts on the subject. The conference brought together about 126 presidents and delegates from 34 constitutional courts around the world.

4.2. Participation of the Court in regional organizations

4.2.1. Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)

During 2017 the CCM representatives have participated in several events organized under the auspices of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ). BBCJ is a regional association, which is composed of the Constitutional Courts of Georgia, Lithuania, Republic of Moldova and Ukraine, established for the purpose of affirming the supremacy of Constitution and constitutional justice, respect for human rights and fundamental freedoms, expressing the need to respect the independence and sovereignty of the states as well as their territorial integrity.

Thus, during the year, the representatives of the constitutional courts - members of the BBCJ had several working meetings (on 13 February in Kiev, on 2 March in Chisinau, on 29 June in Batumi, on 11 September in Vilnius), within which were discussed issues such as the independence of Constitutional Courts, the harmonization of norms and principles of international law with national law, taking over the experience of the European Constitutional Courts and the jurisprudence of the European Court of Human Rights, as well as the jurisprudence of the Constitutional Courts - members of the BBCJ.

Given that on 1 January 2017 BBCJ's presidency was taken over by the Constitutional Court of Ukraine according to the BBCJ's Statute, the country holding the Presidency organizes the annual Congress of the Association. Thus, on 1 and 2 June 2017, the delegation of the Constitutional Court of the Republic of Moldova (CCM) participated at the 2nd Congress and the General Assembly of BBCJ, which took place in Harkiv, Ukraine. The general subject of the second BBCJ Congress were *"The role of Constitutional Courts in interpreting the provisions of national constitutions in the context of generally recognized principles and norms of International Law and EU law, judgements of international courts",* the Congress gathering representatives of constitutional courts and international organizations from Europe and the U.S.A.

In his presentation CCM Judge Aurel Băieșu focused on state sovereignty and hierarchy of principles and norms unanimously recognized on the international level in

the constitutional case-law. The magistrate pointed out that in its case-law CCM ruled that the international jurisdictional practice is binding for the Republic of Moldova as a state that joined the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, in an international society facing new challenges, the stability of constitutional justice becomes an axiom of democratic aspirations of any state.

The Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ) was established in 2015, on the initiative of the Constitutional Court of the Republic of Moldova and the Constitutional Court of Lithuania, and it also includes the Constitutional Courts of Georgia, Lithuania, Moldova and Ukraine. According to its statute, the association is open to membership; other Constitutional Courts, which share its goals and visions may become members of the BBCJ.

Between 2015 and 2016, the BBCJ presidency was held by the Constitutional Court of the Republic of Moldova, as the Court which initiated the founding of this association. Through this initiative, the founding courts have expressed their intention to strengthen constitutional justice in the Countries of the Baltic and Black Sea Regions and have highlighted the crucial role of constitutional courts in the implementation of the principles of the rule of law.

4.2.2. Vilnius Forum

Another format of regional collaboration between the Constitutional Courts of the Republic of Moldova, Georgia, Lithuania and Ukraine, which are at the same time members of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ), is the Vilnius Forum. This meeting, which in 2017 was at its second edition, is organized under the Cooperation Project „Assistance to the Constitutional Courts of Georgia, the Republic of Moldova, and Ukraine in Ensuring the Implementation and Protection of the Principles of the Rule of Law in the Context of the Regional Challenges", supported and funded by the Ministry of Foreign Affairs of Lithuania within the Development Cooperation and Democracy Promotion Programme.

The purpose of this project is, by offering experience gained by the Constitutional Court of the Republic of Lithuania, to strengthen the role of the constitutional justice

institutions of the Eastern Partnership countries – Georgia, the Republic of Moldova, and Ukraine – in ensuring the implementation and protection of the principles of the rule of law.

In the context in which the Republic of Moldova is in the process of implementing important and complex reforms matching the course of European integration, the support provided in this project is particularly necessary, especially by opening opportunities for cooperation between the constitutional courts regarding the implementation and protection of the principles in the field of law.

The project launched is a continuation of the activities initiated under the Cooperation Project „Assistance to the Constitutional Courts of Georgia, Republic of Moldova, and Ukraine in Ensuring the Implementation and Protection of the Principles of the Rule of Law", supported and funded by the Ministry of Foreign Affairs of Lithuania within the Development Cooperation and Democracy Promotion Programme, implemented by the Constitutional Court of Lithuania in the period 2016-2017.

Also, at the Vilnius Forum, the CCM President, Tudor Panțîru, had a meeting with the President of the Republic of Lithuania, Ms Dalia Grybauskaitė. The discussions focused on the imperative of the pre-eminence of law, the reform of the rule of law, as well as the assistance of Lithuania in strengthening the work of constitutional courts and democratic processes. According to the Lithuanian President, in the context where the Eastern Partnership member states are facing challenges regarding the independence of the Constitutional Courts, the Lithuanian side is willing to share its experience on strengthening citizens' confidence in the constitutional courts. In this respect, given that the pre-eminence of the right is the basis of a democratic state, „a Constitutional Court has a special role to strengthen the protection of democracy and human rights", said Dalia Grybauskaitė. And this, according to the high official, can be achieved by ensuring by the Constitutional Courts the transparency of democratic processes, in accordance with the Supreme Law.

Also in the context of the Vilnius Forum on 25 October 2017, CCM President Tudor Panțîru attended the festivity dedicated to the 25th anniversary of the Constitution of Lithuania, held in the Parliament of the host country, occasionally holding a congratulatory speech.

4.3. Participation in other international events

Traditionally, **opening of the judicial year at the European Court of Human Rights** in Strasbourg is marked each year at the end of January. This year's event took place on 27 January and brought together around 350 judiciary figures from across Europe. The invitees took part in the traditional seminar *Dialogue between judges* on the topic „Unreporting as a principle of international law and the role of the judiciary in its implementation". At the end of the seminar, at a solemn meeting, Mr. Guido Raimondi, President of the European Court of Human Rights, and Ms Silvia Alejandra Fernández de Gurmendi, President of the International Criminal Court, spoke.

The Constitutional Court was represented by Mr. Alexandru Tanase, CCM President, and Mrs. Rodica Secrieru, Secretary General.

On 24 to 25 May 2017, the judges of the Constitutional Court of the Republic of Moldova (CCM), led by the President of CCM Mr. Tudor Panțîru, attended **the International Conference** held in Bucharest *„A quarter of century of constitutionalism"*, dedicated to the 25th anniversary of the Constitutional Court of Romania (CCR).

The event brought together presidents, judges of constitutional courts and other courts and representatives of international bodies from Europe, Asia and the United States of America, as well as of the European Court of Human Rights, Court of Justice of the European Union and of the Venice Commission.

In his opening speech, the President of the Constitutional Court of Romania (CCR), Professor Valer Dorneanu, Ph.D. greeted the participants of the Conference and stated that CCR is the final referee of disputes on the interpretation of the Constitution and that the competence of the Court as the sole authority of constitutional jurisdiction is the guarantor of the supremacy of the Constitution.

The presentations made at the Conference included such topics as the jurisdiction of the European Court of Human Rights, the Court of Justice of the European Union and that of the Constitutional Court; the dialogue of judges in an Europe in crises; the Magna Carta and the birth of rule of law; as well as the experience of other constitutional courts represented within the event.

The Constitutional Court of the Republic of Moldova hosted on 8 to 9 June 2017, the ***XIXth International Congress on European and Comparative Constitutional Law (The Annual International Congress in Regensburg)***, which is traditionally held in the city of Regensburg, Germany. The Congress is a platform for scientific and practical discussion, being initiated 19 years ago by the University of Regensburg, Prof. Rainer Arnold. The generic of the Congress this year was „Constitutional Justice and the evolution of individual rights".

In his opening speech addressed to the participants, Mr. Tudor Panțîru, President of the Constitutional Court of the Republic of Moldova, expressed his gratitude towards the faithful organizer of the Congress, Mr. Prof. Rainer Arnold, who, through his passion for constitutional law, contributes to the evolution of constitutional academic doctrine.

The President of CCM underlined that, unlike previous decades, today we are witnessing a dynamic transformation of constitutional law, this becoming an essential lever in adapting law to social realities. Thus, constitutional jurisprudence has the role of con-

ciliation between the dominant power and the rights of the individual, precisely through the multiple influences that it exerts on the actual legal-political realities.

In his turn, Prof. Rainer Arnold welcomed the participants who formed the „grand family of constitutional law" and meet regularly at the Congress. Prof. Rainer Arnold also thanked the Constitutional Court of the Republic of Moldova for the high-level organization of the event and was keen to emphasise the close collaboration for more than 10 years with the CCM and the academic environment in the Republic of Moldova.

Mr. Alexandru Tanase, President of the CCM during 2011 – May 2017, initiator of the congress organization in the capital of the Republic of Moldova, also came before the participants with an welcoming speech. Mr. Tănase highlighted that the topic discussed at the congress is of permanent relevance in the context in which the protection of human rights and constitutional justice are the most important elements in guaranteeing democracy and the rule of law.

Also, Mr. Alexandru Tanase expressed his conviction that the Congress will provide significant support for a better understanding of the importance of strengthening the human rights protection mechanisms in the countries where the participants come from.

In his words of greeting the President of the Constitutional Court of Romania, Mr. Valer Dorneanu, emphasised the importance of the ongoing constitutional dialogue between the Constitutional Courts whilst the deputy chairman of the Constitutional Court of Georgia, Ms. Lali Papiashvili, underlined the role of constitutions in ensuring the protection of human rights.

The event brought together participants from around 20 countries in Europe and Latin America, representatives of both the Constitutional Courts and academia.

The International Congress on European and Comparative Constitutional Law was organized with the support of the German Foundation for International Legal Cooperation (IRZ).

4.4. Cooperation programs with foreign partners

4.4.1. The EU Project „Support to the Constitutional Court of the Republic of Moldova"

During the period of February 2016 to September 2017 a consortium led by the German Foundation for International Legal Cooperation (IRZ) in cooperation with the Con-

stitutional Court of the Republic of Lithuania and the School of German Law at Warsaw University as members, started the implementation of the EU funded project „Support to the Constitutional Court of the Republic of Moldova". The overall objective of the project, which was developed within the provisions of the „Justice Sector Reform Strategy 2011-2016 (JSRS)", was to accelerate the sustainable reform of the justice sector in the Republic of Moldova and to ensure the rule of law by strengthening the Constitutional Court.

The purposes of the project were to:

- Strengthen the Constitutional Court as laid down in the „Justice Sector Reform Strategy 2011-2016 (JSRS)" in consultation with the Venice Commission of the Council of Europe.
- Improve the procedures and internal organisation of the Constitutional Court; increase the capacities of the staff in providing support for the Constitutional Court judges.
- Increase awareness of Constitutional Court judges regarding different methods of interpretation and jurisprudence of the ECtHR and of constitutional control institutions of the EU member states, the recommendations of the Venice Commission, Council of Europe, OSCE and other international organisations.

The assistance delivered by the project was focused on the achievement of the following results:

- Institutional support and capacity building, through the participation of a team of international experts contributing to a better understanding of the international constitutional jurisprudence and of the case-law of the European Court of Human Rights, improving analytical and research process within the institution through continuous training and development of human resources; ensuring effective exchange of information with other Constitutional Courts and other relevant institutions from developed European countries; study visits of the CCM staff organized to European institutions, including the European Court of Human Rights.
- Legal support and contribution, consisting in the provision of technical expertise and assistance needed to a certain working group under the Ministry of Justice to develop the new wording of the draft law on Constitutional Court.
- Communication, awareness raising and interaction with the civil society by conducting campaigns to raise public awareness and inform the population of the

Republic of Moldova on the importance of the CCM functions and of its judgements, as well as on the constitutional rights and freedoms and the way they are to be defended.

Thus, following the successful implementation of the activities within the project, CCM, over the course of 18 months, has enjoyed the direct support from EU experts in the area of constitutional law, and has managed to significantly strengthen its capabilities in several segments:

– improving the performance of Constitutional Court staff (judiciary assistants, lawyers within the CCM subdivisions etc.) in providing support for judges in the exercise of constitutional jurisdiction through training sessions, seminars, round tables, study visits etc.;
– improving research and analysis activities and capabilities by providing access to specialized databases in the field of law (HeinOnline, iDrept etc.);
– increasing the level of the awareness of the public opinion on the activities of the Constitutional Court (publications on the activity of the CCM, periodical publication „the Bulletin of the Constitutional Court", the systematization of the CCM jurisprudence in the edition „Compendium of the Constitutional Court of the Republic of Moldova (1995-2017)" etc.);
– increasing the transparency in the activity of the Constitutional Court etc.

4.4.2. German Foundation for International Legal Cooperation (IRZ Foundation)

The Constitutional Court has established lasting cooperation relationships with the German Foundation for International Legal Cooperation (IRZ Foundation). For at least 12 years the IRZ Foundation has supported the Court in organizing events that have had a significant impact on the development of constitutional law in the Republic of Moldova.

In 2017 the IRZ Foundation supported the conduct of the ***XIXth International Congress on European and Comparative Constitutional Law*** in Chisinau, which traditionally takes place in Regensburg, Germany, bringing together illustrious scholars in constitutional law on the European continent.

The IRZ Foundation also participated as a consortium leader who, in cooperation with the Constitutional Court of the Republic of Lithuania and the School of German Law at Warsaw University, implemented the European Union funded project ***„Support to the Constitutional Court of the Republic of Moldova",*** completed in September 2017, thus managing to achieve more actions to consolidate the Constitutional Court.

As in previous years, the IRZ Foundation in 2017 contributed to the organization of scientific events in the field of constitutional law, with the participation of experts from Germany. Thus, on 11 to 12 October 2017, a round table on the topic ***„The role of the Constitutional Courts in resolving „the disputes" between authorities"*** took place, as a continuation of the discussions started on this topic at the round table held on 2 December 2016.

