



Strasbourg, 11 February 2025

CDL-REF(2025)001

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

DRAFT LAW
ON THE CONSTITUTIONAL COURT
AND THE EXPLANATORY NOTE

Translation from Romanian into English

Draft

LAW ON THE CONSTITUTIONAL COURT

The Parliament adopts this organic law

Chapter I GENERAL PROVISIONS

Article 1. Statute of the Constitutional Court

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

(2) The Constitutional Court is independent of any other public authority and subject only to the Constitution.

(3) The Constitutional Court shall guarantee the supremacy of the Constitution, ensure the implementation of the principles of the rule of law and the separation of powers in the State, guarantee the responsibility of the state towards the citizen and of the citizen towards the state.

Article 2. Principles of activity

The Constitutional Court shall operate on the basis of the principles of legality, independence, collegiality, adversarial proceedings and transparency.

Article 3. Regulatory framework

The organization, competences and procedure of the constitutional jurisdiction are regulated by the Constitution, this law and the regulations approved by the Constitutional Court on the basis of the law.

Article 4. Jurisdiction of the Constitutional Court

(1) For the purpose of exercising its constitutional jurisdiction, the Constitutional Court shall perform the following functional tasks:

a) shall exercise on request constitutionality review of the 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 intends to become a party;

b) shall give the interpretation of the Constitution;

c) shall rule on initiatives to revise the Constitution;

d) shall confirm the results of republican referendums;

e) shall confirm the results of the election of the Parliament and of the President of the Republic of Moldova, validate the term of office of the members of the Parliament and of the President of the Republic of Moldova;

f) shall determine the circumstances justifying the dissolution of Parliament, the dismissal from the office of the President of the Republic of Moldova, the interim President of the Republic of Moldova, the inability of the President of the Republic of Moldova to exercise its powers for more than 60 days;

g) shall decide on exception of unconstitutionality of normative acts referred to in letter a), at the request of the courts;

h) shall rule on questions concerning the constitutionality of a political party.

(2) The constitutionality review extends to normative acts both after and before their publication in the Official Monitor of the Republic of Moldova.

Article 5. Presumption of constitutionality of normative acts

Any normative act is considered constitutional until its unconstitutionality is established in the process of constitutional jurisdiction.

Article 6. Limits of competence

(1) The powers of the Constitutional Court are laid down by the Constitution and by this law. In the exercise of its powers, the Constitutional Court shall determine the limits of its competence.

(2) The competence of the Constitutional Court, established in par. (1) may not be challenged by any public authority.

(3) In reviewing the constitutionality of the challenged act, the Constitutional Court may also rule on other normative acts whose constitutionality depends in whole or in part on the constitutionality of the challenged act after requesting the opinion of the participants in the proceedings.

(4) In the exercise of its constitutional jurisdiction, the Constitutional Court may request the European Court of Human Rights to give an advisory opinion on questions of principle concerning the interpretation or application of the fundamental rights and freedoms provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto.

Article 7. Obligation to comply with the Constitutional Court's requirements

The public authorities, individual and legal persons, irrespective of the type of ownership and form of organization, are obliged to deliver information, within 15 days, the documents and papers they hold, requested by the Constitutional Court in order to perform its functional duties.

Article 8. Symbols

(1) The Constitution, the Coat of Arms, the State Flag and the Flag of the Constitutional Court shall be displayed in the Constitutional Court's court room.

(2) During the public sittings, the judges of the Constitutional Court shall wear robes, the model of which is approved by the Constitutional Court.

(3) During their term of office, the judges of the Constitutional Court shall carry a service badge.

Chapter II**ORGANIZATION OF THE CONSTITUTIONAL COURT****Article 9. Structure of the Constitutional Court**

(1) The Constitutional Court consists of 6 judges appointed for a 6-year term. A judge of the Constitutional Court may hold office for two terms.

(2) Two judges shall be appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy.

Article 10. Plenum of the Constitutional Court

(1) The Constitutional Court shall exercise its jurisdiction in plenary sessions (plenum).

(2) The quorum shall be formed of two thirds of the total number of judges of the Constitutional Court.

