Republic of Moldova

CONSTITUTIONAL COURT

JUDGMENT

ON THE CONSTITUTIONAL REVIEW

of Law No. 109 of 3 May 2013 amending and supplementing some legislative acts (Law on the Constitutional Court and Code of Constitutional Jurisdiction)
(status of judges, competences and procedure of the Constitutional Court)

(*Complaint No.34a/2014*)

CHISINAU

2 June 2014

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

Mr. Alexandru TĂNASE, *chairman*,
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Petru RAILEAN, *judges*,
with the participation of Mr. Eugen Osipov, *registrar*,

given the complaint lodged on 20 May 2014,
and registered on the same date,
having examined the complaint referred to in a public plenary hearing,
given the documents and the proceedings of the file case,

Delivers the following Judgment:

PROCEEDINGS

1. The case originated in the complaint lodged with the Constitutional Court on 20 May 2014, under Articles 25 let. g) of the Law on Constitutional Court and 38 para. (1) let. g) of the Code of Constitutional Jurisdiction, by the Members of Parliament Mihai Ghimpu, Valeriu Munteanu, Gheorghe Brega and Corina Fusu on the constitutional review of some provisions regarding the organisation and functioning of the Constitutional Court, in the part referring to the status of constitutional judges, competences and procedure of the Constitutional Court.

2. The authors of the complaint claimed that by vesting the Parliament, following the amendments, with the possibility to remove the mandates of judges of the Constitutional Court, these judges are deprived of their entitlement to irremovability, in violation of Articles 1, 6, 7, 8, 134, and 137 of the Constitution. Also, by limiting the competences of the Court and by establishing some excessively restricted time limits for examination of complaints, Articles 1, 6, 20, 54, 134, 135, and 137 of the Constitution have been violated. In this context, the authors of the complaint have requested the control of the constitutionality of the Law adopted on 3 May 2013 amending the Law on the Constitutional Court and the Code of Constitutional Jurisdiction.

3. By the decision of the Constitutional Court of 27 May 2014, the complaint had been declared admissible, without any prejudices to the merits of the case.

4. During the examination of the complaint, the Constitutional Court has requested the opinions of the President, Parliament, and Government of the Republic of Moldova.

5. Within the public plenary hearing of the Court, the authors of the complaint were represented by Valeriu Munteanu, Member of Parliament. The Parliament was represented by Sergiu Chirică, Senior Consultant in the General Legal Division of the Secretariat of the Parliament. The Government has not delegated a representative.

THE FACTS

6. On 22 April 2013 the Constitutional Court adopted the Judgment No. 4 on constitutional review of the Decrees of the President of the Republic of Moldova No. 534-VII of 8 March 2013 on the dismissal of the Government, in the part concerning the staying in office of the Prime Minister dismissed by a motion of no confidence (on suspicion of corruption) of 8 March 2013 until the formation of the new government and No. 584-VII of 10 April 2013 on the nomination of the candidate for the office of Prime Minister (*Complaint No. 10a/2013*). Based on this Judgment of the Constitutional Court, the Prime-Minister-in office was removed from his duties and an Acting Prime-Minister was appointed and was disqualified at the same time from becoming a candidate for the position of Prime-Minister with a view to form the new Government.

7. Immediately after the delivery of this judgment, virulent reactions contesting and denigrating the authority of the Court and of its judges followed from the part of the dismissed Prime-Minister and the party he leads, as well as from some of his followers.

8. Consequently, on 3 May 2013 the Parliament adopted the amendments to the Law on the Constitutional Court and the Code of Constitutional Jurisdiction. The parliamentary debates in fact showed that the amendments introduced with a view to vest the Parliament with the right to ‘remove’ the mandate of the constitutional judge is a vendetta in respect of the Judgement of the Constitutional Court No. 4 of 22 April 2013.

9. By the Law No.109 of 3 May 2013, the Parliament adopted amendments to the Law on Constitutional Court and the Code of Constitutional Jurisdiction.

10. The Law on the Constitutional Court was amended as follows (Art.I):

1. **Article 18** para. (2) was supplemented at the end with the phrase ‘*or by the Parliament of the Republic of Moldova, by a decision*’;

2. In **Article 19**:

paragraph (1):

let. b) the phrase '*and office duties*' was substituted with the phrase '*or loss of confidence*';

was supplemented with let. e), with the following content: '*e) violation of office duties*';

paragraph (2) after the phrase 'para. (1)' was supplemented with the phrase '*let. a), c), d) and e)*', and at the end it was supplemented with the phrase '*and at let. b) – by the Parliament*';

in paragraph (3) the phrase '*of oath or*' was excluded;

was completed with para. (4), with the following content:

'*(4) The procedure to remove the mandate of the judge for violation of oath or loss of confidence shall be initiated at the request of at least 25 Members of Parliament, and the decision shall be adopted with the vote of at least 3/5 of the number of elected Members of Parliament'*.

3. **Article 25/1** was repealed;

4. In **Article 32** the sole paragraph became paragraph (1) with the following content:

'*The Constitutional Court shall examine the complaint within 3 months from the date of its registration. As an exception, the deadline may be extended by one month by a reasoned decision of the Court*'.

The Article was supplemented with paragraph (2) with the following wording:

'*(2) The deadline for examination of a complaint on the ascertaining of the circumstances that justify the dissolution of the Parliament, dismissal of the President of the Republic of Moldova, appointment of an Acting President, impossibility of the President of the Republic of Moldova to exercise his/her duties for more than 60 days, cannot exceed 7 days from the date of registration of the complaint*'.

11. In the Code of Constitutional Jurisdiction, Article 7/1 having identical content as Article 25/1 of the Law on Constitutional Court, was repealed (Art. II).

12. Thus, the corresponding articles of the Law on the Constitutional Court have the following content:

Article 18
Vacancy of the office

'(1) The term of office of a judge of the Constitutional Court shall end and a vacancy shall be declared in the event of:

a) expiry of the term of office;
b) dismissal;
c) termination of the term of office;
d) death.

(2) The termination of the term of office and the vacancy in cases stipulated in para. (1) let. a), b), d) shall be declared by Decree of the President of the Constitutional Court, and in the case stipulated under let. c) by the Constitutional Court ***or the Parliament of the Republic of Moldova, by decision***.'