4.5. Official Meetings

4.5.1. Visit of the delegation of the Constitutional Court in Lithuania

On 4-7 April 2017 the official delegation of the Constitutional Court of the Republic of Moldova, led by the President Alexandru Tanase, carried out a working visit in Lithuania, where they held meetings with the representatives of several state authorities.

On 5-6 April the President and Judges of the Supreme Court of Lithuania met and a working visit was carried out to the district court of Druskininkai city, Lithuania. The President of the Supreme Court, Mr. Rimvydas Norkus, as well as other judges, presented the activities, competences and challenges faced by the Supreme Court of Lithuania. Also, there were discussed issues related to the process of examining the pending cases, the uniformity of the jurisprudence, as well as the transparency of the process of appointing judges.

The President of the District Court of Druskininkai City, Mr. Antanas Šeštokas, presented its activity, structure, and competencies. In the course of discussions, Mr. Alexandru Tanase referred to the particularities of the reorganization of the judicial systems in Moldova and Lithuania and to the similarities and the influence of this reorganization on justice.

On 6 April 2017, the delegation of the CCM had a meeting with the Deputy Minister of Justice of the Republic of Lithuania, Mr. Paulius Griciūnas, who during discus-

sions revealed the role of constitutional jurisprudence in the drafting of legislation. In his turn, the CCM President, Alexandru Tanase, underlined the importance of bilateral cooperation between the two countries. Ms. Karolina Bubnytė, Lithuania's Government Agent at the European Court of Human Rights, also participated in the discussions and the topics addressed included the introduction of the individual complaint to the Constitutional Court and the influence of the European Convention on Human Rights on the constitutional legal framework and jurisprudence.

On 7 April 2017, the delegation of the CCM visited the Constitutional Court of Lithuania. Within the visit, the President of the Constitutional Court of Lithuania, Mr. Dainius Žalimas, presented the activities, the competences and recently adopted decisions by the institution he is leading. The visit was focused on sharing the experience between the two institutions in the field of constitutional case-law, as well as on discussions relating to constitutional jurisdiction. There were also tackled issues such as the independence of justice, rule of law, protection of human rights and freedoms, as well as the role of Constitutional Court in strengthening and safeguarding these constitutional values. The President of the Constitutional Court of Moldova, Mr. Alexandru Tanase, highlighted the fruitful and mutually beneficial bilateral cooperation between the two courts, which is particularly important in the European integration process of the Republic of Moldova.

Following the working visit to Lithuania on 7 April 2017, the CCM delegation had a meeting with members of the Seimas (Parliament) of the Republic of Lithuania and had the opportunity to interact with Seimas President Mr. Viktoras Pranckietis. The Chair of the Legal Commission, Mr Julius Sabatauskas, made a presentation of the work and attributions of the Legal Commission. The discussions focused on the interaction between the Parliament and the Constitutional Court, as well as the legislative initiative to amend the Constitution regarding the introduction of direct access of citizens to the Constitutional Court. The President of the CCM, Alexandru Tanase, underlined the importance of ensuring and respecting the supremacy of the Constitution in the process of legislative creation.

The visit of the CCM delegation to Lithuania was one of the activities carried out with the support of the EU Project „Support to the Constitutional Court of the Republic of Moldova".

4.5.2. Visits to the Constitutional Court

During 2017, the President and judges of the Constitutional Court received official and documentary visits from senior international officials: Mr. Gianni Buquicchio, President of the European Commission for Democracy through Law (the Venice Commission); Mr. Guido Raimondi, President of the European Court of Human Rights, Mr. Prof. PhD. Valer Dorneanu, President of the Constitutional Court of Romania; Mr. Andreas Paulus, Judge of the Federal Constitutional Court of Germany, Mrs. Milda Vainiutė, Minister of Justice of the Republic of Lithuania.

At the same time, the President of the CCM received visits from ambassadors accredited in the Republic of Moldova – E.S. James Pettit, the Ambassador Extraordinary and Plenipotentiary from the United States of America, E.S. Zdeněk Krejčí, the Ambassador Extraordinary and Plenipotentiary from the Czech Republic; E.S. Rimantas Latakas, the Ambassador Extraordinary and Plenipotentiary from the Republic of Lithuania, E.S. Jivan Movsisyan, the Ambassador Extraordinary and Plenipotentiary from the Republic of Armenia, E.S. Peter Michalko, Head of the European Union Delegation in Chisinau (starting with September 2017).

The CCM also hosted the delegation of the Congress of Local and Regional Authorities of the Council of Europe during the information visit.

4.5.3. Open doors day for the members of the diplomatic corps accredited in Chisinau

For the first time, on 10 February 2017, the CCM held the Open Doors Day for members of the diplomatic and consular corps and representatives of international organizations based in Chisinau. The CCM President has, on this occasion, made a presentation of the institution, of the projects that are being implemented, of the foreign CCM aspirations and of the practices applied in the decision-making process. The participants exchanged views on the judicial reforms and the challenges that the Republic of Moldova is currently facing. The guests also benefited from a guided visit to the CCM headquarters.

Also, during this event, the CCM President, Alexandru Tanase, and the Head of the European Union Delegation to the Republic of Moldova, Mr. Pirkka Tapiola, made statements to the press. The Ambassador Pirkka Tapiola welcomed the event, noting that the role of the Constitutional Court in a transition society must be of an arbitrator to follow the correct application of the laws. The EU's Head of Mission also invited other institutions to follow the example of the CCM and organize such meetings, including with representatives of civil society, to increase institutional transparency and respond to public interest issues.

The event took place with the support of the EU Project „Support to the Constitutional Court of the Republic of Moldova".

4.6. Events organized and conducted by the Constitutional Court

On 23 February, on the occasion of the 22nd anniversary of the founding of the Constitutional Court, the CCM held a *videoconference with the judge of the Court of Justice of the European Union (CJEU), Egidijus Jarašiūnas,* on the topic ***„Constitutional Court Reports with the CJEU. The influence of the CJEU case-law on the development of constitutional doctrine."***

The topics discussed at the conference aimed to familiarize the present public with European law, particularly in the context of the implementation by the Republic of Moldova of the Association Agreement signed with the European Union. The President of the CCM, Alexandru Tanase, mentioned the importance of the CJEU's practices and principles for the judicial activity of the Constitutional Court of the Republic of Moldova, as well as the impact of the CJEU case-law on constitutional doctrine.

In his presentation, the Judge Egidijus Jarašiūnas referred to the role of the CJEU and its case-law as well as the cooperation between the Constitutional Courts and the CJEU. Referring to the contribution that a Constitutional Court might have in preparing a state for EU membership, Mr. Jarašiūnas said that the contribution of the team of legal professionals, including of the constitutional judges will be needed as well in the preparation of the legal framework for accession. This would avoid divergences between national and EU legislation.

The event was attended by current judges of the CCM and resigning judges, representatives of the Government, the Association of Lawyers, civil society and academia. The conference was broadcasted live, and viewers had the opportunity to ask questions in real time.

The event took place with the support of the EU Project „Support to the Constitutional Court of the Republic of Moldova".

On 2 March 2017, under the auspices of the CCM in Chisinau took place the International Conference on the ***„Evolution of constitutional control in Europe: lessons learned and new challenges"***. The event was attended by 80 international high officials, including presidents and members of over 20 Constitutional Courts, representatives of the General Court of the EU, as well as the President of the Venice Commission, Gianni Buquicchio.

Alexandru Tanase, the President of CCM, in his opening speech underscored that throughout its existence CCM was the key institution in solving the most difficult institutional issues and most pressing institutional conflicts.

Constitutional Courts are called to implement the complicated mission of limiting abusive political will, no matter what is the source. In this regard, „the independence of

Constitutional Courts is a crucial element on which depends the functionality or even the survival of democracy and political pluralism," stated the President of CCM.

Gianni Buquicchio, the President of the Venice Commission, in his speech mentioned that in a state governed by the rule of law, the judgments of the Constitutional Court must be implemented and not be made the subject of a vote, whether in parliament or by the people. In this regard, the Venice Commission strives to help constitutional courts that come under undue pressure.

Andrian Candu, the Speaker of Parliament, stated that the independence of constitutional courts must be protected from any political interference and that the rulings of constitutional courts have to be treated with respect. According to the Speaker of Parliament, „using the Constitution for political or group interests is tempting for some, but I would like to assure you that an analysis of the case-law of the Constitutional Court of Moldova proves that this is not possible. And this is a reason for joy". Mr. Andrian

Candu also underlined that by the acts it delivers, CCM is an European institution and invited the attending constitutional courts to support the candidature of CCM for the Presidency of the XVIIIth Conference of European Constitutional Courts.

This event was carried out by CCM in cooperation with the Venice Commission of the Council of Europe, within the CoE and EU „Programatic Cooperation Framework for Eastern Partnership Countries" and with the support of the EU Project „Support to the Constitutional Court of the Republic of Moldova."

On 30 May 2017 the CCM organized the conference with the generic ***„Constitutional Justice in a Democratic Society",*** which was attended by current CCM judges and resigning judges of the CCM, as well as experts from the European Union and the Council of Europe.

At the opening of the conference, the CCM judge, Mr. Aurel Băieșu, welcomed the participants and brought to the attention of the public the issue of the priority of the international human rights regulations. In this context, the constitutional judge declared that „the event is an evidence of the CCM's attention to European case-law".

A greeting message was presented by Mr. Alexandru Tanase, CCM President during 2011-2017. Quoting Professor Rainer Arnold, according to whom „the essence of the rule of law is constitutionalism", the speaker stated that „essentially, constitutionalism, as a fundamental pillar of the rule of law, must establish that limit between individual freedom and the interest of the state to organize their activity".

The issue was further developed by Mr. Jean-Louis Laurens, former Director General of the Council of Europe's Strategic Planning and Political Affairs Division, who spoke about the role of the press and NGOs in the constitutional case-law of France, focusing on the constitutional issues from the perspective of the recent presidential elections in France.

Speeches relevant to the conference's topic were held by experts from the European Union Project Team „Support to the Constitutional Court of the Republic of Moldova" - Mamuka Jgenti, Gábor Attila Tóth, as well as the resigning judge of the Constitutional Court of Lithuania, Toma Birmontienė.

The event took place with the support of the EU Project „Support to the Constitutional Court of the Republic of Moldova".

On 9 June 2017, at the proposal of the CCM, the University of Academy of Sciences of Moldova ***has awarded the title of Doctor Honoris Causa to the renowned professor of constitutional law from Germany, Rainer Arnold.*** The distinguished professor has been awarded this title for exceptional merits in promoting the consolidation of constitutional justice in Moldova.

Author of over 400 publications and a dedicated participant to international scientific events organised by CCM at the beginning of 2000, professor Rainer Arnold is a loyal supporter of the development of constitutional law in Central and Eastern Europe, including in the Republic of Moldova.

The President of the CCM, Tudor Panțîru, underlined that this ceremony represented for all of us the occasion to prove the gratitude for Mr. Rainer Arnold exceptional contribution to the development of European constitutional law as a whole and to the individual constitutional identity of the states that are or strive to be a part of the great European family, in our case – the Republic of Moldova

A welcome speech was presented by the Rector of the University of ASM, the academician Maria Duca, who expressed her gratitude for the initiative of the Court, and also for the acceptance from Professor Arnold of this honorific title.

The laudatio to Mr. Rainer Arnold was presented by the Vice President of ASM, corresponding member, habilitated doctor of law and full professor, Ion Guceac. According to him, throughout the past years, professor Rainer Arnold becomes more and more involved in the scientific activities of Moldova, particularly by giving lectures and practical courses on German law and comparative law as a visiting professor at the State University of Moldova (SUM), but also as a member of the board of editors of the periodical publication „The Bulletin of Constitutional Court".

Professor Rainer Arnold expressed his gratitude for being granted this honorary title here, in Chisinau, where the Constitutional Court has a jurisprudence which complies with the highest standards of European constitutionalism.

The event included also an address by the President of CCM between 2011-2017, Alexandru Tanase, who recalled a statement made by Professor Arnold at a conference held in Chisinau in March 2017 on the Evolution of constitutional control in Europe, that "constitutional justice is the perfection of the rule of law." Alexandru Tanase thus

took pride in the fact that starting with 2005, Professor Arnold became a bridge of crucial importance, not only between the academia from Germany, but also with the academia from the whole world.

The public attending the ceremony included guests from about 20 countries from Europe and Latin America, who were in Chisinau at the International Congress on European and Comparative Constitutional Law, held in Chisinau for the first time ever.

On 28 July 2017, through the efforts of the CCM in cooperation with the Parliament of the Republic of Moldova, was celebrated solemnly ***the Constitution Day of the Republic of Moldova.*** The event brought together the country's leadership, deputies, ministers, representatives of the diplomatic corps, judges, representatives of civil society and academia, as well as guests from Lithuania, Romania, Georgia, Germany and Ukraine.

Congratulations to the audience have been expressed by Mr. Andrian Candu, Speaker of Parliament, and Mr. Pavel Filip, Prime Minister, who emphasized the primordial role of the Supreme Law in the democratic development of the state and society.

Mr. Tudor Panțîru, President of the CCM, underlined in his congratulatory message that the Supreme Law is the product of our historical, political and cultural becoming, is the legal act that defines our ideology and sets the collective agenda of social and political changes in our society. This is a day that has to urge decision-makers to concrete actions, undertaken in good faith and professionalism, for the benefit of the citizens.

Dainius Žalimas, President of the Constitutional Court of Lithuania, emphasized in his congratulatory discourse the common values of the European identity provided by the Constitution and the Declaration of Independence of Lithuania and by the Constitution and Declaration of Independence of the Republic of Moldova, such as freedom, human dignity and democracy, European orientation. On the occasion of the anniversary of the Constitution, Dainius Žalimas congratulated the CCM for its firm position, being the most courageous and European institution in the Republic of Moldova.