(3) The Constitutional Court shall be convened in plenary session by its President or at the request of at least two judges.

Article 11. Election of the President of the Constitutional Court

(1) The President of the Constitutional Court shall be elected by secret ballot, for a term of 3 years, by a majority of votes of the judges.

(2) If, in the first ballot, the candidates do not obtain a majority of votes, a second ballot shall be held between the two candidates who obtained the largest number of votes in the first ballot, and the judge who obtained the largest number of votes shall be elected President.

(3) If in the second ballot the candidates obtain the same number of votes, the President shall be elected by drawing lots among the candidates.

Article 12. Powers of the President of the Constitutional Court

(1) The President of the Constitutional Court shall exercise the following powers:

- a) coordinate the activities of the Constitutional Court and assign the cases for settlement;
- b) convene the sittings of the Constitutional Court and presides them;
- c) represent the Constitutional Court before public authorities at home and abroad;
- d) conduct the overall of the Secretariat of the Constitutional Court, appoint to office, modify, suspend and order the termination of service of civil servants and of the staff of the office of the person holding public office, employ and dismiss other staff, in accordance with the law;
- e) submit to the Plenum of the Constitutional Court for approval the rules of procedure, the organization chart and the staff regulations;
- f) perform other duties in accordance with the law.

(2) The President of the Constitutional Court shall organize and implement the system of internal managerial control and shall bear managerial responsibility for the administration of the budget of the Institution and the public assets under its management.

(3) The President of the Constitutional Court shall, in the exercise of his/her powers, issue orders and provision.

(4) In the absence of the President of the Constitutional Court or in the event of inability to exercise his/her powers, the Plenum of the Constitutional Court shall elect a judge to exercise his/her functions.

(5) The President of the Constitutional Court shall be assisted in his/her work by his/her own cabinet.

Chapter III JUDGES OF THE CONSTITUTIONAL COURT

Article 13. Eligibility criteria and selection procedure for candidates for the position of judge of the Constitutional Court

(1) A judge of the Constitutional Court may be a person of irreproachable reputation, who is a citizen of the Republic of Moldova, has residence within the state, having superior legal education, high professional competence and at least 15 years of seniority in legal activity, outstanding judicial knowledge or scientific activity, and less than 65 years of age at the time of appointment.

(2) Three months before the expiry of the term of office of each judge, the President of the Constitutional Court shall inform in writing the authority that appointed the judge whose term of office is due to expire of the procedure for appointing a new judge. Until the expiration of the term of office of the Judge, the competent authority shall appoint a new Judge.

(3) The appointment shall be made only with the prior written consent of the candidate. If the candidate holds an office incompatible with the office of judge of the Constitutional Court or is a member of a political party, the agreement must include an undertaking by the candidate to resign, on the date of taking the oath, from the office he/she holds unless the law provides for suspension from office and to cease to be a member of the political party.

(4) A person may not be appointed as a judge of the Constitutional Court if he/she is barred from holding a public office of public dignity by a definitive act.

Article 14. Oath

(1) The Judge shall take up his/her duties from the date on which he/she takes his/her oath.

(2) The judge shall take the following oath before the Parliament, the President of the Republic of Moldova and the Superior Council of Magistrates:

„I swear to fulfil in good faith the duties as a judge of the Constitutional Court, to defend the constitutional order of the Republic of Moldova, to protect the supremacy of the Constitution, the fundamental human rights and freedoms and to obey in the exercise of my office only to the Constitution”.

(3) In case the judge is unable to take the oath under the conditions of par. (2), he/she shall take the oath before the Plenum of the Constitutional Court.

Article 15. Independence guarantees for Constitutional Court judges

(1) The judges of the Constitutional Court shall be independent in the exercise of their duties and shall obey only to the Constitution.

(2) The Judges of the Constitutional Court may not be compelled to give explanations or statements on cases examined or under examination.

Article 16. Irremovability

(1) The judge of the Constitutional Court shall be irremovable during the term of office.

(2) The term of office of a judge of the Constitutional Court shall be suspended or terminated only in the cases established by this law.

Article 17. Inviolability of Constitutional Court judges

(1) Judges of the Constitutional Court may not be held legally liable for votes or opinions expressed during their term of office.