Article 19
Dismissal

'(1) The term of office of a judge is terminated with the removal of his/her immunity in the event of:

a) inability to perform his/her duties for a long period (more than four months) due to health reasons;
b) violation of the oath ~~and office duties~~; ***or loss of confidence***;
c) conviction by a court of law for committing a criminal offence;
d) incompatibility;
e) violation of office duties.

(2) The Constitutional Court decides on the removal of the judge's immunity and on the termination of his/her term of office in the circumstances provided in paragraph (1) ***let. a), c), d), and e)***, a***nd on let. b) – by the Parliament***.

(3) The circumstances of ~~a~~ violation of the ~~oath or of the~~ office duties shall be investigated by two judges appointed by Order of the President of the Constitutional Court.

(4) The procedure to remove the mandate of the judge for violation of oath or loss of confidence shall be initiated at the request of at least 25 Members of Parliament, and the decision shall be approved with the vote of at least 3/5 of the number of elected Members of Parliament.'

~~Article 25/1~~
~~Action of the appealed act~~

~~(1). The action of the normative acts provided for in Article 4, para. (1), let. a), properly appealed to the Constitutional Court, which affect or relate to the fields laid out in para. (2) of this Article may be suspended until the case will be settled on the merits, by issuing a final decision or judgment.~~

~~(2). It may be suspended the action of:~~
~~1) acts which affect or relate to the following fields:~~
~~a) sovereignty and state power;~~
~~b) the rights and fundamental freedoms;~~
~~c) democracy and political pluralism;~~
~~d) separation and collaboration of powers;~~
~~e) the fundamental principles of property;~~
~~f) national unity and the right to identity;~~
~~g) economic or financial security of the state;~~

~~h) other fields that the Constitutional Court considers necessary to suspend the action of the challenged act, in order to prevent damage and imminent negative consequences;~~

~~2) individual acts issued by Parliament, by the President of the Republic of Moldova or by the Government, concerning the state officials exponents of public and/or special political interest.~~

~~(3) The Constitutional Court shall examine the application for suspension of the challenged normative act at the latest in the second working day after the registration of the application.~~

~~(4) The decision to suspend the action of the challenged act is adopted by the plenum of the Constitutional Court by a vote of at least three judges. In case of impossibility of convening the plenum of the Court, the decision to suspend is issued by a provision of the President of the Constitutional Court, with further compulsory confirmation of the plenum of the Constitutional Court.~~

~~(5) The decision to suspend the challenged normative act enters in force on the date of issuing, and shall be published in the "Monitorul Oficial" (Official Journal) of the Republic of Moldova.~~

~~6) In case of suspending the action of the challenged normative act, the Constitutional Court will examine, on the merits, the application within a reasonable time, which shall not exceed 15 days from registration. If necessary, the Constitutional Court may decide, in a reasoned manner, to extend the term of 15 days for at most another 15 days.~~'

Article 32
Time limit for settling the appeal

~~'The Constitutional Court must settle the appeal within the term of 6 months from the date of receiving the materials.'~~

'***(1) The Constitutional Court shall examine the application within 3 months from the date of its registration. As an exception, the deadline may be extended by one month by a reasoned decision of the Court*'.**

'***(2) The deadline for examination of a complaint on the ascertaining of the circumstances that justify the dissolution of the Parliament, dismissal of the President of the Republic of Moldova, appointment of an Acting President, impossibility of the President of the Republic of Moldova to exercise his/her duties for more than 60 days, cannot exceed 7 days from the date of registration of the complaint***'

13. Adoption of the Law No. 109 of 3 May 2013 has generated a number of prompt reactions from the part of international institutions. In the expeditors statement of Mr Gianni Buquicchio, the President of the Commission for Democracy through Law of the Council of Europe (Venice Commission), referring to the amendments operated to the Law on the Constitutional Court it was stressed out expressly:

'I learned today about the adoption, in first reading, of the draft amendment to the Law on the Constitutional Court of Moldova. According to this amendment, Parliament may remove judges of the Constitutional Court by a 3/5 vote of its members if the judges lose Parliament's "trust/confidence".

Such a provision is in clear contradiction with European Standards on constitutional justice and is a clear violation of Article 137 of the Constitution of Moldova. A constitutional court has the task of controlling the work of the Parliament. Subjecting its judges to the need of being "trusted" by Parliament is in evident contradiction with the very purpose of a constitutional court.

I strongly encourage Parliament not to adopt this law. It would be the task of the **current composition** of the Constitutional Court to decide on the constitutionality of this provision.' (http://www.venice.coe.int/webforms/events/?id=1703)

14. In the same spirit, the High Representative of the European Union for Foreign Affairs and Security Policy, Catherine Ashton, and EU Commissioner for Enlargement and European Neighbourhood Policy, Štefan Füle, expressed their concern regarding the adoption of amendments to the Law on the Constitutional Court of the Republic of Moldova, which allow the dismissal of judges of the Constitutional Court, if they do not benefit from the 'trust/confidence' of the Parliament. The Declaration states:

'**We have learned with strong concern of the adoption of an amendment to the Law on the Constitutional Court of the Republic of Moldova, allowing removal of judges from the Constitutional Court if they do not have the "trust" of parliament**. This law, as well as a number of other important laws, touching upon fundamental issues for the functioning of Moldova's democracy, have been adopted with extreme haste, and without proper consultation with Moldovan society, or appropriate regard to European standards on constitutional reform, in particular those of the Venice Commission of the Council of Europe. In this regard, **we fully share the concerns expressed by the President of the Venice Commission in the statement he issued today.**

We understand that these laws, in addition to the measures affecting the Constitutional Court judges, include measures on the electoral law, the threshold required for parties to enter parliament, the powers of the Acting Prime Minister to dismiss Ministers and Heads of Institutions and a change in status of the National Anti-Corruption Centre. This follows a worrying new pattern of decision-making in Moldova, reflected also in other recent legislative moves, where the institutions of the state have been used in the interest of a few. We reiterate our concern that these measures, carried out without proper preparation and consultation, could constitute a threat to the independence of key national institutions, and an obstacle to Moldova's further democratic development and stable rule of law.