Mr. Valer Dorneanu, the President of the Constitutional Court of Romania, expressed his joy in his congratulatory message that the CCM was elected to hold the presidency of the Conference of European Constitutional Courts for the period 2020-2023 as a recognition of the independence and quality of the work in accordance with European standards. In this respect, the high-ranking dignitary in Bucharest brought to the audience's attention the resolute judgements of the CCM, among which the CCM Judgement in 2013 on the interpretation of article 13 para. (1) of the Constitution in conjunction with the Preamble to the Constitution and the Declaration of Independence of the Republic of Moldova.

Zaza Tavadze, President of the Constitutional Court of Georgia, addressed a congratulatory message through the Georgian Embassy in Moldova, emphasizing the existing constitutional similarities between Georgia and the Republic of Moldova - independence, statehood, the rule of law - and expressed the conviction that both States, despite difficulties, will become members of the European Union.

The congratulatory message from the Constitutional Court of Ukraine was delivered by Stanislav Shevchuk - Judge and Chairman of the Standing Committee on Foreign Relations of the Constitutional Court of Ukraine. In his speech, he underlined that the CCM, through its work, is a model for the Constitutional Court of Ukraine, referring in

particular to the CCM judgment of 2 May 2017 on the interpretation of art. 11 of the Constitution on RM neutrality.

The Federal Constitutional Court of Germany was represented by the Judge Andreas Paulus, who made a speech entitled „The Role of Constitutional Courts in Assuring the Pre-eminence of Law and Democracy." In its view, the Constitution remains a dead letter if it is not interpreted and applied in judicial decisions and is not implemented by the competent state institutions. According to the judge, the basic role of the Constitutional Courts is to exercise control over the state institutions whose activities are subject to the laws, including constitutional laws.

According to Mr. Paulus, constitutional loyalty does not simply mean the enforcement of Constitutional Court judgements, in this respect the judge comes with examples from the German constitutional jurisprudence. In particular, he provided examples of practical application of the principle of inviolability of human dignity and elucidated the benefits of individual complaints submitted by citizens as giving the opportunity to understand the merit of this remedy in protecting the rights provided by the Constitution.

The event was attended by the judges in office and the resigning judges of the Constitutional Court, deputies in Parliament and members of the Government, other senior officials, representatives of foreign diplomatic missions, personalities in the field of culture and science.

On 6 October 2017, the CCM held the conference dedicated to the ***20th anniversary of the entry into force in Moldova of the European Convention on Human Rights.*** The guest of honour of the event was the President of the European Court of Human Rights, Mr. Guido Raimondi.

In the opening speech of the ceremony, the President of CCM – Mr. Tudor Panțîru underlined the importance joining the Convention by the Republic of Moldova, which brought about significant benefits for the State. Correlated with this, according to the President of CCM, "the jurisprudence of the European Court constitutes the official interpretation of the Convention and it is binding for the authorities and judiciary of the Republic of Moldova." Furthermore, aiming at fulfilling the mission CCM has in preventing violations of the Constitution and of the Convention, Tudor Panțîru mentioned

the Judgment no. 2/2016 of CCM on the exception of unconstitutionality thereby litigants were granted the opportunity to raise exceptions of unconstitutionality before any court of law, which at its turn applies before CCM. The complexity of efforts in upgrading to European standards has led to the acceptance of CCM in the Superior Courts Network under the European Court of Human Rights and to being elected to hold the presidency of the Conference of European Constitutional Courts for the period 2020-2023.

The Speaker of Parliament, Andrian Candu, underlined that in the context of observing the European Convention by our State, the Parliament takes into consideration "the possibility to utilise the mechanism of parliamentary control for a closer monitoring of the execution of the judgments of the European Court of Human Rights".

At his turn, the Minister of Justice, Vladimir Cebotari, stated that implementing the Convention has determined the national authorities to see it as a catalogue of imperative values, which extremely rarely allows for derogations. Moreover, due to the implementa-

tion of the Convention, in Moldova were established new institutions, such as the Council on the Prevention and Elimination of Discrimination and Ensuring Equality and the existent ones were strengthened, e.g. the institution of Ombudsman.

The guest of honour of the event, the President of the European Court of Human Rights, Guido Raimondi, had an address for the audience. Referring to the work done by CCM, the President of ECtHR stated: "Proceedings that involve human rights have grown to account for over 70% of decided cases, making your Court a "genuine human rights tribunal." The high official made a special remark with regards to the Judgment of CCM no. 2/2016 on the exception of unconstitutionality, which made it possible for the Court to examine over 150 exceptions in the first year following the delivery of the judgment, with a speedy examination thereof. Furthermore, the European judge made reference to the similarities between the content of certain judgments issued by the CCM and the ECtHR.

Mr. Guido Raimondi expressed his satisfaction on the fact that the office of President of CCM is held by the first judge to the ECtHR representing the Republic of Mol-

dova – Tudor Panțîru, thus ensuring a practical application in the Republic of Moldova of the reach experience accumulated at the European Court of Human Rights.

The Venice Commission member representing Moldova, Mr. Alexandru Tanase, stated that after 20 years since the entry into force of the Convention, out of those who voted for its ratification, few of them were fully aware of the impact it is going to have. In this context, the representative of the Commission mentioned a number of ECtHR judgments of particular importance for the Republic of Moldova, which have significantly impacted the development of the domestic legal framework. Further, the official recalled the Opinion of the Venice Commission on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, where the Commission stated that abiding by the judgments of the ECtHR is a unequivocal, imperative legal obligation, which is vital in upholding and promoting the principles and values of the European continent.

The ceremony gathered about 250 invitees, including representatives of the judiciary, academia, the corp diplomatique and representatives of the Constitutional Courts members of the BBCJ Association.

On 11 to 12 October 2017, within CCM took place debates on the topic ***„Collaboration between State Authorities. The role of the Constitutional Court in resolving the „disputes" between State Authorities"***, in which experts from Germany and the Republic of Moldova made a fruitful exchange of views. Mr. Winfried Schubert, the resigning president of the Constitutional Court of the Free State of Saxony, the Federal Republic of Germany, and Mr. Reinhard Gaier, the resigning judge of the Federal Constitutional Court of Germany, have participated in the discussion.

During the event were discussed issues related to the role and functions of the constitutional authorities in Germany and the Republic of Moldova, the Constitutional Court's relations with the other authorities, the role of the CC in ensuring the rule of law, etc.

The event brought together guests invited by the public authorities and the academic environment of the Republic of Moldova and was organized with the support of the German Foundation for International Legal Cooperation (IRZ Foundation).

4.7. Study tours to the Constitutional Court, thematic contests for pupils and students

4.7.1. Visit of representatives of the Congress of Local Authorities of Moldova

On 15 March 2017, CCM for the first time ever hosted more than 50 mayors from the Moldovan villages and cities, who accepted the invitation to the meeting, organized with the aim of disseminating more information on the possibility of referring the Constitutional Court on issues related to local autonomy.

The President of the CCM made a presentation on the functioning of the Court and responded to the questions of the mayors. Thus, the mayors were informed about the mechanism of notification by the local authorities of the CCM if the basic principles of local public administration, as laid down in article 109 of the Constitution, are affected. The event was organized in the context of the legislative amendments of 4 March 2016, according to which the councils of the first and second level administrative and territorial units became subjects with the right of referral to the Constitutional Court.

4.7.2. Information Visits

In order to raise the legal culture of high school pupils and students, regular study visits are held at the CCM. Thus, as mutual communication with secondary and higher education institutions in the country has already been established, during the year 2017 the Court was visited by several groups of students and high-school students. Traditionally, these visits take place on the occasion of Europe Day.

Thus, on 4 May 2017, the CCM hosted a group of first-year students from the Faculty of General Economics and Law of the Academy of Economic Studies of Moldova, who capitalized on the opportunity to learn more about the work of the CCM. Future lawyers learned from the first source about the work of the Constitutional Court, the functions and competencies of the institution, the ruling decisions of the CCM and their impact for the future, presented by Mr. Alexandru Tanase and Mr. Veaceslav Zaporojan. At the same time, the students listened to information presented by EU experts in the CCM on issues related to the European dimension of the CCM's activity.

On 11-12 May 2017, the CCM received visits from groups of students of law faculties within the State University of Moldova, the University of European Political and Economic Studies „Constantin Stere" and the American University of Moldova.

The Court's judges reported on the work of the CCM and its implications for the promotion of European democratic values in the Republic of Moldova, the powers of the Court, the procedure for the examination of complaints, the information resources available in the Court's library and the CCDOC public database and the most important judgements of CCM. The students were informed about the possibility of citizens to follow the Court's sittings live.

Continuing the communication tradition with pre-university education institutions, a group of students from the „Stefan cel Mare și Sfant" High School of Grigoriopol town visited the CCM on 17 May 2017. During the visit the students learned about the activity of the Court, judges and collaborators. The CCM responded to questions about the functions and powers of the institution. This is not the first time students from the Transnistrian region visit the CCM. Thus, in 2015, the CCM became a hospitable host for the students of „Lucian Blaga" High School. This tradition seeks to raise awareness of the society and inform the public of the rights guaranteed by the Constitution and how to defend them within the scope of the CCM.

On 29 May 2017 a group of doctoral students from the Doctoral School of Law, Political and Administrative Studies of the National Consortium of the Academy of Economic Studies of Moldova (ASEM) and the University of European Political and Economic Studies „Constantin Stere" (USPEE) participated at the round table organized at the Constitutional Court on the topic „New Trends in the Development of Constitutional Doctrine."

Event participants had the opportunity to learn the details of new trends in this area. Dr. Prof. Veaceslav Zaporojan, a judge at the CCM, gave a detailed presentation of the CCM's work within the European model of the institution's functioning, as well as of the new trends in CCM jurisprudence during 2016-2017. More about the European dimension of the CCM activity the doctoral students learned from the former Judge of the Constitutional Court of Lithuania, expert of the EU project „Support to the Constitutional Court of the Republic of Moldova", Prof. Dr. Toma Birmontienė, who carried

out a comparative analysis of the constitutional jurisprudence of the Courts of the European Union and the CCM, and noted the similar nature of the CCM's work with the European Constitutional Courts.

On 5 October 2017, CCM was visited by a group of law students from Iasi, Romania, and Chisinau - members of the ELSA Association - a student association of the faculties of law in Europe, the largest international organization of law students and young lawyers in Europe. During the visit the members of the ELSA Association had a meeting with the CCM President, Mr. Tudor Pantîru, being discussed topics such as the constitutional system in the Republic of Moldova, the attributions of the Constitutional Court, the importance and the impact of the CCM jurisprudence on the theory and judicial practice in the Republic of Moldova.

4.7.3. Moot-court competitions

For the first time in the Republic of Moldova, the CCM organized the Moot-court competitions, which is a specialized competition for students enrolled in the third and

fourth year of the bachelor's cycle of a faculty of law from the universities of the Republic of Moldova. The competition aims to give students the opportunity to apply the accumulated theoretical knowledge into practice and to develop practical advocacy skills before the CCM.

In the opening speech of the competition, which took place on 19 June 2017, CCM judge Mr. Veaceslav Zaporojan welcomed this opportunity offered to future lawyers to build on their knowledge. According to the CCM judge, the launch of the competition is proof that both the Constitutional Court of the Republic of Moldova and the judiciary courts become crucial partners in the implementation of the European Union's development strategy „Europe 2020" to stimulate and maintain the development of the field of law.

Thanks to the work of the CCM, there have been made major changes in the field of human rights in the Republic of Moldova lately. In this respect, the Mock trial competition in Constitutional Law is an exercise that will open up more opportunities for participants as future legal professionals and lawyers. And this becomes even more present in the context of the defence of fundamental rights by raising the exception of unconstitutionality in court when the rights and interests of a party to the dispute are being violated.

The first edition of the Moot-court competitions in constitutional law was attended by teams of students of law faculties from 8 universities in the country: Moldova State University, Academy of Economic Studies of Moldova, Free International University of Moldova, University of European Studies of Moldova, University of European Political and Economic Studies „Constantin Stere", State University „Alecu Russo" from Balti, State University „Bogdan Petriceicu Hasdeu" from Cahul and Comrat State University.

The contestants had the task of holding the moot-court competition before the jury, including international experts and judges of the CCM, in the same cases as those examined by the Constitutional Court. During the competition the participants played the role of deputies, ministers, lawyers, other parties of the process in constitutional litigation. According to the regulations, the competition took place in several stages, the final stage being held on 23 June 2017. Of the 8 participating teams, the Moldova State Uni-

versity (USM) team and the Free International University of Moldova (ULIM) team became victorious.

The competition was carried out with the support of the European Union project „Support to the Constitutional Court of the Republic of Moldova".

4.7.4. Summer School

On 20 to 22 June 2017, the CCM organized a summer school for law students from all over the country. The summer school with the topic *„Constitutional jurisdiction – effective remedy for human rights protection"* took place in Vadul lui Voda town. Among the experts training the participating future lawyers were invited: Mr. Alexandru Tanase – President of CCM in 2011-2017 and current members of CCM, the President and the

Secretary General of the Constitutional Court of Lithuania, the former Vice President of the Constitutional Court of Georgia and other local and international experts.

The goal pursued by this Summer Schools was to provide students both with practical knowledge and theory in the field of constitutional justice. The presentations of experts tackle such issues as the work and case-law of CCM, the case-law of ECtHR, the freedom of speech and religion, and the right to private and family life, etc.

This Summer School was carried out in cooperation with the EU project "Support to the Constitutional Court of the Republic of Moldova."

4.7.5. The contest „The Best Constitutional Journalist"

Between November 2016 – March 2017, the Constitutional Court carried out the contest „The Best Constitutional Journalist 2016". The contest was intended for journalists from the Republic of Moldova that address thematic topics related to the activity of the Constitutional Court. Thus, the participants' dossiers on the reflection of the activity of the CCM in the press was evaluated within the contest. The criteria for the selection of the winners included the added value for society, the conformity with the requirements of Code of Journalism Deontology, as well as the presence at CCM sittings and events.

