

Law N° 317-XIII on the Constitutional Court

(13 December 1994)

Chapter I

General Provisions

Article 1 The Constitutional Court – authority of constitutional jurisdiction

1. The Constitutional Court is the sole authority with constitutional jurisdiction of the Republic of Moldova.
2. The Constitutional Court is independent and subject only to the Constitution.
3. The Constitutional Court:
 - a) shall guarantee the supremacy of the Constitution;
 - b) shall ensure the implementation of the principle of the separation of the state powers into legislative, executive and judicial;
 - c) shall guarantee the responsibility of the State towards the citizen and of the citizen towards the State.

Article 2 Legislation on the Constitutional Court

The Constitutional Court shall conduct its activity in accordance with the Constitution, the present Law and the Constitutional Jurisdiction Code.

Article 3 Principles of activity

The Constitutional Court shall perform its functions on the basis of the following principles:

- a) independence;
- b) collegiality;
- c) legality;
- d) publicity.

Article 4 Jurisdiction

1. The Constitutional Court:
 - a) shall, upon appeal, the constitutional review of laws, regulations and decisions of the Parliament, the decrees of the President of the Republic of Moldova, the decisions and orders of the Government, as well as the international treaties the Republic of Moldova is party to;
 - b) shall give the interpretation of the Constitution;
 - c) shall provide its opinion on initiatives of revising the Constitution;
 - d) shall confirm the results of the republican referendums;

e) shall confirm the results of parliamentary and presidential elections and shall validate the mandates of the Parliament's members and of the President of the Republic of Moldova;

f) shall determine the circumstances which justify the dissolution of the Parliament, the dismissal from office of the President of the Republic Moldova, the interim office or the impossibility of the President of the Republic of Moldova to fully exercise its powers for more than 60 days;

g) shall decide on exception of unconstitutionality of the legal acts, claimed by the Supreme Court of Justice;

h) shall decide on issues concerning the constitutionality of a political party.

2. The jurisdiction of the Constitutional Court is provided by the Constitution and may not be challenged by any public authority.

Article 5 Term of the mandate

1. The term of the mandate of the Constitutional Court is unlimited.

2. The judge of the Constitutional Court may hold this position for two terms of office.

Article 6 Structure

1. The Constitutional Court consists of six judges, appointed for a six-year term.

2. Two judges shall be appointed by the Parliament, two by the President of the Republic of Moldova and two by the Superior Council of Magistracy.

Note: The phrase "President of the Republic of Moldova" from the Article 6, para. (2) has been declared unconstitutional by the Judgement of the Constitutional Court No. 6 of 16.05.2013, in force 16.05.2013.

3. The Constitutional Court shall also include the Secretariat, which is responsible for preparing and organising the Court's activity.

4. An Advisory Scientific Council may be set up to assist the Constitutional Court.

Article 7 The President of the Constitutional Court

1. The President of the Constitutional Court shall be elected for a three-year term by majority vote of the judges of the Court in a secret ballot.

2. The number of candidates for the office of the President of the Constitutional Court shall be unlimited.

3. If, on the first ballot, no candidate secures the majority of the votes, a second ballot shall be held and the judge securing the highest number of votes shall be declared elected President.

4. If, in the second ballot, the candidates obtained the same number of votes, the President shall be elected by drawing lots.

5. The Constitutional Court shall elect a judge to perform the duties of the President during his/her absence.

Article 8 The powers of the President of the Constitutional Court

1. The President of the Constitutional Court has the following powers:

- a) to convene the Constitutional Court and to preside over its sessions;
- b) to co-ordinate the activities of the Court and to assign cases for settlement;
- c) to represent the Court before the public authorities of the country and abroad;
- d) to establish when the term of office of a judge is terminated, as provided by this Law, and to inform the public authority which appointed that judge to appoint another for the vacant post;
- e) to exercise the general administration of the Secretariat of the Constitutional Court, to appoint and dismiss from office the staff of the Secretariat, under conditions of the individual labour contract;
- f) to submit for the approval at the Constitutional Court the Regulations of the Secretariat, the organisational chart and the status of the staff, and the Regulations governing the Advisory Scientific Council, and to approve the regulations of the Secretariat's departments;
- g) to exercise other powers laid down in this Law, in the Constitutional Jurisdiction Code and in other legislative acts.