We urge Moldova's political leaders not to lose sight of the long-term impact of their decisions, including on the achievement of Moldova's aspirations'. (http://europa.eu/rapid/press-release_MEMO-13-402_en.htm?locale=en#PR_metaPressRelease_bottom)

15. The General Secretary of the Council of Europe, Mr. Thorbjørn Jagland, declared:

> '**I have been following with concern the situation in Moldova**. In the last days, the Parliament of Moldova has amended a number of fundamental laws that affect the functioning of political system of the country. The Law on the Constitutional Court, electoral legislation, functioning of the Government and law-enforcement structures, in some cases repeatedly, without adequate consultations have been modified. These amendments and the manner of adoption create the risk of undermining the independence and institutional balance of the country. And **recent amendments regarding the Constitutional Court are of special concern, since the amendments requested seem to be in contradiction with the Constitution of Moldova, and the European standards on constitutional jurisdiction.**
>
> I urge all political actors to act in a responsible manner. The coherence and credibility of the European course of the country are at stake. The Council of Europe will continue to support Moldova, including through Venice Commission to help the country to overcome current political difficulties.'

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

16. Moreover, the President of Parliamentary Assembly of the Council of Europe, Mr Jean-Claude Mignon, expressed his opinion regarding the adopted law:

> '**Recent voting by the Parliament on vital matters for democracy functioning as well as confirmation with the Constitution, legal independence and electoral system was rushed without the effort to find a wider consensus in the Parliament**.
>
> I urge all political forces of the country to put aside the partisan and personal interests and work together for the European future of the country and its citizens. APCE is willing to facilitate the dialogue between different political parties, if they want this.'

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

17. Despite the pressure emphasised by the high level officials to adopt the draft law and efforts made in this regard, the Law No. 109 of 3 May 2013 was not promulgated by the President of the Republic of Moldova, Mr Nicolae Timofti, and was sent back to the Parliament for repeated examination. In his letter of 8 May 2013, addressed to the Parliament, the President says: '*Unlike the Government, which is invested by the procedure of providing the vote of confidence by the Parliament, the Constitutional Court is not subject to such exercise and is not liable before the Parliament.[...] Under the conditions in which it exercises the constitutional*

review of laws, regulations and Decisions of the Parliament, i.e. its main activity, it would be absolutely abnormal for the Parliament to appreciate whether one judge or another lost the confidence and penalize him/her. Hence, the principle of independence of the Court's judges is endangered; they being forced to adopt convenient judgements every time so they are not suspected of this 'loss of confidence/trust'.

PERTINENT LEGISLATION

A. National legislation

18. The relevant provisions of the Constitution (OG, No. 1/1, 1994) are the following:

Preamble

'[...] CONSIDERING the **rule of law**, civic peace, democracy, human dignity, fundamental human rights and freedoms, the free development of human personality, justice and political pluralism as supreme values [...]'

Article 1
The State of the Republic of Moldova

'(3) Governed by the **rule of law**, the Republic of Moldova is a democratic State in which the dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values that shall be guaranteed.'

Article 6
Separation and Cooperation of Powers

'The legislative, the executive and the judicial powers are separate and cooperate in the exercise of the assigned prerogatives **pursuant to the provisions of the Constitution.**'

Article 7
Constitution - the Supreme Law

'The Constitution of the Republic of Moldova shall be the Supreme Law of the State. **No law or other legal act which contravenes the provisions of the Constitution shall have legal force.**'

Article 20
Free Access to Justice

'(1) Any individual is entitled to effective satisfaction from the part of competent courts of law against actions infringing upon his/her legitimate rights, freedoms and interests.

(2) **No law may restrict the access to justice**.'

Article 54
Restrictions on the Exercise of Certain Rights or Freedoms

'(1) In the Republic of Moldova no law may be adopted which might curtail or **restrict the fundamental rights and freedoms of the individual and citizen**.[...]'

Article 134
Statute [Constitutional Court]

'(1) The Constitutional court is the sole authority of constitutional jurisdiction in the Republic of Moldova.

(2) The Constitutional Court **is independent of any other public authority and shall abide only by the Constitution.**

(3) The Constitutional Court **guarantees the supremacy of the Constitution, ascertains the enforcement of the principle of separation of the State powers into the legislative, executive and judiciary, and it guarantees the responsibility of the State towards the citizen and of the citizen towards the State**.'

Article 135
Powers

'(1) The Constitutional Court:

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

b) gives the interpretation of the Constitution;

c) formulates its position on initiatives aimed at revising the Constitution;

d) confirms the results of republican referenda;

e) confirms the results of parliamentary and presidential elections in the Republic of Moldova;

f) ascertains the circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova or the interim office of the President, as well as the impossibility of the President of the Republic of Moldova to fully exercise his/her functional duties for more than 60 days;

g) solves the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice;

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

(2) The Constitutional Court carries out its activity on the initiative brought forward by the subjects provided for by the Law on the Constitutional Court.'

Article 136
Structure

'(1) The Constitutional Court consists of 6 judges appointed for a 6-year term of office.

(2) Two judges shall be appointed by the Parliament, two -by the Government and two -by the Superior Council of Magistrates. [...]'

Article 137
Independence

'For the tenure of their mandate the judges of the Constitutional Court **are irremovable**, independent, and abide only by the Constitution.'

Article 140
Judgments of the Constitutional Court

'(1) Laws and other normative acts or parts thereof become null and void from the moment of adopting by the Constitutional Court of the appropriate judgment to that effect.

(2) The judgments of the Constitutional Court are final and cannot be appealed against.'

B. Acts of international organisations to which the Republic of Moldova is a party

19. The fundamental principles of the judicial power adopted by the UN General Assembly by two Resolutions in 1985, adopted by the 7th Congress on Prevention of Crime and Treatment of Offenders in Milano, between 26 August - 6 September 1985, and endorsed by Resolutions No.40/32 of 29 November 1985 and No.40/146 of 13 December 1985 of General Assembly:

Independence of the Judiciary

'-The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary;

- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason;

- Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists;

- A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge;

- Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.'

20. 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):

Chapter I – General aspects

Scope of the recommendation

'1. 1. This recommendation is applicable to all persons exercising judicial functions, **including those dealing with constitutional matters**.

2. The provisions laid down in this recommendation also apply to non-professional judges, except where it is clear from the context that they only apply to professional judges.'

Judicial independence and the level at which it should be safeguarded

'3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.

6. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court. All persons connected with a case, including public bodies or their representatives, should be subject to the authority of the judge.

7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.

8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.

9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.

10. Only judges themselves should decide on their own competence in individual cases as defined by law.'

Chapter III – Internal independence

'22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction,

improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.

23. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.'

Chapter VI – Status of the judge

'46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.'

Tenure and irremovability

'49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.'

21. The Bangalore Principles of Judicial Conduct (2001):

Independence

'Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.'

22. European Charter on the Statute for Judges. Strasbourg, 8-10 July 1998:

Activities for the development and consolidation of democratic stability

GENERAL PRINCIPLES

'1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.

1.2. In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.

1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.'

THE LAW

23. Given the content of the complaint, the Court noticed that in essence it refers to the possibility to remove the mandate of judges of the Constitutional Court by the Parliament for 'loss of confidence', as well as to limit the competences of the Constitutional Court and the time frame for the examination of complaints.

24. Thus, the complaint refers to a set of interconnected elements and principles with constitutional value, such as rule of law, irremovability of judges of the Constitutional Court, independence of the Court in relations with other state authorities, responsibility of the state toward the citizen.

A. ADMISSIBILITY

25. The Court observes that the authors of the complaint requested *a priori* constitutional review of Law No. 109 amending and supplementing some legislative acts, adopted by the Parliament in final reading on 3 May 2013.

26. In this regard, by Judgment No. 9 of 14 February 2014, the Court reiterated that the constitutional review of laws refers to the laws adopted by the Parliament both before and after being published in the Official Gazette of the Republic of Moldova, based on the complaint filed by the President

of the Republic of Moldova and other subjects entitled to lodge complaints to the Constitutional Court.

27. Also, in the abovementioned Judgment the Court stated that in the process of promulgating, in case of any doubts of unconstitutionality, the President of the Republic of Moldova may send the law for reconsideration to the Parliament, notifying at the same time the Constitutional Court as the sole authority of constitutional jurisdiction with a view to control the constitutionality of the adopted Law. If the Law sent by the President of the Republic of Moldova to the Parliament for reconsideration is challenged on grounds of unconstitutionality, the Parliament may repeatedly vote in respect of the said law only after the decision of the Constitutional Court confirming the constitutionality is delivered.

28. In accordance with its Judgement of 27 May 2014 (see § 3 *supra*), the Court observed that based on Article 135 para. (1) let. a) of the Constitution, Article 4 para. (1) let. a) of the Law on Constitutional Court and Article 4 para. (1) let. a) of the Code of Constitutional Jurisdiction, the application lodged falls under the competence of the Constitutional Court.

29. Articles 25 let. g) of the Law on Constitutional Court and 38 para. (1) let. g) of the Code of Constitutional Jurisdiction authorise the MP to address the Constitutional Court.

30. The Court appreciates that the complaint cannot be rejected as inadmissible and there are no other grounds to discontinue the proceedings under the provisions of Article 60 of the Code of Constitutional Jurisdiction. The Court notes that is was legally informed and is competent to decide on the constitutionality of Law No. 109 of 3 May 2013. Hence, the Court will continue to consider the merits of the complaint.

31. Under these circumstances and based on Article 6 para. (2) of the Code of Constitutional Jurisdiction, the Court notes that two out of three issues submitted to the Court for consideration are interdependent. Taking into account the fact that the control of constitutionality of the amendment related to the competence of the Court does influence the rationale referring to time frames for the examination of complaints, certain aspects will be considered jointly. The issue related to the modification of the status of Constitutional Court judges will be considered separately.

32. To elucidate the aspects described in the complaint, the Court will operate especially with the provisions of the Preamble, Articles 1 para. (3), 6, 20, 54, 134, 135, and 137 of the Constitution, its previous case-law, as well as principles enshrined in the international law, using all methods of legal interpretation.

B. THE MERITS

I. THE ALLEGED VIOLATION OF ARTICLES 1 PARA. (3), 6, 134 AND 137 OF THE CONSTITUTION WHEN MODIFYING THE STATUS OF THE JUDGES OF THE CONSTITUTIONAL COURT

33. According to the authors of the complaint, the amendments operated to Articles 18 and 19 of the Law on Constitutional Court (Art. I, para. 1 and 2 of the amending Law) were adopted in breach of Article 137 of the Constitution, reading that:

> 'For the tenure of their mandate the judges of the Constitutional Court are **irremovable,** independent, and abide only by the Constitution.'

34. Moreover, in the opinion of the authors of the complaint, when adopting the challenged norms, Article 134 para. (2) of the Constitution was violated, according to which:

> '(2) The Constitutional Court **is independent of any other public authority and shall abide only by the Constitution**'.

35. At the same time, Article 1 para. (3) of the Constitution [Rule of law] and the principle of separation of powers in a constitutional democracy (Article 6) were also violated.

1. Arguments of the authors of the complaint

36. According to the authors of the complaint, by entitling itself to withdraw the mandate of judges of the Constitutional Court, the Parliament deprived them of irremovability.

37. Depriving the judges of the irremovability encroaches the independence of the Constitutional Court and compromises severely its mission to guarantee the supremacy of the Constitution, to ensure the principle of separation and cooperation of state powers and to guarantee the responsibility of the state toward the citizen and of the citizen toward the state.

2. Arguments of the authorities

38. In the written opinion the President of the Republic of Moldova mentioned that he reiterates the arguments expressed in the Letter addressed to the Parliament when the abovementioned Law was returned for repeated examination (see § 17).

39. According to the Head of State, the amendments operated by the Law No.109 can be qualified as attempts to establish a political responsibility of

the judges of the Constitutional Court toward the Parliament, which is in contradiction with Articles 134 and 137 of the Constitution.

40. The representative of the Parliament in the plenary hearing of the Court mentioned that when the draft law was adopted, the General Legal Division underlined in its Informative Note that the draft law contains elements of unconstitutionality and considered that the draft law should be declared unconstitutional by the High Court.

41. The Government did not present its written opinion in respect of the complaint.

3. Appreciation of the Court

3.1. General principles

3.1.1. Independence of the judge

42. Independence of judges is one of the constitutional principles of justice. According to this principle, in his/her activity, the judge obeys only the law and his/her conscience. In settling litigations, the judge cannot receive any orders, instructions, indications, suggestions and other advice regarding the decision he/she should make.

43. It is axiomatic that while ruling on a case a judge does not act at the orders or instructions of any third party from inside or outside the judicial system.

44. The judges have to benefit of unlimited freedom to solve the cases in an impartial manner, according to their beliefs and their own manner of interpretation of facts, in accordance with the legal provisions in force.