Following the analysis of dossiers, winners were declared: Mrs. Ana Bejenaru, reporter of the public TV channel "Moldova 1", and Mrs. Ileana Pirgaru, reporter of TVR Moldova channel. The ceremony took place in the sitting room of the Court, in the presence of current and former CCM judges, team members of the EU-funded project "Support to the Constitutional Court of the Republic of Moldova" and high level international experts invited at the event.

The purpose of the contest was to raise awareness of the Moldovan society and the media on the mandate and activity of the Constitutional Court of Moldova.

The contest was carried out with the support with EU-funded project "Support to the Constitutional Court of the Republic of Moldova".

4.8. Activities that have contributed to strengthening the capacity of the Constitutional Court

4.8.1. Strengthening research capabilities

In 2017, the Constitutional Court continued the collaboration initiated in 2016 with the Consortium of Electronic Resources for Moldova (REM), as an electronic platform that provides optimal access to the local and international electronic information resources in the field of law.

Thus, through the consortium, the Court received access to one of the most requested and quoted international law databases - ***HeinOnline***. This database contains the richest international collection of publications in the field of law: Law Journal Library; World Treaty Library; Women and the Law; Case Law; World Constitutions Illustrated; English Reports, Full Reprint; United Nations Law Collection; Foreign and International Law Resources Database, Legal Classics.

Also, the Constitutional Court subscribed to the ***iDrept*** database in Romania, thus having the possibility of accessing the Romanian legislation from the first source, the legal doctrine and the jurisprudence of the Constitutional Court of Romania.

These opportunities are of genuine relevance to the Court and contribute to strengthening the existing research and analysis capacities in the context of the exercise of the tasks set out by the relevant legislative framework.

4.8.2. Launching the Live Video Broadcasting Platform of the Constitutional Court

Starting with May 2017, the Constitutional Court ensures the live broadcasting of its sessions on the CCM website www.constcourt.md. Thus, with the help of the new technologies implemented, all interested parties have the opportunity to follow all the Court's public hearings remotely.

The implementation of this technology aims to ensure at a new level the transparency of the implementation of constitutional justice, in particular, and of the CCM activity in general.

TITLE V

THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

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THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

In 2017 there were 176 complaints lodged with the Constitutional Court, 24 complaints were taken over from 2016, so the task of the Court for 2017 implied 200 pending complaints *(see Charts no.1, no.2, no.3).*

Of the total 200 pending complaints, 184 complaints were examined in 2017 and 16 complaints have been transferred to 2018 (*see Chart no.3*).

According to the subject matter of the contested normative provision, of the total number of complaints lodged with the Court in 2017, the criminal area was the most challenged (43%), being followed by the social, economic and cultural rights area (23%), civil (16%), administrative (9%), social-political rights (6%), political rights (3%) (*see Chart no.4*).

Pending complaints of the Court in 2017 (*see Chart no.5*) were lodged by the following subjects:

- President of the Republic of Moldova – 2 complaints;
- Members of Parliament and Parliamentary factions – 20 complaints;
- Government – 4 complaints;
- Courts – 137 complaints;
- Ombudsman – 3 complaints;
- Central Electoral Commission - 7 complaints;
- General Prosecutor's Office – 2 complaints;
- Local Public Administration – 1 complaint.

Of the 20 pending complaints lodged by Members of Parliament and parliamentary factions, 18 complaints were reviewed on the merits, and 2 complaints were transferred to 2018.

In 2017 the Court delivered 40 judgements, namely:

– 3 judgements on the interpretation of certain provisions of the Constitution;
– 10 judgements on the review of constitutionality of normative acts;
– 19 judgments on the solving of exceptions of unconstitutionality;
– 7 judgements concerning the validation of MP mandates;
– 1 judgment on the approval of the Report for the year 2016 *(see Chart no.9).*

In 2017, the Court also delivered 5 opinions, 2 of which were delivered at the request of the Parliament and 3 at the request of the Government (*see Chart no.8*).

Following the examination of the pending complaints in 2017, in *29 judgements* the Court delivered its decision on the constitutionality or unconstitutionality of the challenged legal provisions, as follows:

– in *14 judgements* at least one legal provision of the total provisions challenged was recognized as constitutional;
– in *11 judgements* at least one legal provision of the total provisions challenged was recognized as unconstitutional;
– in *4 judgements* the Court ruled on constitutionality of some legal provisions and non-constitutionality of other legal provisions (*see Chart no.10*).

In the jurisdictional activity of the Court, during 2017, the number of exceptions of unconstitutionality was increasing in comparison with 2016 year. Thereby, in 2017, the exceptions of unconstitutionality have represented 77% of all the complaints lodged, in comparison with 2016, when the number of the exceptions of unconstitutionality amounted to 71% of the total number of complaints. Although, from the procedural point of view, the exceptions of unconstitutionality are submitted to the Constitutional Court by the courts, but, as authors of the exceptions of unconstitutionality, during 2017, in descending order, were: the defense party/representative (105 complaints), being followed by the party to the dispute (26 complaints), the courts *ex officio* (6 complaints).

A | STATISTICAL DATA FOR 2017

Chart no.1

Jurisdiction of the Constitutional Court in 2017 *(based on complaints)*

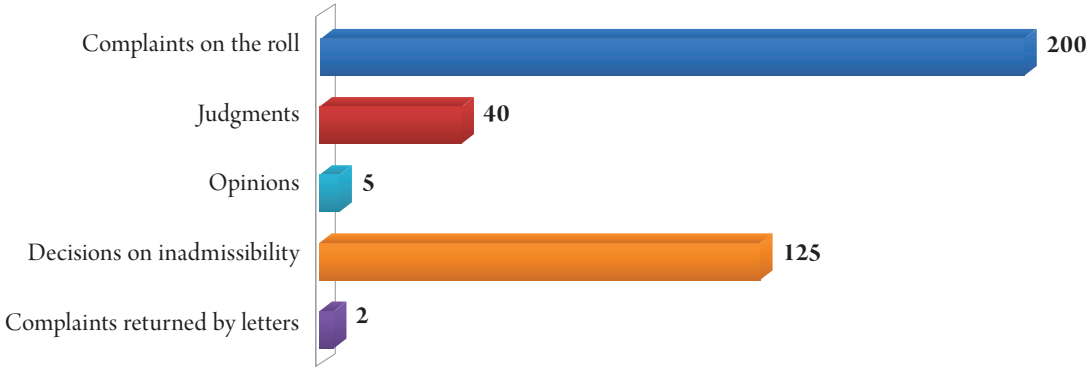


Chart no.2

The task of the Constitutional Court in 2017

Chart no.3

Complaints settled in 2017 and transferred for 2018

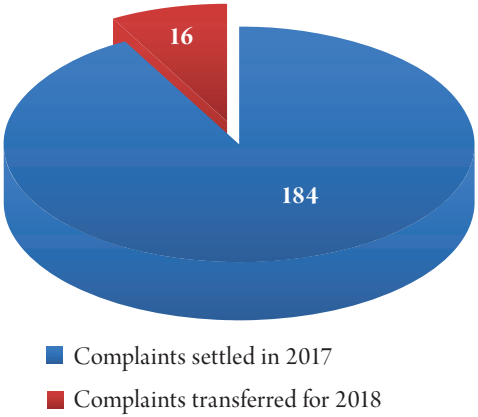


Chart no.4

Structure by subject matter of the complaint in 2017

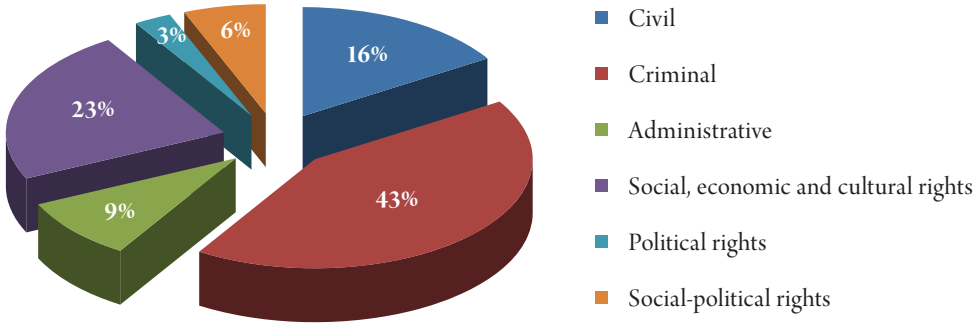


Chart no.5

Subjects having submitted complaints to the Constitutional Court in 2017

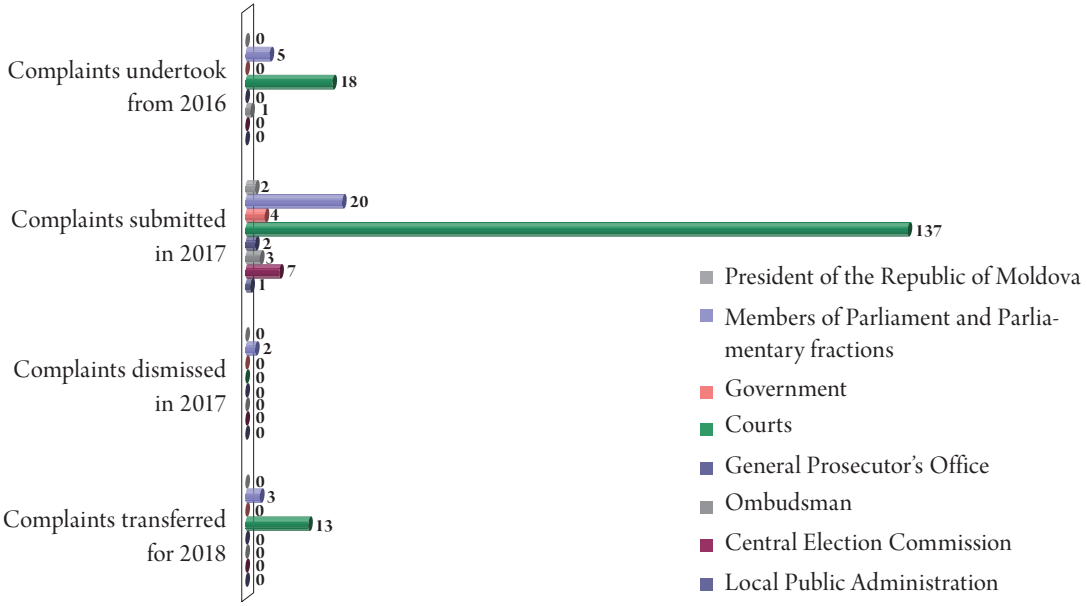


Chart no.6

Complaints settled by the Constitutional Court in 2017, including those undertook from 2016 and those transfered for 2018 *(per object)*

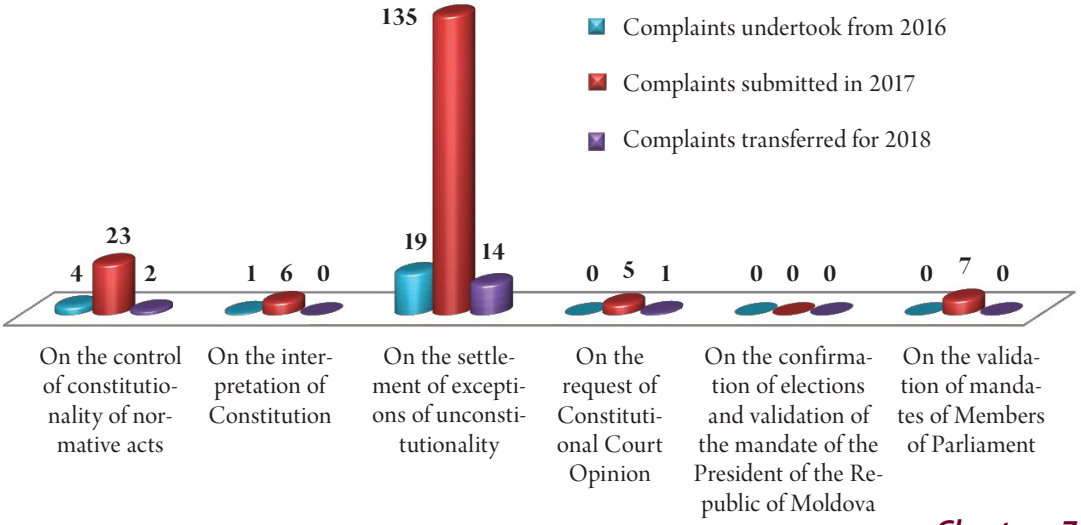


Chart no.7

Complaints submitted by Parliamentary factions, including those undertook from 2016 and those transferred for 2018