2. The President of the Constitutional Court shall be responsible for the financial resources of the Court within the limits of the approved budget.

3. The President of the Court shall issue orders and provisions.

Article 9 Obligation to comply with the Constitutional Court's requirements

1. The public authorities and other legal persons, regardless of the nature of their property or of the form of legal organisation, are obliged to deliver the information, within the term of fifteen days, or other documents and normative acts they hold, a requested by the Court for the performance of its duties.
2. Failure to comply, or inadequate compliance, with paragraph (1) above, as well as the failure to attend plenary sessions for reasons which the Court considers unfounded shall be sanctioned pursuant to the Constitutional Jurisdiction Code.

Article 10 Official reports the Constitutional Court

The Court shall annually present the reports on the implementation of the constitutional jurisdiction to the authorities empowered to appoint its judges.

Chapter II

Status of judges of the Constitutional Court

Article 11 Appointment

1. Judge of the Constitutional Court may be any person who is citizen of the Republic of Moldova, has residence within the state, and must possess outstanding judicial knowledge, high professional competence and a length of service of at least 15 years in legal field, legal education or scientific activity.
2. The age limit for being appointed as judge of the Constitutional Court is 70 years old.
3. The appointment shall occur only with the prior consent of the candidate, expressed in written form. In case the candidate holds an office incompatible with that of judge of the Constitutional Court, or he/she is a member of a political party or another political organisation, the consent must include the candidate's commitment to resign, on the day of taking the oath, from the previous office and to suspend the activity within the political party or other political organisation.

Article 12 Oath

1. At the beginning of the term of office, the judge of the Constitutional Court shall take the following oath before the Parliament, the President of the Republic and the Superior Council of Magistracy:

“I swear to perform faithfully and conscientiously the duties as judge of the Constitutional Court, to defend the constitutional order and to obey only the Constitution”.

2. The judge of the Court shall perform his/her duties from the date of taking the oath.

Article 13 Independence

1. Judges of the Court are independent in performing their duties and they obey only to the Constitution.

2. Judges of the Court can not be held legally liable for their votes or opinions expressed while performing their duties.

Article 14 Irremovability

1. The judge of the Constitutional Court is irremovable during the term of office.

2. The term of office of a judge of the Court shall be suspended or terminated only in the circumstances provided for by the present Law.

3. If the term of office of a judge is terminated, such judge shall be dismissed under the conditions laid down by the present Law.

4. The judge of the Constitutional Court may resign on his/her own initiative.

Article 15 Incompatibilities

The position of judge of the Constitutional Court is incompatible with holding of any other remunerated public or private position, except for didactic and scientific activity.

Article 16 Immunity

1. The judge of the Constitutional Court can not be detained, arrested or searched, except for the cases of flagrant offences, nor can he/she be sent to trial for criminal or minor offences without the prior consent of the Constitutional Court.

2. Jurisdiction for minor and administrative offences committed by judges of the Constitutional Court belongs to the Supreme Court of Justice.

3. The initiation of criminal proceedings and requests for consent to prosecute falls under the competence of the Prosecutor General.

4. From the date when the criminal proceedings are instituted against him/her, the judge of the Constitutional Court is legally suspended from office. In case of a final conviction, the judge shall be automatically deprived of his/her office in accordance with the conditions laid down in this Law.

Article 17 Obligations

The judges of the Court are required:

a) to perform their duties impartially and in accordance with the Constitution;

- b) to keep their deliberations and votes confidential and to take no public position and hold no consultations on matters within the jurisdiction of the Court;
- c) to express an affirmative or negative vote while enacting the decisions of the Constitutional Court;
- d) to notify the President of the Court of any activity incompatible with their exercised powers;
- e) to forbid the use of their office in purposes of any kind of propaganda;
- f) to refrain from any activity contrary to the status of judge;
- g) to submit, under the law, the declaration on incomes and property.

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) resignation;
- c) dismissal;
- d) demise.

2. The termination and the vacancy of the office in cases stipulated by the paragraph (1), let. a), b), d) shall be decided by a provision of the President of the Constitutional Court, but in the case foreseen by let. (c) – by the Constitutional Court.

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;
- c) conviction of a court of law for committing a criminal offence;
- d) incompatibility.

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 by the paragraph (1).

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

Article 20 Filling a vacancy

1. If a judge's term of office is terminated in accordance with Article 18, the President of the Court shall notify the competent authority within three days at the most from the date on which the vacancy is declared and shall request that authority to appoint a new judge.