45. The independence of judicial power has both an objective component as an indispensable feature of the judicial power, as well as the subjective component that refers to the right of a person to be granted freedoms and rights by an independent judge. In the absence of independent judges, the rights and freedoms cannot be observed in a fair and legal manner.

46. Therefore, the independence of judicial power does not represent a goal per se. It is not a personal privilege of the judges, it is rather justified by the need to allow the judges to play the role of protectors of rights and freedoms of citizens (§6 of the Venice Report on the Independence of the Judicial System Part I: Independence of Judges).

47. A number of international legal instruments have enshrined and developed this principle.

48. Thus, according to para. 4 of the first Fundamental principle of the United Nations on the independence of the judiciary, adopted by the 7th UN Congress in Milano in 1985, and approved by the resolutions of General

Assembly No. 40/32 of 29 November 1985 and No. 40/146 of 13 December 1985:

> 'There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law [...].'

49. The second phrase of Art. 2 of the Universal Charter of the Judge, approved by the International Association of Judges at Taipei Central Council meeting in 1999, stipulates:

> '[...] The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure [...]'

50. Along the same line, the Recommendation R(2010)12 on Judges: independence, efficiency and responsibilities adopted by the Committee of Ministers of the Council of Europe stipulates:

> '3. The purpose of independency, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only or without any improper influence.
>
> 4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.
>
> 5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.
>
> 6. Judges should have sufficient powers and be able to carry out their duties and maintain their authority and the dignity of the court. All persons concerned with a case, including public bodies and their representatives, should be subject to the authority of the judge.
>
> 7. The independence of the judge and of the judiciary should be enshrined in the Constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.
>
> […]
>
> 22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.'

3.1.2. Irremovability

51. Irremovability is a guarantee of good administration of justice and a *sine qua non* condition of judge's independence and impartiality. It is dedicated not only to the interest of the judge, but of the justice as well.

52. Irremovability is a strong guarantee of judge's independence and is the means to protect the latter. According to this principle, the judge cannot be revoked, downgraded, transferred to a similar position, or promoted without his/her consent. Irremovability protects the judges from any revocation and transfer imposed, except for severe mistakes and following judicial procedures.

3.2. Application of aforementioned principles in the present case

53. The idea of supremacy of the Constitution is a conquest of legal thinking, which is related to political will to guarantee effectively this supremacy through constitutional jurisdiction. The role of constitutional court as a guarantor of the supremacy of the Constitution is enshrined in Art.134 para.(3), and with a view to ensure this role the Constitutional Court is defined as the sole authority of constitutional jurisdiction in the Republic of Moldova (Art. 134 para. (1)), independent from any other public authority (Art. 134 para. (2)) and abiding only by the Constitution (Art.137 para.(1)).

54. The Constitution of the Republic of Moldova dedicates a separate title to the Constitutional Court – Title V (Art.134-140). It includes provisions regulating the role of the Court, its structure, tenure of its members, procedure to appoint judges and elect the President of the Court, conditions to hold the position of the judge, incompatibilities, independence and irremovability, authority of the Constitutional Court, as well as the effects of the decisions delivered by the Court. Based on relevant constitutional texts, the Parliament adopted Law No.317/1995 on the Constitutional Court and the Code of Constitutional Jurisdiction (Law No. 502/1995).

55. The structure of the Constitutional Court of the Republic of Moldova is regulated by Article 136 of the Constitution. According to these provisions, the Constitutional Court of the Republic of Moldova consists of 6 judges appointed for a term of 6 years. Two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy. Such procedure for the appointment of judges of the Constitutional Court of the Republic of Moldova ensures the most representative and democratic structure, as it expresses the opinions of the highest public authorities from all three state powers: legislative, executive,

and judicial. Separation of power confers strong guarantees regarding the impartiality and independence of constitutional judges.

56. Both the Constitution and the Law on the Constitutional Court regulate important principles and guarantees of independence and neutrality of Constitutional Court judges, which allows them to carry out justice in an objective manner. The Court, according to Article 134 para. (2) of the Constitution, is 'independent of any other public authority' and abides only the Constitution. In this sense, the Constitutional Court is the only one entitled to decide on its competence [Art.6 para.(3) of the Code of Constitutional Jurisdiction]; the competence of the Constitutional Court is stipulated in the Constitution and cannot be challenged by any public authority [Art. 4 para. (2) of the Law]; **judges of the Constitutional Court cannot be held legally liable for their votes or opinions expressed while performing their duties** [Art.8 para.(3) of the Code and Art. 13 para. (2) of the Law]; among other duties, the judges of the Constitutional Court are required 'to perform their duties impartially and in accordance with the Constitution' [Art.17 para.(1) let.a) of the Law]; judges are required 'to notify the President of the Court of any activity incompatible with their functions [Art.17 para.(1) let.d) of the Law]; judges are required 'to refrain from any activity contrary to the status of judge' [Art.17 para.(1) let.f) of the Law]; finding of disciplinary misconducts of judges, establishment of sanctions and the procedure of the applicsation thereof is the exclusive competence of the Plenum of the Constitutional Court (Art.84 of the Code); the Constitutional Court has its own budget, which is approved by the Parliament, at the proposal of the Plenum of the Constitutional Court (Art. 37 of the Law).

57. In its Judgement No. 6 of 16 May 2013 the Court mentioned:

> '50. Taking into account the complexity and the nature of Constitutional Court's duties, as well as the procedures according to which the Court fulfils its duties, it can be considered a political-jurisdictional public authority. The political character results from the procedure of appointing the judges of the Constitutional Court, as well as the nature of some duties. The jurisdictional character results from the principle of organisation and functioning (independence and irremovability of judges), as well as other duties and procedures. In this regard, the President of the Constitutional Court is assimilated with the President of the Supreme Court of Justice, and the judges of the Constitutional Court are assimilated with the Deputy Presidents of the Supreme Court of Justice [Art. 21 para. (2) and (3) of the Law]. The jurisdictional character of the Constitutional Court applies the principles of judicial independence despite the fact that the authority of constitutional jurisdiction is not part of the judicial system.
>
> 51. At the same time, there is no such possibility to revoke the judges of the Constitutional Court by the authorities that appointed them, because the judges are irremovable, which is a guarantee of their independence in exercising their tenure.
>
> 52. This principle protects the judges, first of all, against external influence in fulfilling their jurisdictional duties. The fundamental idea consists in the fact that the

constitutional judges in exercising their duties, are not employed by the authorities that appointed them. Once they take the oath, the judges are independent, irremovable and abide only by the Constitution.