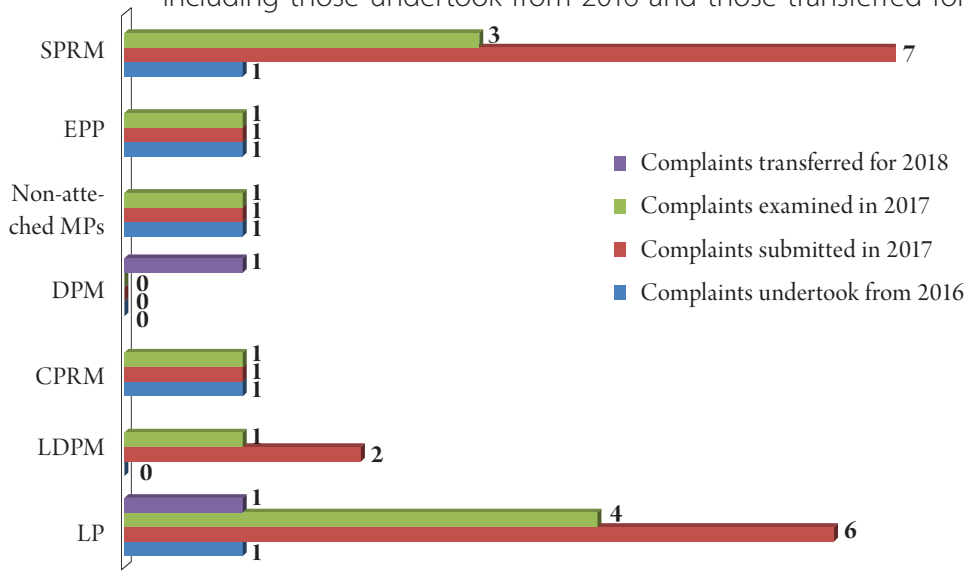


Chart no.8

Acts rendered by the Constitutional Court in 2017

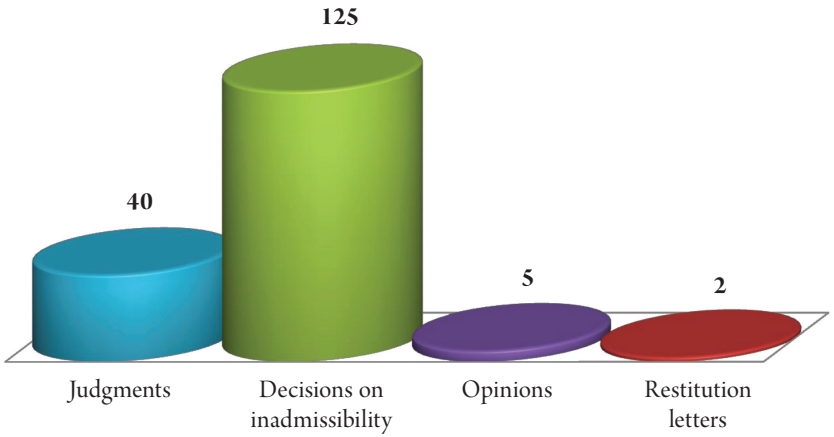


Chart no.9

Judgments delivered by the Constitutional Court in 2017 *(per object)*

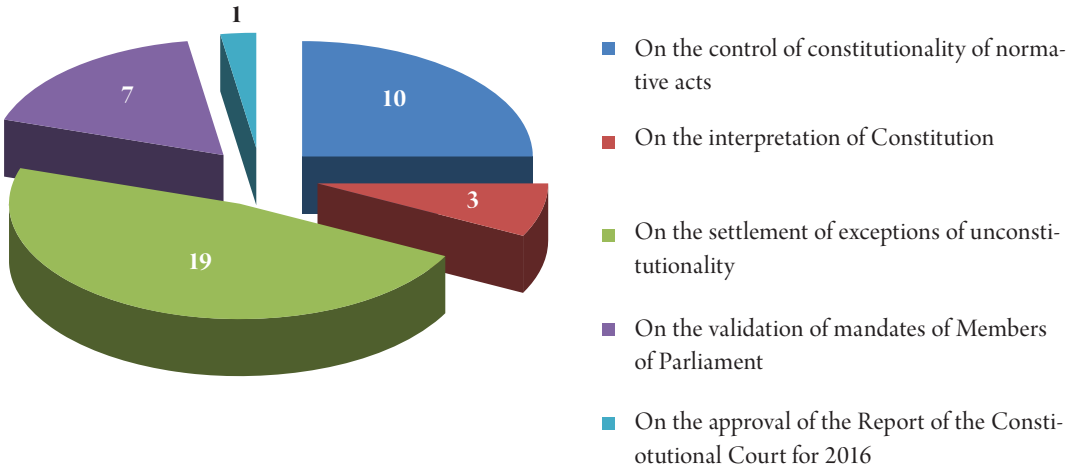


Chart no.10

Findings of the Constitutional Court in the judgments delivered

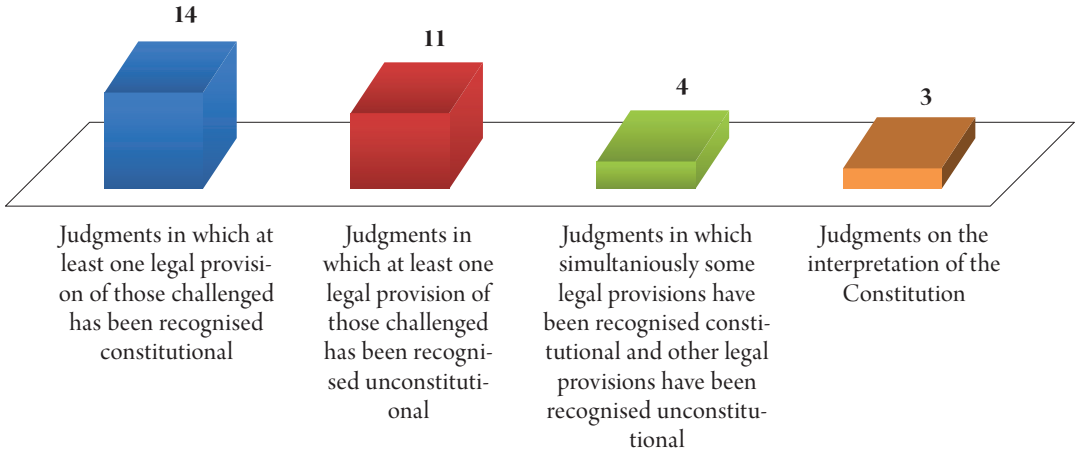


Chart no.11

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

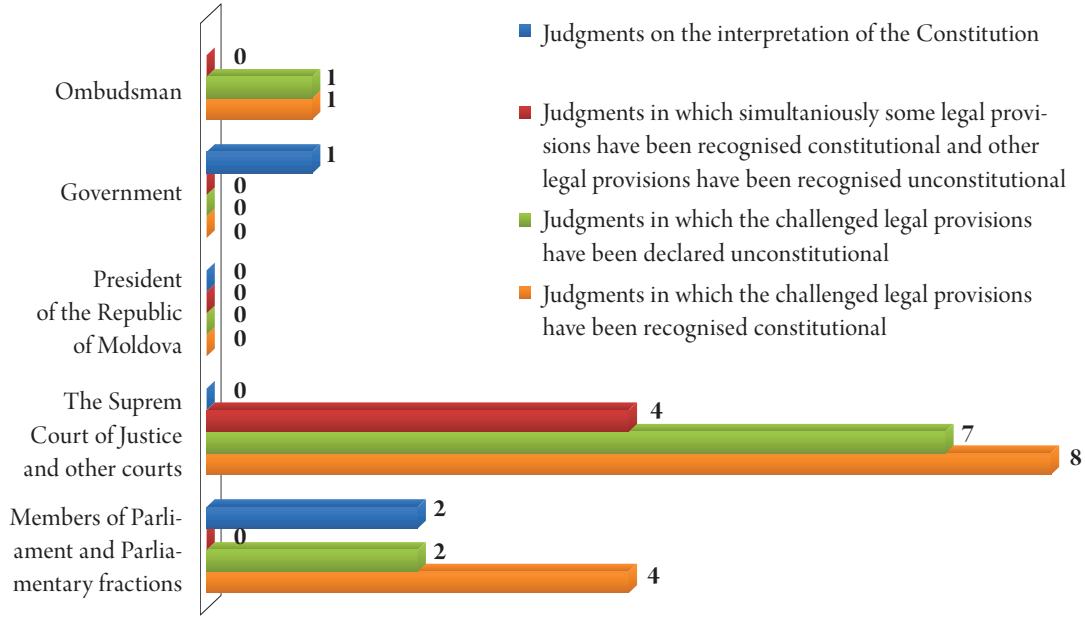


Chart no.12

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

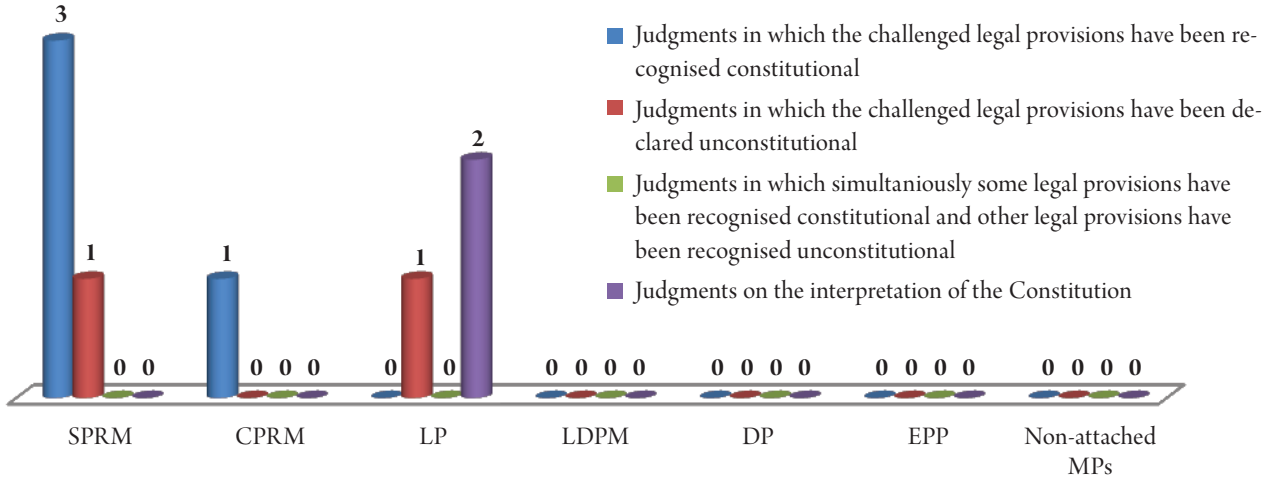


Chart no.13

Enforcement of the Judgments delivered by the Constitutional Court in 2015-2017

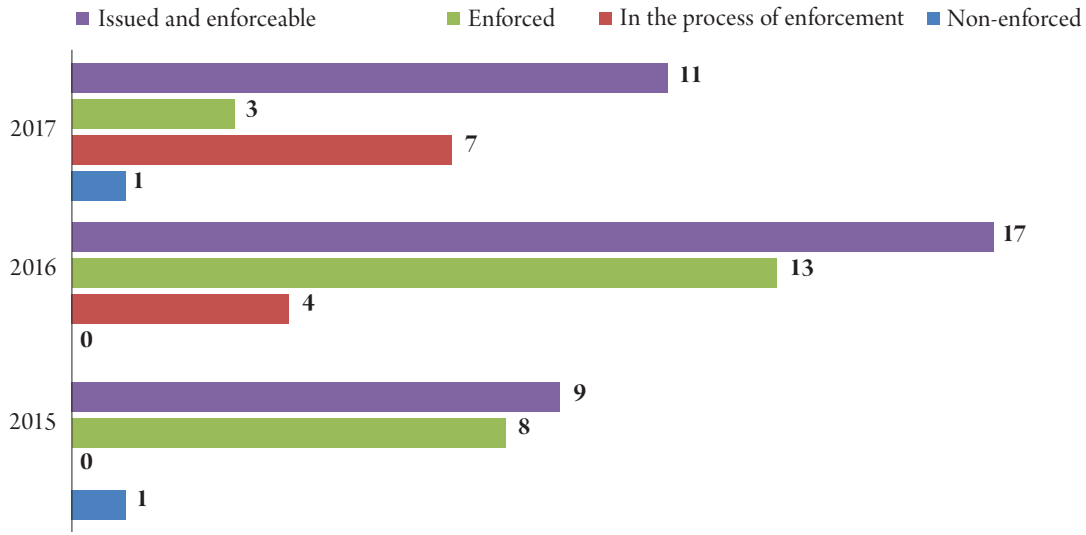
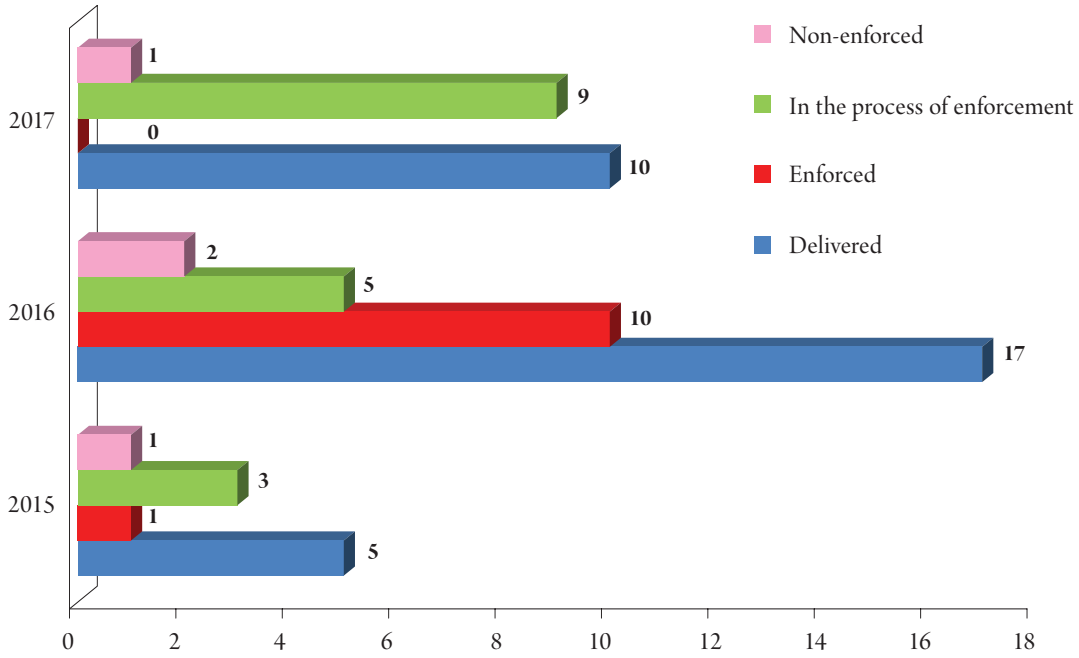