2. The competent authority shall appoint the new judge within fifteen days from the date the President of the Constitutional Court has made the appeal.

Article 21 Qualification degree, salary, allowances, pensions

1. The judges of the Constitutional Court, specialists of a high legal education and outstanding professional competence, shall benefit during their lifetime from a superior judicial qualification degree of the judges, from the date of their appointment.

2. The President of the Constitutional Court is assimilated with the office of the President of the Supreme Court of Justice in matter of the allowances and pension.

3. The judges of the Constitutional Court are assimilated with the office of the Vice-President of the Supreme Court of Justice in matter of allowances and pension.

4. The salaries of the President and judges of the Constitutional Court are established under the conditions and wages foreseen by the Law Nr. 355-XVI of 23 December 2005 on the salary system in the public sector from the budgetary means of the Constitutional Court.

5. The judge of the Court that has resigned from office, having reached the age limit or because of a long and constant incapacity (more than 4 months) to exercise his/her duties due to health reasons is entitled to a dismissal allowance equal to one year's salary. The Constitutional Court is entitled to grant to the resigned judge a dismissal allowance equal to three months' salary.

6. The way the pension is provided shall be determined by law.

Article 21¹ Bodies carrying out the establishment and payment of pensions

1. Pensions and monthly life allowances are determined and paid by social insurance bodies.

2. Social insurance bodies have the right to control the authenticity of documents confirming length of employment and income, issued by the competent authorities.

Article 21² Funding source

Expenses for pensions and monthly life allowances shall be paid as follows: 50% of the amount set – from the state social insurance budget and 50% – from the state budget.

Article 22 Guarantees for performing the duties of the office

1. The employment contract held previously is suspended for the duration of the judge's term of office.

2. After the expiry of his/her term of office, a judge shall be entitled to return to the post held prior to appointment. If the latter has been liquidated, an equivalent post shall be offered to him/her within the same or another institution.

3. A fixed-term employment contract shall be signed with the person replacing the judge in his/her previous position; this contract shall be terminated upon the judge's return. The same procedure will be followed where the previous position was held on the basis of selection or competitive examination.

4. The period served as a judge shall be included in the whole and uninterrupted length of service of the previous post.

5. A judge who, on the expiry of his/her term of office, has reached retirement age and has the requisite length of service to obtain a pension shall retire on the conditions laid down by law.

6. The judge shall be entitled to an annual paid leave for a period of 36 working days (taking into account the six working days week) and to an unpaid leave for personal interests.

Chapter III

The exercise of Jurisdiction

Article 23 Plenum of the Constitutional Court

1. The Constitutional Court shall exercise its jurisdiction in plenary sessions (plenum).
2. The plenum, besides exercising jurisdiction, conducts the activity of the Court on the whole.
3. The quorum for the plenum of the Court is formed of two thirds of the number of the Court's judges.
4. The Court shall have the right to meet in plenary session only when at least 4 of the judges have been appointed by all the competent authorities.

Note: The paragraph (4) of the Article 23 has been declared unconstitutional by the Judgement of the Constitutional Court No. 6 of 16.05.2013, in force 16.05.2013.

Article 24 Appeal to the Constitutional Court

1. The Constitutional Court exercises its jurisdictional power upon the application lodged by the subjects foreseen by the present law and under the conditions of the Constitutional Jurisdiction Code.
2. The application has to be well-founded and must comply with the requirements of the Constitutional Jurisdiction Code.
3. The application shall be signed by the head of the authority on behalf of which it has been lodged.
4. The model of the application and the manner of presenting it are laid down in the Constitutional Jurisdiction Code.

Article 25 Subjects entitled to submit the application to the Constitutional Court

The following have the right to submit application to the Court:

- a) the President of the Republic of Moldova;
- b) the Government;
- c) the Minister for Justice;
- d) the Supreme Court of Justice;

Let. (e) has been excluded by the Law No. 163 of 22.07.2011, in force 12.09.2011.

- f) the Prosecutor General;
- g) members of Parliament;
- h) Parliamentary fractions;
- i) Ombudsman;

j) People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases of exercising the review of constitutionality over laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and provisions of the Government, as well as the international treaties the Republic of Moldova is party to, which infringes upon the powers of Găgăuzia.