53. In accordance with Article 23 para. (1) of the Law, the Constitutional Court exercises its jurisdiction in plenary sessions. The provisions of the Law stipulate clearly that irrespective of the authority that appointed them, the judges are equal in the decisional process of the Court.

54. The Court observes that any normative act should respect the constitutional principles and norms, as well as requirements of legislative technique meant to ensure clarity, predictability and accessibility of the act. The Law should regulate unitarily, should ensure a logical and legal relation between its provisions and in case of legal institutions with a complex structure, should project elements that make a difference between their particularities.

55. The Court underlines that these constitutional provisions do not have declarative character, but are mandatory constitutional norms for the Parliament that has the obligation to legislate the institution of proper mechanisms to ensure real independence of judges, without which the rule of law, stipulated in Art. 1 para. (3) of the Constitution of the Republic of Moldova does not exist.

56. Or, in circumstances when ensuring the stability of the political system and democratic institutions is an essential condition of the rule of law, the purpose of infra-constitutional provisions may be only to guarantee the independence of the Constitutional Court and ensure the existence of a functional state authority.'

58. The constitutional review is not an impediment to the democracy, it is rather a necessary instrument, because it allows the minority of the Parliament and the citizens to ensure the observance of the Constitutional provisions, which is a necessary counterbalance for the parliamentary majority, if it disregards the text and the spirit of the Constitution.

59. Democratic legitimacy of this review results from the exclusive appointment of constitutional judges by the three state representative constitutional authorities (Parliament, Government, and the Superior Council of Magistracy). Thus, the participation of the Constitutional Court - in forms determined by the Constitution – in the legislative process is obvious.

60. The Constitutional Court was instituted to pursue the goal of verifying the activity of the Parliament. Subjecting the Court judges to obedience in front of the Parliament under the need of 'confidence' comes in obvious contradiction with the *per se* purpose of the Constitutional Court.

61. In this context, it should be taken into account that there is a risk of pressure from the part of the Parliament in certain cases that can appear before the Court, as well as the fact that the responsibility toward it may put indirect pressure on a judge who avoids taking unpopular decisions or who can take popular decisions in favour of the Legislative, not to 'lose the

confidence'. Therefore, *the liability of Constitutional Court judges before the Parliament, which activity they supervise, is inadmissible.*

62. On the contrary, such possibility can generate suspicions regarding the impartiality of judges, who are entitled to freely appreciate a truly political body, there existing the danger of subordination to influences that are against the goal of the Court.

63. Moreover, it is a legal nonsense that the mandates of Constitutional Court judges can be lifted by the Parliament since the Parliament itself appoints two judges of the Court. Despite the fact the judges take the oath before the Plenum of the Parliament, the President and the Superior Council of Magistracy, it does not mean that the Parliament may intervene as a decision-maker in the process of appointment, it rather has the mere nature of a solemn procedure of investiture and delineation of the date when the tenure of the office starts.

64. The Court reiterates that parliamentary debates showed that the adopted amendments entitling the Parliament to 'withdraw' the mandate of constitutional judges is an act of revenge for the Constitutional Court Judgement No. 4 of 22 April 2013 (see §§ 6-8 *supra*). In this context, the Court observes that although the Parliament formally invoked the objective of the so-called 'enhancement of independence of the Court judges', it is obvious that based on the amendments adopted the Parliament actually pursued the subordination of the Court judges, with flagrant violation of constitutional norms and European standards in the field of constitutional justice.

65. In light of the abovementioned, withdrawal of the mandates of the Constitutional Court judges by the Parliament represents an inappropriate interference in the activity of the Constitutional Court, as such, a violation of the principle of independence and is in contradiction with the principle of irremovability and independence of judges [Articles 134 para. (2) and 137 of the Constitution]. Consequently, Art. I paragraphs 1 and 2 of the Law No.109 of 3 May 2013 amending and supplementing some legislative acts are **unconstitutional.**

II. THE ALLEGED VIOLATION OF ARTICLES 134 AND 135 OF THE CONSTITUTION WHEN AMENDING THE COMPETENCE OF THE CONSTITUTIONAL COURT

66. By suppressing the competence of the Court to consider the individual acts and to suspend the challenged acts, as well as substantial shortening of the time frames for the examination of complaints, the violation of Article 134 of the Constitution is assumed, according to which:

'[…]

(2) The Constitutional Court is independent of any other public authority and shall abide only by the Constitution.

(3) The Constitutional Court guarantees the supremacy of the Constitution, ascertains the enforcement of the principle of separation of the State powers into the legislative, executive and judiciary, and it guarantees the responsibility of the State towards the citizen and of the citizen towards the State.'

67. At the same time, the competence of the Court, provided in Article 135 of the Constitution, was also violated:

'a**) exercises, upon appeal, the review of constitutionality over laws and decisions of the Parliament, decrees of the President, decisions and ordinances of the Government, as well as over international treaties to which the Republic of Moldova is a party** [...]'

Appreciation of the Court

3.1. Acts subjected to constitutional review

68. The Court observes that the repeal of Articles 25/1 of the Law on Constitutional Court and 7/1 of the Code of Constitutional Jurisdiction had the purpose to exclude any direct reference in these legal norms of constitutional review of individual acts issued by the Parliament, President and the Government, declared unconstitutional by Judgement of the Constitutional Court of 22 April 2013, Decree of the President of the Republic of Moldova on appointing the candidate for the position of Prime Minister.

69. Having examined the constitutional provisions, the Court observes that the following acts are covered by the constitutional review: laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government, as well as international treaties to which the Republic of Moldova is a party.

70. The provisions of Art.25/1 took over partly the considerations included in the Judgement of the Constitutional Court No.10 of 16.04.2010 on the revision of Judgement of the Constitutional Court No.16 of 28.05.1998 'On the interpretation of Art.20 of the Constitution of the Republic of Moldova' in the wording of Judgment No.39 of 09.07.2001. In its Judgement the Court noted that the provisions of Article 135 of the Constitution do not establish any difference between the judgements that may be subject to control under the aspect of manner of their adoption or under their character – either normative or individual, which means that these decisions may be submitted for constitutional review – *ubi lex non distinguit nec nos distiguere debemus*.