Chart no.14

Enforcement of addresses delivered by the Constitutional Court in 2015-2017



B | EVOLUTION OF THE EXCEPTIONS OF UNCONSTITUTIONALITY

Chart no.15

Exceptions of unconstitutionality out of the total number of complaints submitted within 1995 - 2017

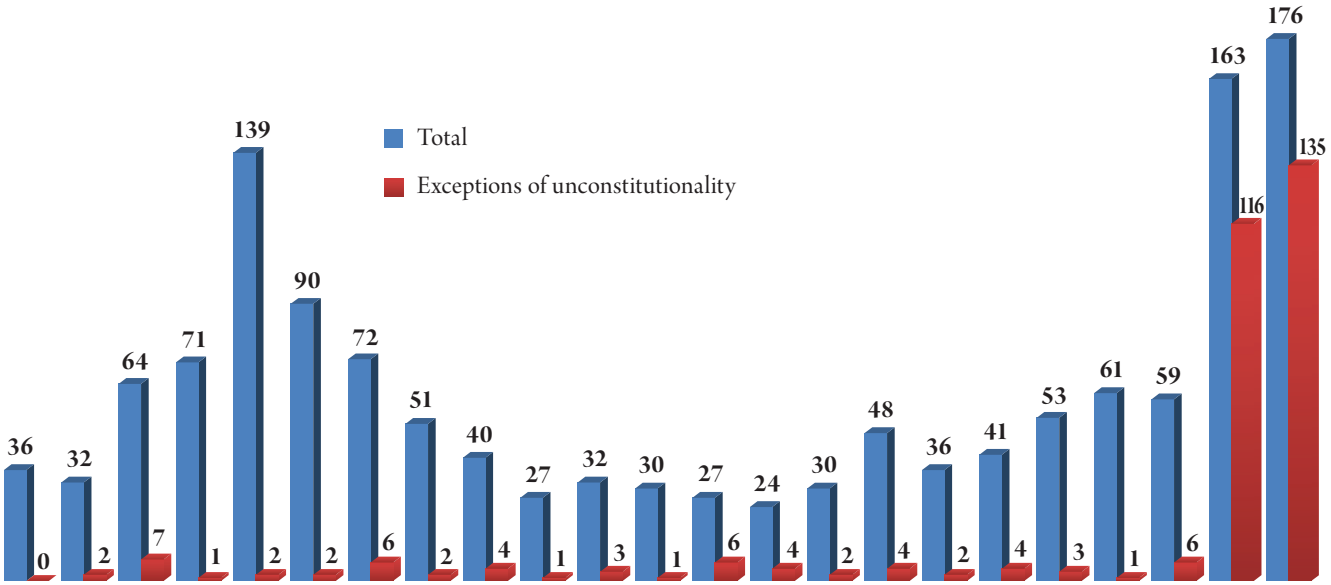


Chart no.16

Share of exceptions of unconstitutionality within the total number of complaints submitted in 2017

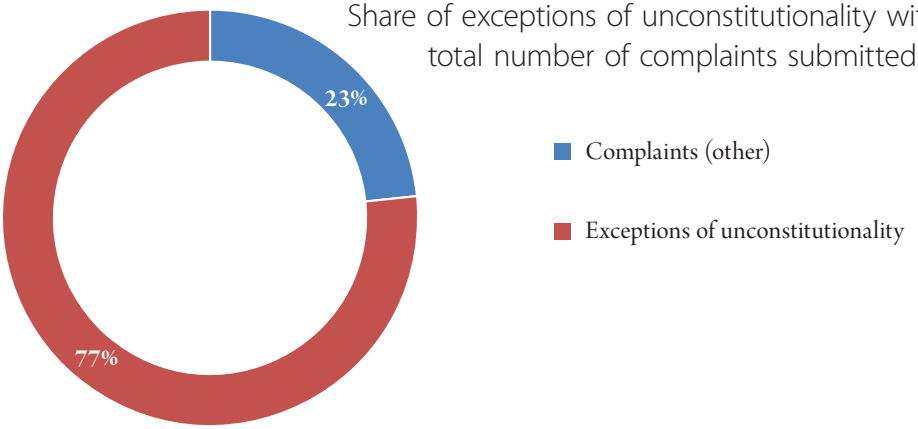


Chart no.17

The authors of the exception of unconstitutionality in 2017

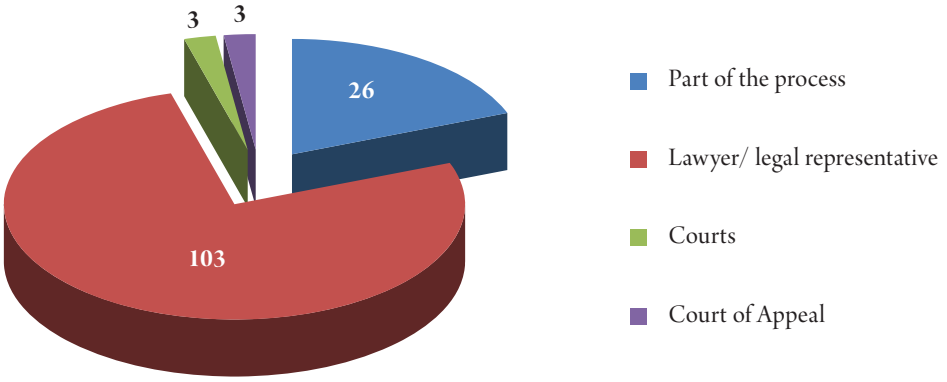
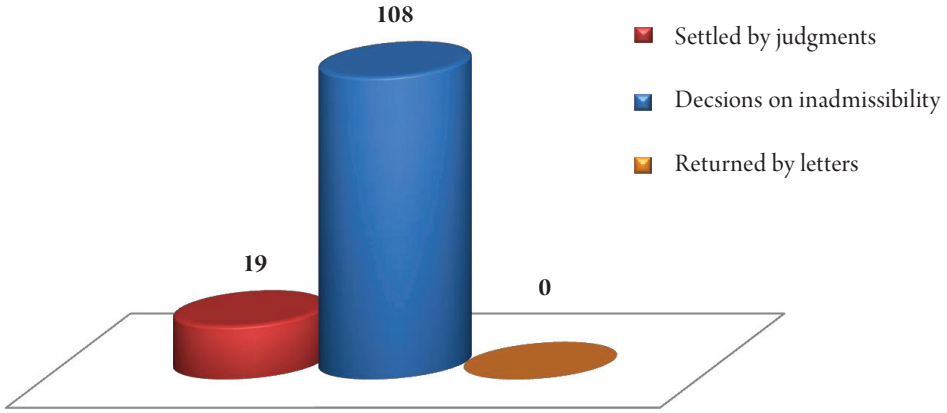


Chart no.18

Acts issued in respect of exceptions of unconstitutionality



C | EVOLUTION OF CONSTITUTIONAL COURT ACTIVITY WITHIN 1995-2017

Chart no.19

Exercise of constitutional jurisdiction within the period 1995-2017

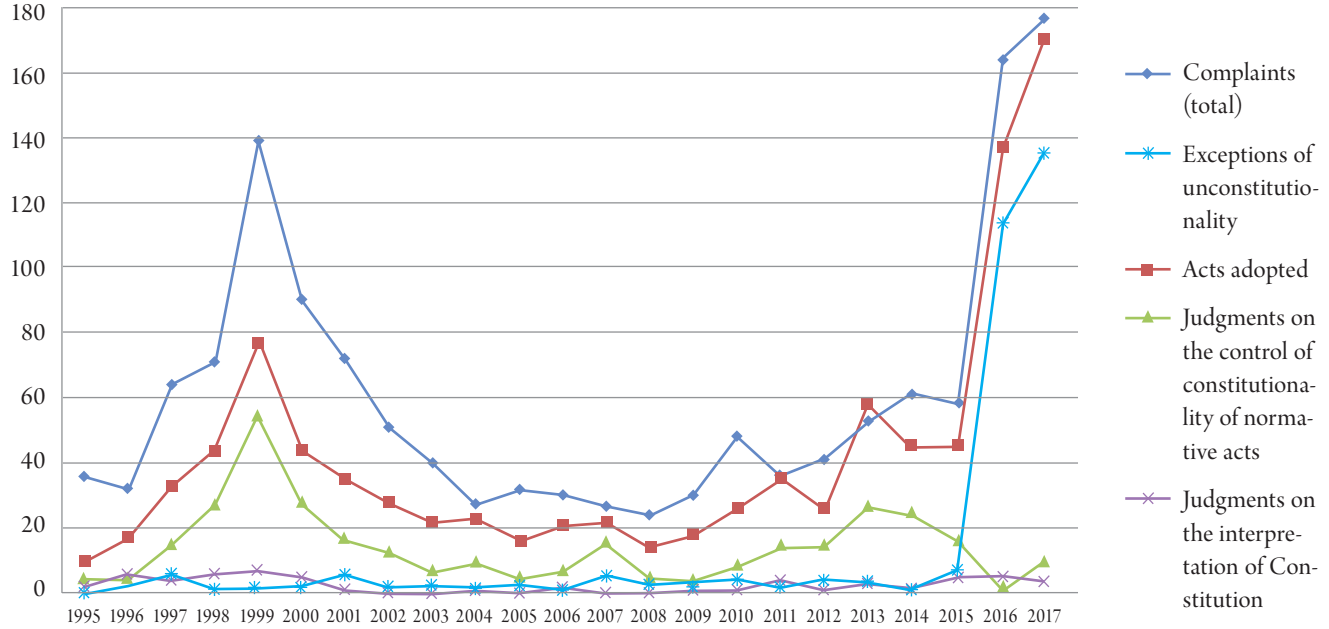


Chart no.20

Complaints submitted in 1995 - 2017

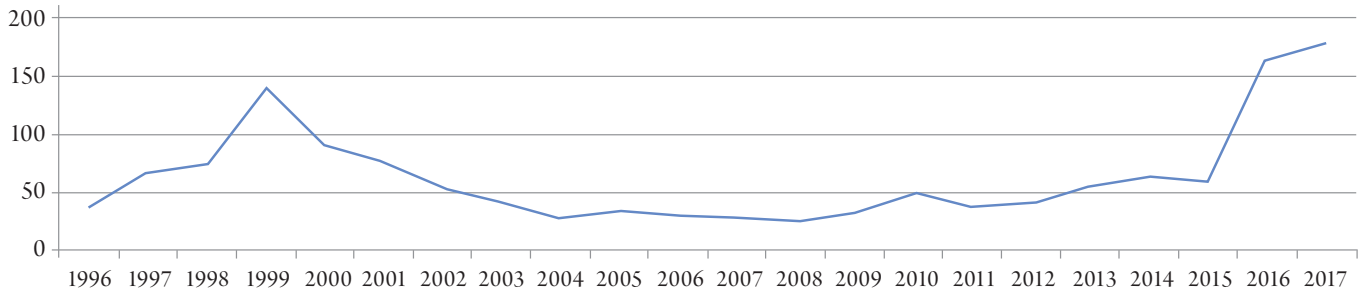


Chart no.21

Complaints *(exceptions of unconstitutionality)* in 1995 - 2017

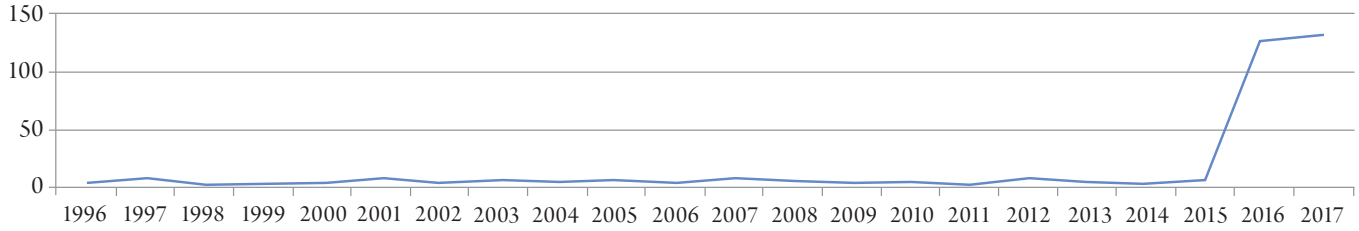


Chart no.22

Acts adopted in 1995 - 2017

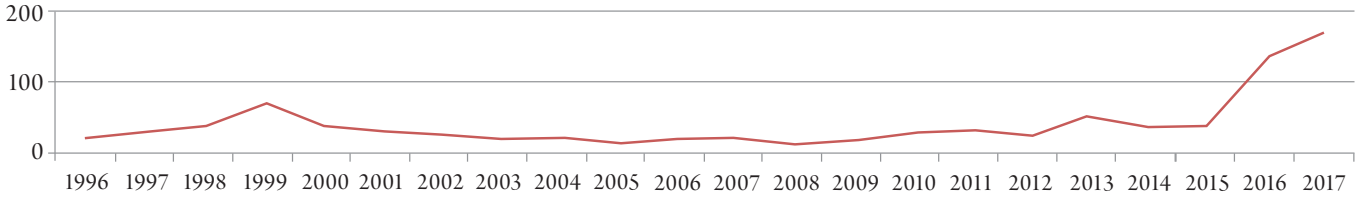


Chart no.23

Judgments on the control of constitutionality of normative acts adopted in 1995 - 2017