Article 25¹ 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 26 The acts of the Constitutional Court

1. The Constitutional Court adopts judgments, decisions and issues advisory opinions.

2. Judgments and advisory opinions are adopted in the name of the Republic of Moldova.
3. Following their adoption, decisions of the Court shall be delivered in plenary session.
4. Judgments and advisory opinions of the Court shall be published in the Official Journal (“Monitorul Oficial”) of the Republic of Moldova in term of 10 days from the date of their adoption.
5. The acts of the Constitutional Court are final, cannot be appealed and shall enter into force from the date of their adoption. The Court may rule that certain decisions shall become effective from the date of their publication or from the date indicated in the decision itself.
6. The acts of the Constitutional Court shall be signed by the President of the Court or by the substitute judge.
7. The judgments of the Constitutional Court shall produce effect only for the future.

Article 27 Voting

1. The acts of the Court shall be adopted by a majority vote of the judges.
2. In case that for the adoption of the judgment on the constitutionality of the normative act or of the international treaty is recorded a parity of votes, the normative act or the international is presumed constitutional and the case shall be ceased. In other cases of parity of votes, the judgment, decision or advisory opinion shall not be considered as adopted and the examination of the case is to be suspended excepting the cases provided for in Article 4, paragraph (1), letters d), e), f) and h) when the examination of the case is adjourned.
3. The voting shall have an open character. Upon the decision of the Constitutional Court plenum, some acts may be submitted to a secret vote.
4. The judge is entitled to avoid the vote or to refrain from voting.
5. Upon request, the judge’s separate dissenting opinion shall be attached to the adopted act.

Article 28 The action of the Constitutional Court acts

1. The acts of the Constitutional Court are official and enforceable acts on the entire territory of the state, for all public authorities and all individual and legal persons.
2. The normative acts or some parts thereof declared unconstitutional become null and unenforceable from the moment the Constitutional Court passes the respective judgment.
3. The legal effects of the normative act or some parts thereof declared as unconstitutional are removed pursuant to the legislation in force.

Article 28¹ Liability of public authorities on the enforcement of the Constitutional Court act

1. The Government shall, within the term of 3 months at the most from the date of the Constitutional Court judgment publication, lodge with the Parliament the draft law on the amendment or abrogation of the normative act or some parts thereof declared as unconstitutional. The draft law at issue shall take priority within the Parliament examination.
2. The President of the Republic of Moldova or the Government shall, within the term of 2 months from the date of the Constitutional Court judgment publication, amend and supplement, or repeal the normative act or some parts thereof declared as unconstitutional and, if necessary, it shall issue or adopt a new act.

3. The acts issued for the purpose of enforcement of normative acts or some parts thereof declared as unconstitutional become null and shall be annulled.

4. Remarks delivered by the Constitutional Court on the gaps (omissions) of the normative regulations due to the non-enforcement of certain constitutional provisions laid down in the address, shall be examined by the referred body, which within the term of 3 months at the most, shall notify the Constitutional Court about the outcomes of the examination.

Article 28² The non-enforcement of the Constitutional Court acts

The non-enforcement, the inappropriate enforcement, and the obstruction of the enforcement of the Constitutional Court acts shall bring the liability as provided by the legislation in force.

Article 29 Publicity of proceedings

The sessions of the Constitutional Court shall be held in public, but the President may order a secret session, in case the publicity could threaten the state security and public order.

Article 30 Language of proceedings

1. The proceedings and the Secretariat activities of the Constitutional Court shall be performed in the official language. The documents submitted in a foreign language shall be translated in the official language and delivered in public.

2. Foreign participants at the session shall speak or express their opinions through an interpreter.

Article 31 Limits of jurisdiction

1. The Constitutional Court shall examine only issues falling within its competence.

2. Subjects of the review of constitutionality are only the normative acts adopted after the entrance into force of the Constitution adopted on 29 July 1994.

3. The Constitutional Court examines exclusively legal matters.

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.

Article 33 Legislation on jurisdictional procedure

The constitutional jurisdiction procedure is laid down in the Constitutional Jurisdiction Code.

Chapter IV

Specialised and Administrative Staff

Article 34 Secretariat of the Constitutional Court

1. The Secretariat of the Constitutional Court shall provide the informational, organisational, scientific and other kind of assistance, it shall ensure the organisation of the citizens' hearings, the preliminary examination of the applications lodged at the Court, the settlement of which by the judges of the Constitutional Court is not mandatory, as well as it shall assist the judges at the preparation of the case files for examination.