71. Similarly, in the Judgement No.10 of 16 April 2010, the Court mentioned that:

> '[...]The acts issued by the Parliament, the President of the Republic of Moldova and the Government in respect of officials, exponents of a particular public interest, elected or appointed for the duration of the term of office, **may be subject to constitutionality control in terms of the form and adoption procedure.** [...]'

72. Establishment of its duty to exercise such constitutional review represents the expression of diversification and consolidation of Constitutional Court's competence, the sole authority of constitutional jurisdiction in the Republic of Moldova, and a win in the efforts to achieve the rule of law and a democratic state without being considered a conjunctional or justified opportunity-based action. Hence, the legal, political and social reality proved its actuality and utility taking into account the fact that the constitutional court was asked to deliver its judgement on the constitutionality of some decisions of the Parliament that discussed constitutional values and principles.

73. Moreover, the Court notes that an important component of the state is the constitutional justice delivered by the Constitutional Court, a political and legal public authority, which is placed outside the legislative, executive or judicial power, having the role to ensure the supremacy of the Constitution, as Fundamental Law of a state governed by the Rule of law. Thus, according to Art.134 para.(3) of the Constitution: 'The Constitutional Court guarantees the supremacy of the Constitution'. The supremacy of the Fundamental Law is hence, the essence of the rule of law, representing at the same time a legal reality that involves consequences and guarantees. The consequences include the differences between the Constitution and laws, and last but not least, the compatibility of the entire law with the Constitution, and the constitutional review is among the guarantees.

74. The constitutional review of individual acts which discuss the constitutional values and principles is not just a fundamental legal guarantee of the supremacy of the Constitution, it represents a manner to provide the Constitutional Court with a competence able to ensure efficiently the separation and balance between the powers in a democratic state.

75. The legitimacy of Constitutional Court competence to rule on individual acts that impact constitutional values and principles, or depending on the case, refer to the organisation and functioning of authorities and constitutional high level institutions results from the Fundamental Law which supremacy the Court has to guarantee while the legislative solution that is criticised for eliminating these competences is not based on the Constitution but, as it was showed, results from the violation thereof.

76. Removing the individual acts from constitutional review is not based on the rule of law, but eventually on the considerations of opportunity, in

their essence, imply subjectivity, interpretation and arbitration. As a matter of fact, the constitutional justice is based on the rule of law, and not on opportunity.

77. Hence, the Court underlines the importance of constitutional review of individual acts for the well-functioning of the rule of law and for the observance of the separation and balance between the state powers, so when the issue related to the impact on the values and constitutional principles is discussed in some individual acts, including the acts of the Parliament, beyond the inherent political conflicts between the majority and opposition, the Court can be called to ensure the observance of these values and principles, intrinsic to democracy as a political model compatible with the Fundamental Law.

78. Having examined the arguments of the Constitutional Court in its case-law in justifying the need of constitutional review of individual acts, it has been established that the legal rationale used to ground the solutions delivered previously by the Court referred without any distinction to all acts of the Parliament, President and Government.

79. It is true that the constitutional court cannot transform itself into an arbiter of political conflicts. But to the extent these acts represent political manifests that are formally hidden behind legal acts – individual acts, that may influence the constitutional values or principles, if not adopted following constitutional and regulatory procedures, these acts can become an object of constitutional review exercised by the Constitutional Court.

80. In conclusion, the Constitutional Court, by virtue of the competences set in the Fundamental Law to play the role of guarantor of the supremacy of the Constitution, is the only one entitled, by way of its case-law, to establish the framework for the constitutional review of acts lodged under Article 135 of the Constitution, as it did until now, by examining the object of complaints and consequently solving them by invoking corresponding constitutional values and principles.

3.2. The right of the Court to suspend the action of challenged acts

81. In a well-organised authority of the state, the role of constitutional courts is essential and defining, representing a true pillar of the state and democracy, guaranteeing the equality before law, fundamental freedoms and human rights. At the same time, the constitutional courts contribute to the well-functioning of public authorities in constitutional relations of separation, balance, collaboration and mutual control of the state powers.

82. The repealed provisions of Articles 25/1 of the Law and 7/1 of the Code enshrined a new competence of the Court – to suspend the action of challenged acts with a view to avoid imminent prejudice and negative

consequences; this competence is obviously circumscribing to the constitutional framework.

83. In this sense, the Court quotes the Judgment No. 6 of 16 May 2013:

> '57. The Court observes that the essence of the norm included in Art.72 para. (3) let.c) of the Constitution to regulate the organisation and functioning of the Constitutional Court is to allow the law-maker to increase, extend the functionality and mechanisms of the constitutional court.
>
> 58. That is why, the interpretation of aforementioned fundamental norm in the sense that the law-maker would have the possibility to limit, eliminate or reduce the duties conferred equals to removing the content, respectively, by renouncing to the goal of improving the constitutional democracy pursued by the constituent law-maker during the review, which is absolutely inadmissible.
>
> 59. Hence, any legal norm or legislative amendment adopted based on Art.72 para.3 let. c) of the fundamental law which entails blocking under any form the functionality of the Court, is considered unconstitutional *ab initio*.'

84. Being legally provided, this competense of the Court is indissolubly integrated into a legal mechanism that may contribute to the achievement of the principle of separation and balance of powers in a democratic social state based on the rule of law.

85. Hence, the elimination of the competence of the Constitutional Court regarding the suspension of action of cthe hallenged acts, including those that refer to fundamental freedoms and rights, within the constitutional review, is unconstitutional. As a matter of fact, protecting the human freedom and dignity from any form of abuse committed by public authorities represents one of the main principles of the rule of law.

3.3. Procedural deadlines

86. The efficiency of the Court's action exercised in accordance with the competence provided by Article 135 of the Constitution, as in the case of any litigations or processes, is indissolubly related to the observance of some reasonable terms. Otherwise, the constitutional jurisdiction would risk to become illusionary.

87. The reasonability of deadlines is determined by a number of factors: complexity of the case, conduct of the Ccourt, of the parties, and of other authorities involved.