(2) A judge of the Constitutional Court may not be detained, subjected to compulsory arrest, arrested or searched without the prior consent of the Constitutional Court Plenum, except in cases of *flagrante delicto*.

(3) Prosecution of a judge of the Constitutional Court may be initiated only by the Prosecutor General or, in his/her absence, by a deputy on the basis of an order issued by the Prosecutor General, with the prior consent of the Constitutional Court Plenum. In the case of commission by the judge of the offenses specified in articles 243, 324, 326 and 330² of the Criminal Code of the Republic of Moldova, as well as in the case of *flagrante delicto*, the consent of the Constitutional Court Plenum for the initiation of criminal proceedings is not required.

(4) A judge of the Constitutional Court whose identity was not known at the time of detention shall be released immediately after his/her identity is established.

(5) The arrest of a judge of the Constitutional Court caught in *flagrante delicto* shall be immediately notified to the Constitutional Court, which shall express its opinion on the arrest within 24 hours.

(6) The inviolability of the judges of the Constitutional Court shall extend to their residence and work premises, the vehicles and means of telecommunication used by them, their correspondence, personal property and documents.

(7) A judge of the Constitutional Court may be suspended from office by a decision of the Plenum if criminal proceedings have been instituted against him/her, until the final judgment in the case in question has been handed down.

Article 18. Incompatibilities and restrictions on holding office

(1) The office of judge of the Constitutional Court is incompatible with any other public or private office, with the exception of teaching, scientific or creative activity.

(2) A judge of the Constitutional Court shall not be entitled to engage in political activity and may not be a member of a political party.

Article 19. Obligations

The judge of the Constitutional Court is obliged to:

- a) perform his/her duties independently, impartially and in compliance with the Constitution;
- b) preserve the secrecy of deliberations and of the votes cast;
- c) cast an affirmative or negative vote when adopting acts of the Constitutional Court;
- d) refrain from any action contrary to the status of judge
- e) submit, in accordance with the law, a declaration of assets and personal interests
- f) not to express publicly his/her opinion on the cases pending before the Constitutional Court until their final resolution.

Article 20. Social guarantees

(1) The President and the judges of the Constitutional Court shall be paid in the manner, under the conditions and in the amounts provided for by the normative framework on the unitary system of salaries in the budgetary sector, from the means of the budget of the Constitutional Court.

(2) A judge of the Constitutional Court who has reached the age of 50 years and has at least 20 calendar years of service, including a full term of office as a judge of the Constitutional Court, shall be entitled to a pension for length of service in the amount of 55% of his/her average monthly salary, and for each full year of service over 20 years - increased by 3%, but in total not more than 80% of his/her average monthly salary.

(3) The seniority pension shall be paid in full to the sitting judge.

(4) After retirement, the judge shall be entitled to take up employment and receive both pension and full salary.

(5) A judge of the Constitutional Court who has left the system honourably shall be paid a dismissal allowance equal to 50% of the product of the average monthly salary multiplied by the number of years of full service in the office of judge. In calculating the single dismissal allowance for a judge who resigns and is reinstated, the time worked as a judge since the date of termination of the last resignation shall be taken into account.

(6) A judge of the Constitutional Court who has resigned from the Constitutional Court because he is unable to perform his/her duties for a period of more than 4 consecutive months for health reasons shall be entitled to a dismissal allowance equal to one annual salary of the office. The Constitutional Court shall be entitled to grant the resigning judge a dismissal allowance equal to a maximum of 3 monthly salaries of the office.

(7) Pensions for length of service and allowances of the judges of the Constitutional Court shall be determined and paid by the social security bodies.

(8) The expenses for the payment of pensions and allowances of the judges of the Constitutional Court shall be covered as follows: 50% of the established amount - from the state social insurance budget and 50% - from the state budget.

(9) The term of office of a judge shall be included in the total and uninterrupted length of service in the previous specialty.

(10) The judge shall be entitled to paid annual leave for a period of 42 calendar days, as well as to unpaid leave under the conditions of the law.