2. The Secretariat of the Constitutional Court is headed by a Chief of Secretariat.
3. The Regulations of the Constitutional Court Secretariat, the organisational chart and the status of staff shall be approved by the Court.
4. The staff of the Constitutional Court Secretariat consists of civil servants, subjects to the provisions of the Law No. 158-XVI of 4 July 2008 on the public office and status of civil servant, and contractual staff, performing subsidiary activities, subject to the provisions of the labour legislation.

Article 35 Assistant-judges

1. The President and judges of the Court shall be assisted in their activity by 6 assistant-judges.
2. The assistant-judges must be citizens of the Republic of Moldova, have residence within the country, higher legal education and a length of service of at least 10 years in legal field or within the institutions of high legal education. They are employed upon competitive examination for a term until they attain the age limit of 65 years. The examining board shall be appointed by the President of the Court and have up to 3 judges, the Chief of Secretariat and other civil servants of the Court.
3. The office of the assistant-judge shall be assimilated to that of the Court of Appeal judge and shall have the similar status as the judges of other law courts.
4. The assistant-judges shall take the oath before the plenum of the Constitutional Court under the conditions laid down in Article 12, paragraphs (1), (4) and (6) of the Law on the status of the judge. The taking of an assistant judge's oath shall be recorded in the minutes of proceedings, signed by the President of the Constitutional Court and the person who has been sworn in.
5. The assistant-judges, depending on their professional experience and length of service, shall be granted for life, the first or second degree for judges. The qualification shall be awarded by the Constitutional Court plenum, after the preliminary attestation according to the established procedure.
6. The assistant-judges are entitled to immunity. They are subject to the provisions of Article 16.

Article 36 The Advisory Scientific Council

1. An Advisory Scientific Council of scholars and experts-practitioners in legal field may be set up within the Constitutional Court.
2. The Regulation of the Advisory Scientific Council shall be approved by the Constitutional Court.

Chapter V

Final Provisions

Article 37 Financing

1. The Court has its own budget, which is an integral part of the State budget.
2. The budget of the Constitutional Court shall be approved by the Parliament at the proposal of the Constitutional Court's Plenum and included into the state budget.

Article 38 The symbols of power

1. In the court room of the Constitutional Court are displayed the State Coat of Arms, the State Flag and the Constitution of the Republic of Moldova.

2. During the public sitting, the judges of the Constitutional Court shall wear robes, the design of which shall be approved by the Constitutional Court.

3. The judges of the Constitutional Court and the Specialised and Administrative Staff shall be handed identity cards. The form of the identity card and the manner of its handing are laid down in the Regulations of the Secretariat. The President of the Republic of Moldova shall hand the identity cards to the Constitutional Court judges.

Article 39 The seal

The Court has the seal with the image of the Coat of Arms and its title.

Article 40 Head office

1. The head office of the Constitutional Court is in the Municipality of Chisinau.
2. The plenary sessions of the Constitutional Court shall be held in its head office.

Article 41 Security

The security of the head office of the Constitutional Court and, if necessary, of the President of the Court shall be provided under the law.

Chapter VI

Transitional Provisions

Article 42

1. The Constitutional Court shall be established within thirty days at the most from the date of publication of the present law.
2. Within five days from the establishment, the Constitutional Court shall elect its President.
3. For the first composition of the Constitutional Court, the judges from the part of the Superior Council of Magistracy shall be appointed by the General Assembly of the People's Judges and the Supreme Court members.
4. The Supreme Court shall have the right to apply to the Constitutional Court on behalf of the Supreme Court of Justice before its establishment, and on behalf of the Court of Audit – by the Arbitration Board of the Republic of Moldova.
5. Until the establishment of the Superior Council of Magistracy, the judges of the Constitutional Court shall take their oath before the Parliament and the President of the Republic of Moldova.
6. Until the President of the Constitutional Court is elected, the plenary sessions shall be convoked and presided over by the senior judge.
7. Until the establishment of the Supreme Court of Justice and the Court of Appeal, the wages and allowances of the President, judges and assistant-judges of the Constitutional Court shall be established by the Parliament.

President of the Parliament

Petru LUCINSCHI

Chişinău, 13 December 1994

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