88. In this context, it is worth drawing the attention to the fact that the procedural deadlines are not stipulated in the Law on Constitutional Court, but in the Code of Constitutional Jurisdiction. It enshrines a number of procedural deadlines that have to be observed during the proceedings in constitutional jurisdiction. According to Article 19 para. (4) of the Code of Constitutional Jurisdiction, within 60 days, the Constitutional Court shall

decide on the admissibility of the complaint for examination and to include it on the agenda. The President of the Constitutional Court has the discretion to establish the deadline for the the examination of the application and to submit the report. If a larger amount of investigations are necessary, this deadline may be extended by 30 days. In accordance with Article 32 of the Code, during the consideration of the case, the rapporteur judge or the Constitutional Court, during the hearing, may decide on the necessity to conduct some expert examination. The ruling on conduct of an expert examination is legalised by the nominal requirement of the rapporteur judge or by the decision of the Constitutional Court, indicating the deadline for the submission of the expert report.

89. In accordance with Article 17 para. (2) of the Code, date, time and place of the hearing are notified to the parties at least 10 days before the hearing, except for the extraordinary cases. According to Article 9 para. (1) of the Law, the public authorities and other legal entities, regardless of the nature of their property or of the form of legal organisation, are obliged to submit the information, within the term of fifteen days, or other documents and normative acts they hold, as requested by the Court for the performance of its duties. Articles 35, 36, 37 of the Code stipulate the possibility of interruption, extension, and restoration of the procedural deadline.

90. In general, the regulation of the deadlines for the examination of complaints and the time frames for the procedures in front of the Constitutional Court by the laws adopted by the Parliament is in contradiction with the principle of independence of the Court. Based on the experience of other states, the normality consists in regulated autonomy of the Court, which shall be entitled to approve its own procedural regulations. Similarly, the European Court of Human Rights adopts its own procedural regulation.

91. In this context, setting some excessively restricted terms *a fortiori* affects the independence of the Court and risks to compromise full consideration of the cases, and respectively, deprives of its essence the duty of the Court as a guarantor of the Constitution.

92. The Court appreciates that there are no objective and reasonable arguments to justify the shortening by half of the general term provided for the examination of complaints and to introduce new deadlines to solve the existing cases.

93. In the same context, the Court observes that Articles 25/1 para. (6) of the Law and 7/1 of the Code stipulate that in case of suspending the action of the challenged normative act, the Constitutional Court will examine, on the merits, the application within a reasonable time, which shall not exceed 15 days from registration. If necessary, the Constitutional Court may decide, in a reasoned manner, to extend the 15 days term for another 15 day s term at most.

94. Hence, although the notion of 'reasonable term' is enshrined in the aforementioned provision, it fixes this term for not more than 15 days. Under this aspect, the norm enshrines a legal nonsense, proving a deficit and imprecise text.

95. The Court underlines that these norms risk to interrupt the activity of the Constitutional Court, especially in the context when the Parliament did not foresee the necessary resources to support the activity of the Constitutional Court in this regard and their imposition took place without consulting the Court, the society or relevant national and international institutions. On the contrary, the Court was deprived by a number of leverages to make its activity more efficient.

96. In this context and taking into account the motivations expressed during the debates in the Parliament in respect of the adopted amendments, as well as in the context of the entire set of amendments operated regarding the withdrawal of the mandates by the Parliament, the Court considers that the adopted amendments pursue the goal of creating artificial situations that would justify the application of norms regarding the withdrawal of the mandates of constitutional judges.

97. The Court considers that the manner and the context of adopted amendments underline the unconstitutional and abusive behaviour of the Parliament toward the Constitutional Court.

98. **The principle of observance of the supremacy of the Constitution is a norm of the rule of law**. The material superiority of the Constitution stems from the fact that it is the Constitution that **sets and organises the competences,** so that acting contrary to the Constitution equals to acting illegally. The manner of applying and observing the principle of supremacy of the Constitution in a state determines **the quality of the rule of law** in that state.

99. A key feature of constitutional review of laws is the compulsory *erga omnes* character of decisions, which establishes the unconstitutionality during the review.

100. Mandatory general character of the judgements of the Constitutional Court is an essential requirement for good-functioning of national rule of law, being a factor of stability of the Constitution. Either reporting to common courts, to the Parliament or the Government, all have the obligation to observe the provisions of the Constitution and implicitly, the judgements of the Constitutional Court.

101. A direct consequence of direct or indirect disregarding of judgements of the Constitutional Court leads inevitably to sacrificing the principle of supremacy of the Constitution, principle of separation of state powers and implicitly, of the rule of law. In the same context, exercising any form of pressure on the judges of the Court, before the ruling and as an act of revenge for adopted solutions, is inadmissible because it is

incompatible with the observance of the rule of law, authority of the Court and supremacy of the Constitution.

102. In the end, the Court reminds that the mandatory power of judicial acts, and of judgments of the Constitutional Court, refers not only to the operative part, but also to the considerations it is based on. Hence, both the considerations and the operative part of the judgements of the Constitutional Court are generally compulsory, according to provisions of Art.140 of the Constitution, and have the same force on all legal subjects, including in the legislative process of reviewing an unconstitutional provision.

Based on these reasons and in accordance with Articles 140 of the Constitution, 26 of the Law on Constitutional Court, 6, 61, 62 let. a) and 68 of the Code of Constitutional Jurisdiction, the Constitutional Court

DECIDES:

1. To *admit the complaint* submitted by the members of Parliament Mihai Ghimpu, Valeriu Munteanu, Gheorghe Brega and Corina Fusu on constitutional review of some provisions on the organisation and functioning of the Constitutional Court, in the part referring to the status of judges, competence and procedure of the Constitutional Court.

2. *To declare unconstitutional* the *Law* No. 109 of 3 May 2013 amending and supplementing some legislative acts.

3. *To declare unconstitutional* the text ‘ ,which shall not exceed 15 days from registration. If necessary, the Constitutional Court may decide, in a reasoned manner, to extend the term of 15 days for another 15 days at most.’ in Article 25^1 paragraph (6) of the Law No. 317-XIII of 13 December 1994 on the Constitutional Court and Article 7^1 of the Code of Constitutional Jurisdiction No. 502-XIII of 16 June 1995.

4. This judgement is final and cannot be subject to any form of appeal. It comes into effect on the date of passing and shall be published in the Official Gazette of the Republic of Moldova.

President **Alexandru TĂNASE**

Chisinau, 2 June 2014
JCC No. 18
Complaint No. 34a/2014