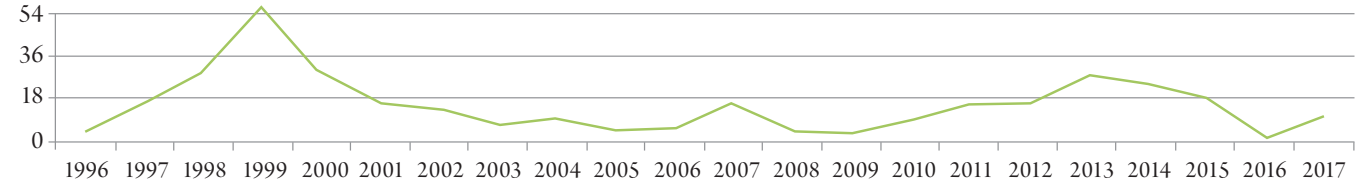
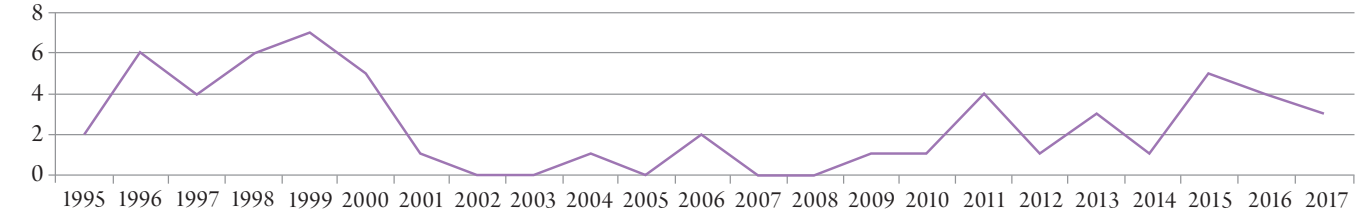


Chart no.24

Judgments on the interpretation of Constitution in 1995 - 2017



D | JUDGMENTS AND OPINIONS OF THE CONSTITUTIONAL COURT DELIVERED IN 2017

	Act number / year of issue	Complaint's number	Subject-matter of the judgment / opinion	Complaint's author	Normative challenged act	Constitutional provision invoked	Device
1.	CCJ No.2/ 2017	Complaint No.5b/ 2017	Codecision at government reshuffle	group of MPs	Interpretation of the provisions of art. 98 para.(6) of the Constitution of the Republic of Moldova	Article 98 para. (6) of the Constitution of the Republic of Moldova	• The President of the Republic of Moldova may refuse, only once, the Prime Minister's proposal to appoint a person to the vacant post of Minister, when he considers that the proposed person does not meet the legal requirements for exercising the function of a member of the Government; • The Prime Minister shall make another proposal to the President or reiterate the same candidacy for the office of Minister, which the President is bound to appoint.
2.	CCJ No.3/ 2017	Complaint No.126a/ 2016	Prohibition of holding multiple citizenship by contract soldiers	Ombudsman	Law No. 162-XVI of 22 July 2005 on military status	Articles 16, 35, 43 of the Constitution	***Was declared unconstitutional:*** • Let. e) of para.6 of Article 28; • Let. (g) of para. 3 of Article 35; • Para. (2) of Article 38 of Law No. 162-XVI of 22 July 2005 on the military status.
3.	CCJ No.4/ 2017	Complaints No.145g/ and 149g/ 2016	Organization of illegal migration	Chisinau Court of Appeal	Article 424 para. (2), 431 para.(1) point 1^{1}) of the Code of Criminal Procedure and Article 362^{1} of the Criminal Code	Article 1 para. (3) combined with Articles 22 and 23 of the Constitution	Was recognized constitutional: • Article 362^{1} of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002.

4.	CCJ No.5/ 2017	Complaint No.140a/ 2016	Governing Bodies within Higher Educational Institutions	MPs	Education Code of the Republic of Moldova No. 152 of 17 July 2014 and Annexes No. 3 and No. 4 to Government Decision No.390 of June 16, 2015, on state plans (state command) for the training of specialists, on professions, specialities and general fields of study, in technical and higher education institutions for the academic year 2015-2016	Article 35, 46, 54 of the Constitution	***Was recognized constitutional:*** • the provisions of Articles 82 (2), 102, 103, para. (3) let. g) and let.h), 104, 105 alin. (3), (4), (6), (7), (8), (9) (10), (11), (15), (17), 106 (8), Article 107 (l) let. d), 108 par. (6) lit. a) and c) of the Education Code of the Republic of Moldova No. 152 of July 17, 2014.
5.	CCJ No.6/ 2017	Complaint No. 100g/ 2016	Maternity benefit	Court	Article 16 para. (5) of the Law No. 289 of 22 July 2004 on allowances for temporary incapacity for work and other social security benefits, as well as point 49 of the related Regulation, approved by the Government Decision No. 108 of 3 February 2005	Articles 16, 47, 49 of the Constitution	***Was declared unconstitutional:*** • Article 16 para. (5) of the Law No.289 of 22 July 2004 on allowances for temporary incapacity for work and other social security benefits and point 49 of the Regulation on the conditions for determining, the method of calculation and the payment of the allowances for temporary incapacity for work, approved by the Government Decision on No. 108 of 3 February 2005.
6.	CCJ No.7/ 2017	Complaint No. 162a/ 2016	Ensuring students with textbooks	MPs	Article 41 para.(4) of the Education Code of the Republic of Moldova No. 152 of July 17, 2014	Article 35 of the Constitution	***Was declared unconstitutional:*** Article 41 para.(4) of the Education Code of the Republic of Moldova No. 152 of July 17, 2014, in the part where it is intended to provide students of grades V-IX with textbooks according to the rental scheme approved by the Ministry of Education.

7.	CCJ No.8/ 2017	Complaint No. 161g/ 2016	Beneficiaries of the «Protected Housing» Social Service	Court	Framework Regulation on the Organization and Functioning of the «Protected Housing» Social Service, approved by the Government Decision No. 711 of August 9, 2010	Articles 16 and 51 of the Constitution	***Was declared unconstitutional:*** • the phrase "*is not declared by the court as incapable*" in point 3 subpoint (1); • point 56, subpoint (2); • The phrase "*capacity limitation or declaration of the beneficiary's incapacity by the court*" in point 57 of the Framework Regulation on the organization and functioning of the "Protected Housing" Social Service, approved by the Government Decision No. 711 of August 9, 2010.
8.	CCJ No.9/ 2017	Complaint No. 156g/ 2016	Judgment based on evidence administered during the criminal investigation phase	Court	Article 364[1] of the Code of Criminal Procedure	Articles 16, 20 and 54 of the Constitution	***Was recognized constitutional:*** • Article 364[1] of the Code of Criminal Procedure of the Republic of Moldova No. 122-XV of 14 March 2003.
9.	CCJ No.10/ 2017	Complaint No. 116g/ 2016	Liability for non-performance of the contract with a budgetary institution	Court	Article 80 para. (2) of the Law on Public Finances and Budget-Tax Responsibility No. 181 of July 25, 2014	Article 23 para. (2) of the Constitution	***Was declared unconstitutional:*** • Article 80 para.(2) of the Law on Public Finances and Budget-Tax Responsibility No. 181 of July 25, 2014. • Until Parliament adopts new legal provisions, sanctions for non-performance in time of contracts concluded with a budgetary institution are to be applied in accordance with the provisions of civil law and contractual clauses.
10.	CCJ No.11/ 2017	Complaint No. 33e/ 2017	Validation of The mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Was declared elected as a member of the Parliament of the Republic of Moldova, with the mandate validation***: • Mr. Alexandru Barbăroșie, on the list of the Liberal Democratic Party of Moldova.
11.	CCJ No. 12 / 2017	Complaint No. 115g/ 2016	Criminal liability of judges	Supreme Court of Justice	Article 307 of the Criminal Code	Articles 6, 22, 116 of the Constitution	***Was recognized constitutional:*** • Article 307 of the Criminal Code of the Republic of Moldova No.985-XV of April 18, 2002, insofar as, the judges within the courts, the courts of appeal and the Supreme Court of Justice can be held criminally liable, only, for the deliberate pronouncement of a judgment, sentence, decision or concluding act, contrary to the law.

12.	CCJ No.13/ 2017	Complaint No. 50e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Were declared elected as deputies in the Parliament of the Republic of Moldova, with the mandate validation:*** • Mr. Eugen Bodarev and Mr.Iurie Chiorescu on the list of the Liberal Democratic Party of Moldova.
13.	CCJ nr.14/ 2017	Complaint nr. 37b/ 2014	Permanent neutrality	Group of MPs in Parliament	Article 11 of the Constitution	Article 11 of the Constitution	For the purposes of Article 11 of the Constitution, in conjunction with Articles 1 para. (1), 3 and 8 of the Constitution: • The military occupation of a part of the territory of the Republic of Moldova at the moment of the declaration of neutrality, as well as the lack of recognition and international guarantees of this statute, does not affect the validity of the constitutional provision regarding neutrality; • In the case of threats to constitutional fundamental values such as national independence, territorial integrity or state security, the authorities of the Republic of Moldova are obliged to take all necessary measures, including military ones, which would enable them to defend themselves effectively against these threats; • the deployment on the territory of the Republic of Moldova of any troops or military bases, run and controlled by foreign states, is unconstitutional; • the participation of the Republic of Moldova in collective security systems such as the United Nations security system, peacekeeping operations, humanitarian operations, etc., which would impose collective sanctions against international law abusers and criminals, is not in contradiction with the neutrality status.

14.	CCJ No.15/ 2017	Complaint No. 41a/ 2017	Remuneration of judges and prosecutors	Supreme Court of Justice	Article 10^1 para. (1) of Law No.328 of 23 December 2013 on the remuneration of judges and prosecutors	Articles 6 and 116 of the Constitution	***Was declared unconstitutional:*** • the phrase "*within the limit of the allocations provided for this purpose in the national public budget*" in Article 10^1 para. 1of the Law No.328 of 23 December 2013 on the remuneration of judges and prosecutors.
15.	CCJ No.16/ 2017	Complaint No. 58e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Was declared elected as a deputy in the Parliament of the Republic of Moldova, with the mandate validation:*** • Mr. Nicolae Olaru, on the list of the Liberal Democratic Party of Moldova.
16.	CCJ No.17/ 2017	Complaint No. 20g/ 2017	Prohibition of the release of civil status documents, an Identity documents or driving licenses	Court	Article 22 para. (1) let.v) of the Execution Code	Articles 23, 27, 28 and 54 of the Constitution	***Was declared unconstitutional:*** • the text "*Prohibition on the issue of civil status documents, an identity documents or driving licenses is applied exclusively by the court*" of Article 22 (1) let. v) of the Execution Code of the Republic of Moldova No. 443-XV of 24 December 2004.
17.	CCJ No.18/ 2017	Complaint No. 27g/ 2017	Intimate conviction of the judge	Court	Some provisions of the Code of Criminal Procedure	Articles 114, 115 para. (4) and 116 para. (1) of the Constitution	***Was recognized constitutional:*** • the phrase "*and own conviction*" in para. 2 of Article 26; • the phrase "*the judge and the person conducting the criminal proceedings shall appraise the evidence in accordance with their own conviction*" in para. 1 of Article 27; • the phrase "*the representative of the criminal investigative body or the judge assesses the evidence according to his own conviction*" in para. 2 of article 101 of the Criminal Procedure Code of the Republic of Moldova No. 122-XV of 14 March 2003.

18.	CCJ No.19/ 2017	Complaint No. 25g/ 2017	Deceiving parental rights of people suffering from drug abuse	Supreme Court of Justice	Article 67 let. f) of the Family Code	Articles 28 and 54 of the Constitution	***Was recognized constitutional:*** • phrase *"Drug addiction"* from the provisions of Article 67 let. (f) of the Family Code No.1316-XIV of 26 October 2000, insofar as, the deprivation of parental rights is not automatically applied by the court, but is decided in the best interests of the child.
19.	CCJ No.20/ 2017	Complaint No. 39g/ 2017	Recalculation of social insurance allowances	Court	Article 7 para. (17) of Law No. 289 of 22 July 2004 on allowances for temporary incapacity for work and other social security benefits, as well as point 89 of the Regulation on the conditions for determining, the method of calculation and the payment of the indemnities for temporary incapacity for work, approved by the Government Decision No. 108 of 3 February 2005	Articles 47, 49, 50 and 53 of the Constitution	***Was recognized constitutional:*** • Article 7 para. (17) of Law No. 289 of 22 July 2004 on allowances for temporary work incapacity and other social security benefits and point 89 of the Regulation on the conditions for determining, the method of calculation and the payment of the indemnities for temporary incapacity for work, approved by the Government Decision No. 108 of 3 February 2005, insofar as the prohibition on the recalculation of social security benefits established is not applicable in the event of errors in determining the basis of calculating the allowance.
20.	CCJ No.21/ 2017	Complaint No. 78e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code no. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Were elected as deputies in the Parliament of the Republic of Moldova with the mandate validation of:*** • Mr. Oleg Cuciuc and Mr. Sergiu Groza on the list of the Party of Socialists of the Republic of Moldova.

21.	CCJ No.22/ 2017	Complaints No. 113g/ 2016 and No. 8g/ 2017	Excessive power or Exceeding the service duties	Court	Art. 328 para. (1) of the Criminal Code	Articles 1 para. (3), 22 și 23 of the Constitution	***Was declared unconstitutional:*** • the text of "*public interests or*" para. 1 of Article 328 of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002. ***Was recognized constitutional:*** • the text "*whether it has caused considerable damage to [...] the rights and interests protected by law of natural or legal persons*" in para. 1 of Article 328 of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002.
22.	CCJ No.23/ 2017	Complaints No.31g/ 2017 and No.55g/ 2017	Raising immunity of the judge	Supreme Court of Justice	Article 23 para. (2) of Law No.947-XIII of 19 July 1996 on the Superior Council of Magistracy	Artilce 116 para. (1) of the Constitution	***Was declared unconstitutional:*** • text "*without appreciating the quality and the authenticity of the material presented* "in Article 23 para.(2) of Law No.947-XIII of 19 July 1996 on the Superior Council of Magistracy. ***Was recognized constitutional:*** • the text "*The Superior Council of Magistracy examines the proposal of the Prosecutor General or of the First Deputy, and in his absence - of the Deputy appointed in the order issued by the Prosecutor General, only, in terms of compliance with conditions or circumstances provided by the Criminal Procedure Code for the initiation of the criminal investigation, retention, arrest, forced bringing or perquisition of the judge*" in Article 23 para. (2) of Law No.947-XIII of 19 July 1996 on the Superior Council of Magistracy.
23.	CCJ No.24/ 2017	Complaint No.40a/ 2017	Republican Consultative Referendum	MPs	Decree of the President of the Republic of Moldova No. 105-VIII of 28 March 2017 on the conduct of the Republican consultative referendum on issues of national interest	Articles 1 (3), 66 (1). b), 85, 88 and 141 (1) of the Constitution	***Was declared unconstitutional:*** • Decree of the President of the Republic of Moldova No. 105-VIII of 28 March 2017 on the conduct of the Republican consultative referendum on issues of national interest. ***Was declared unconstitutional:*** • Para. (2) of Article 144 of the Electoral Code No. 1381-XIII of November 21, 1997.

24.	CCJ No.25/ 2017	Complaint No.75a/ 2017	Special Pension of Judges	Supreme Court of Justice	Article II of the Law no.290 of 16 December 2016 for the amendment and completion of some legislative acts	Articles 46, 116 of the Constitution	***Was declared unconstitutional:*** • Art. II of Law No.290 of 16 December 2016 for the amendment and completion of some legislative acts.
25.	CCJ No.26/ 2017	Complaint No. 105e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Was declared elected as a deputy in the Parliament of the Republic of Moldova, with the mandate validation:*** • Mr. Petru Corduneanu, on the list of the Party of Socialists of the Republic of Moldova.
26.	CCJ No.27/ 2017	Complaint No. 48g/ 2017	Limiting reconciliation In criminal cases	Court	Article 109 para. (1) of the Criminal Code	Article 22 of the Constitution	***Was recognized constitutional:*** • the text "*in the last five years*" of para. 1 of Article 109 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002.
27.	CCJ No.28/ 2017	Complaint No. 124b/ 2017	Non-fulfillment of constitutional obligations by the President	Government of the Republic of Moldova	Interpretation of the provisions of Article 98 (6) in conjunction with Articles 1, 56, 91, 135 and 140 of the Constitution	Articles 1, 56, 91, 98, 135, 140 of the Constitution	• For the purposes of Article 91 of the Constitution, the President's refusal to fulfill its constitutional obligations constitutes a temporary impossibility to exercise the attribution(s) in question and justifies the establishment of the interim office, which is ensured in order by the President of the Parliament or the Prime Minister, for the exercise of this (these) constitutional obligations of the President. • The institution of the interim office, caused by the deliberate refusal to fulfill a constitutional obligation, and the circumstances justifying the interim office of President are to be ascertained in each case by the Constitutional Court, according to the competence assigned to it by art. 135 par. (1) lit. f) of the Constitution.
28.	CCJ No.29/ 2017	Complaint No.59a/ 2017	Maintaining the effects of NBM acts	MPs	Article 38 (7) of the Financial Institutions Act No. 550-XIII of July 21, 1995	Articles 20, 53 para. (1), 54 of the Constitution	***Was recognized constitutional:*** • Article 38 para.(7) let. a) of the Financial Institutions Law no.550-XIII of July 21, 1995.

29.	CCJ No.30/ 2017	Complaint No. 62a/ 2017	Limitation of the right to strike for some categories of employees	Ombudsman	Article 369 para. (2), (3) and (4) of the Labor Code, art. 21 para. (2) and (3) of the Railway Transport Code, Government Decision No. 656 of 11 June 2004 on the approval of the Nomenclature of Units, Sectors and Services whose employees can not participate in the strike	Articles 16, 45, 54 of the Constitution	***Was recognized constitutional:*** • Article 369 (2), (3) and (4) of the Labor Code No. 154-XV of March 28, 2003; • Article 21 (2) and (3) of the Railway Transport Code No. 309-XV of 17 July 2003. Was recognized constitutional: • The provisions of items 5, 6, 7, 8, 9, 13, 14, 15 of the Nomenclature of Units, Sectors and Services whose employees can not participate in the strike, approved by the Government Decision No.656 of 11 June 2004. ***Was recognized constitutional***: • the text *"All employees"* in items 2, 3 and 4 of the Nomenclature of Units, Sectors and Services, whose employees can not participate in the strike, approved by the Government Decision No.656 of 11 June 2004, insofar as, they concern only persons with responsibility of central public authorities. ***Was recognized constitutional:*** • the text *"All collaborators"* in items 10, 12, 16, 17, 19, 20 of the Nomenclature of Units, Sectors and Services whose employees can not participate in the strike, approved by the Government Decision No.656 of 11 June 2004, in which it concerns only the employees whose functional competencies are to ensure the public order, the rule of law and the security of the state. ***Was recognized constitutional:*** • the text "*The whole system*" in item 11 of the Nomenclature of Units, Sectors and Services whose employees can not participate in the strike, approved by the Government Decision No.656 of 11 June 2004, insofar as, it concerns the judges of the courts.

30.	CCJ No.31/ 2017	Complaint No. 146e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Was declared elected as a deputy in the Parliament of the Republic of Moldova, with the mandate validation:*** • Ms. Alla Mironic, on the list of the Party of Communists of the Republic of Moldova.
31.	CCJ No.32/ 2017	Complaint No. 115g/ 2017	Verification of judges by the Intelligence and Security Service	Supreme Court of Justice	Articles 5 let. (a), 14 and 15 (2), (4) and (5) of Law No. 271-XVI of 18 December 2008 on verification of holders and candidates for public positions	Articles 6 and 116 (1) and (2) of the Constitution separately and combined with Articles 1 (3), 20 and 21 of the Constitution	***Was declared unconstitutional:*** • Articles 5 let.a) and 15 para. (2), (4) and (5) of the Law No. 271-XVI of December 18, 2008 regarding the verification of the holders and candidates for public positions in the part referring to the examination of the candidates for the position of judge and of the judges in office.
32.	CCJ No.33/ 2017	Complaints No. 80g/ 2017 and No. 129g/ 2017	Abuse of power or abuse of service	Court	Article 327 para. (1) and 361 (2) lit. d) of the Criminal Code	Articles 1, 22 and 23 of the Constitution	***Was declared unconstitutional:*** • the text of *"public interests or"* para. 1 of Article 327 and let. (d) para. 2 of Article 361 of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002. ***Was recognized constitutional:*** • the text *"of the service situation"* in para. 1 of article 327 of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002, insofar as, it relates to the service the attributions granted by law.

33.	CCJ No.34/ 2017	Complaint No.88/ 2017	Obligation of the trade union body's consent to dismissal	Court	Article 87 (1) of the Labor Code no. 154-XV of 28 March 2003	Articles 4, 8, 9,42, 46 and 126 of the Constitution	***Was declared unconstitutional:*** • the first sentence "*Dismissal of employees, union members, in cases stipulated in article 86 para.(1) let.c), e) and g) can only take place with the written preliminary agreement of the trade union organ (organizer) in the unit.*" Article 87 para.(1) of the Labor Code 154-XV of 28 March 2003, in the previous version of Law No. 188 of 21 September 2017.
34.	CCJ No.35/ 2017	Complaint No. 85a/ 2017	Interdiction for the President of the Republic of Moldova to be a party member	MPs	Article 112 para. (2) of the Electoral Code	Articles 32, 41, 77 and 81 of the Constittution	***Was recognized constitutional:*** • the text "*is not a member of any political party and*" from para. 2 of Article 112 of the Electoral Code of the Republic of Moldova No. 1381-XIII of November 21, 1997.
35.	CCJ No. 36/ 2017	Complaint No. 165e/ 2017	Validation of the mandate	Central Electoral Commission	Articles 88, 89 of the Electoral Code No. 1381-XIII of November 21, 1997	Article 69 para. (1) of the Constitution	***Was declared elected as a deputy in the Parliament of the Republic of Moldova, with the mandate validation:*** • Ms. Aliona Babiuc, on the list of Communists Party of the Republic of Moldova
36.	CCJ No.37/ 2017	Complaint No. 46a/ 2017	Financial stimulation of investigating agents	MPs	Article 21^2 of Law No. 355-XVI of 23 December 2005 on the remuneration system in the budgetary sector and Government Decision No.172 of March 22, 2017	Articles 1, 15, 16, 21 and 23 of the Constitution	***Was recognized constitutional:*** • Article 21^2 of Law No. 355-XVI of 23 December 2005 on the remuneration system in the budgetary sector; • Government Decision No. 172 of 22 March 2017 for the approval of the Rules of Procedure on financial stimulation of the investigating officers within the General Police Inspectorate of the Ministry of Internal Affairs.

37.	CCJ No.38/ 2017	Complaint No. 98g/ 2017	Refusal to grant the right of access to state secrets	Court	Articles 25 (1) let. c), 26 para. (4) and 27 (5) of the Law No. 245-XVI of 27 November 2008 on State Secrecy; Article 47 para. (1) let. s) of Law No. 320 of December 27, 2012 on the activity of the police and the status of the policeman (repealed by Law No. 94 of 2 June 2017); Article 109 of the Regulation on the Secure System of Public Authorities and Other Legal Entities, approved by the Government Decision No. 1176 of 22 December 2010.	Articles 4, 6, 8, 15, 16, 20, 21, 23, 26, 28, 34, 39 para. (2), 43 and 54 of the Constitution	***Was recognized constitutional:*** • Articles 25 para.(1) let.(c), 26 para.(4) and 27 para.(5) of Law No. 245-XVI of 27 November 2008 on State Secrecy; • Article 47 para. (1) let.(s) of Law No. 320 of December 27, 2012 on the activity of the police and the status of the policeman (repealed by Law No. 94 of 2 June 2017 amending and supplementing certain legislative acts); • Point 109 of the Regulation on the Secure Statement of Public Authorities and Other Legal Entities, approved by Government Decision No. 1176 of 22 December 2010.
38.	CCJ No.39/ 2017	Complaint No. 24g/ 2017	Payment of the maintenance pension	Court of Appeal	Article 15 para. (2) let. d) and art. 38 para. (4) let. f) of the Execution Code	Articles 1 para. (3), 46 para.(1), (2) and 54 para. (1) of the Constitution	***Was declared unconstitutional:*** • Article 15 para. (2) let.d) of the Execution Code No. 443-XV of 24 December 2004. ***Was recognized constitutional:*** • Article 38 para.(4) let. f) of the Execution Code No. 443-XV of 24 December 2004.

39.	CCJ no.40/ 2017	Complaint No. 168g/ 2017	Deadline for submission of the request on prolonging arrest	Court	Articles 232 para. (2) and 308 para. (4) of the Code of Criminal Procedure	Articles 4, 16, 20, 25 and 26 of the Constitution	***Was recognized constitutional***: • Article 232 para.(2) of the Criminal Procedure Code of the Republic of Moldova No. 122-XV of 14 March 2003, insofar as, the method of calculating the time-limits for the acts performed by the prosecutor does not apply in relation to the steps for which the law establishes mandatory terms for submission to the court.
40.	Opinion No. 1/2017	Complaint No. 10c/ 2017	Right to association	Government of the Republic of Moldova	Article 42 of the Constitution	Articles 1, 7, 42, 141, 142 and 143 of the Constitution	• The draft law to amend Article 42 of the Constitution does not violate the limits of the review required by the constitutional provisions of Article 142 paragraph (2) and may be submitted to Parliament, with the condition of exclusion of paragraph 2 of the project, without the need for a repeat approval by the Constitutional Court. • The draft law to amend the Constitution may be adopted at least 6 months after the date of the Parliament's initiative to amend the Constitution.
41.	Opinion No.2/ 2017	Complaint No. 137f / 2017	Interim of the position of President of the Republic of Moldova for the fulfillment of the constitutional obligation to appoint a minister	Government of the Republic of Moldova	Article 91 of the Constitution	Articles 1, 56, 79, 91 and 98 of the Constitution	• It is found that the circumstance which justifies the interim office of President of the Republic of Moldova in the procedure of reshuffle of the Minister of Defense deliberate refusal of the President to fulfill his constitutional obligation to appoint the candidature, proposed repeatedly by the Prime Minister, constitutes, within the meaning of Article 91 of the Constitution, a temporary impossibility to exercise the attribution in question. • Pursuant to Article 91 of the Constitution, the President of the Parliament or the Prime Minister will, as interim President, issue the appointment decree to the office of Minister of Defense and take his oath.

42.	Opinion No.3/ 2017	Complaint No. 134c/ 2017	Romanian language	MPs	Article 13 of the Constitution	Articles 7, 13 and 72 of the Constitution	• The draft law amending the Constitution, being elaborated in order to execute the Constitutional Court's Judgement No. 36 of 5 December 2013 on the interpretation of Article 13 para.(1) of the Constitution, in conjunction with the Preamble to the Constitution and the Declaration of Independence of the Republic of Moldova, do not violate the limits of the review required by Article 142 para. (2) of the Constitution.
43.	Opinion No.4/ 2017	Complaint No. 149c/ 2017	Judicial system	Government of the Republic of Moldova	Articles 141 para. (1) let. c) and 142 para. (2) of the Constitution	Articles 7, 72, 116, 121, 122 and 123 of the Constitution	• The constitutional law draft for amending and supplementing the Constitution of the Republic of Moldova does not exceed the limits of the review imposed by the provisions of Article 142 para. (2) of the Constitution and may be submitted to Parliament for consideration. • The constitutional law draft for amending and supplementing the Constitution of the Republic of Moldova can be adopted at least 6 months after the date of the initiative to amend the Constitution.
44.	Opinion No.5/ 2017	Complaint no. 162c/ 2017	European integration	MPs	Draft law amending and supplementing the Constitution of the Republic of Moldova	Articles 1, 8 and 72 of the Constitution	• The constitutional law draft for amending and supplementing the Constitution of the Republic of Moldova can be adopted at least 6 months after the date of the initiative to amend the Constitution.

Summary