(11) In calculating the pensions of judges of the Constitutional Court, the periods of general length of service provided for in the legislation on the public pension scheme are included.

(12) Pensions determined in accordance with this Act shall be indexed in accordance with the legislation on the public pension system.

Article 21. Termination of the term of office

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

- a. expiry of the term of office;
- b. resignation;
- c. dismissal;
- d. death.

(2) The termination of the term of office of a judge of the Constitutional Court shall be established and the vacancy shall be declared by a decision of the Plenum of the Constitutional Court.

(3) A judge of the Constitutional Court whose term of office has expired shall remain in office until the newly appointed judge takes the oath of office.

(4) Where the termination of the term of office of the judge of the Constitutional Court pursuant to par. (1) letter b) - d), within no more than 3 days from the date of the declaration of vacancy of the position, the president of the Constitutional Court notifies the authority that appointed the judge, requesting the start of the procedure for appointing a new judge. The competent authority appoints the judge within 45 days from the date of notification.

Article 22. Dismissal

- (1) The term of office of a judge of the Constitutional Court shall be terminated in case of:
- a) inability to exercise the office of judge for health reasons for a period exceeding 4 consecutive months;
 - b) violation of the oath and the duties of office
 - c) loss of citizenship of the Republic of Moldova;
 - d) application of the disciplinary sanction provided for in article 23 par. (3) letter c);
 - e) a final judgment of conviction;
 - f) incompatibility, established by final act;
 - g) failure or refusal to submit a declaration of assets and personal interests after receiving the request of the integrity inspector;
 - (h) confiscation of unjustified assets ordered by a court by irrevocable judgment.
- (2) The dismissal on the grounds set out in paragraph. (1) letters a), b), d) and g) shall be decided by a decision of the Plenum adopted by a 2/3 vote of the number of judges of the Constitutional Court.
- (3) The decision of the Plenum on the dismissal of the judge of the Constitutional Court shall not be subject to appeal.

Article 23. Disciplinary liability of judges

- (1) Any conduct of a judge which damages the image of the Constitutional Court and the term of office of a judge of the Constitutional Court or undermines confidence in the independent and impartial decision-making process of the Constitutional Court, as well as any other culpable violation of the provisions of this Law, the regulation of the Constitutional Court, the decisions of the Plenum of the Constitutional Court or the orders and provisions of the President, as the case may be, shall constitute a disciplinary sanction.
- (2) The determination of disciplinary sanctions and the application of sanctions are the exclusive competence of the plenary of the Constitutional Court, in accordance with the provisions of its regulation.
- (3) The Constitutional Court may impose the following disciplinary sanctions on judges, depending on the seriousness of the misconduct:
- a) warning;
 - b) reprimand;
 - c) dismissal as a judge of the Constitutional Court.
- (4) The warning shall consist in drawing the judge's attention to the disciplinary misconduct committed, with a recommendation to comply with the legal provisions in the future, warning him/her that a more severe sanction may be imposed in the event of a similar disciplinary misconduct. The warning shall be issued in writing. The term of the warning is 1 year.
- (5) A reprimand is a criticism, expressed in written form, of acts committed by the judge. The time limit for reprimand is 2 years.
- (6) The sanction of dismissal shall be applied by a decision of the Plenum, adopted in the manner provided for in article 22 paragraph (2).
- (7) For the judge who holds the office of President of the Constitutional Court, in addition to the sanctions indicated in par. (3), the disciplinary sanction of dismissing may also be imposed.

Chapter IV JURISDICTIONAL ACTIVITY

Article 24. Appeal to the Constitutional Court

- (1) The Constitutional Court shall exercise its jurisdiction upon an application lodged by persons entitled to do so.
- (2) The application shall comply with the substantive and formal requirements laid down in the Regulation of the Constitutional Court.

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

- (1) 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 of Justice;
d) the Superior Council of Magistracy;
e) the judges/judge panels of the Supreme Court of Justice, courts of appeal and courts of law;
f) the Superior Council of Prosecutors;
g) the deputies of Parliament;
h) the Ombudsman, Ombudsman for Children's Rights;
i) the councils of administrative-territorial units of the first or second level, the People's Assembly of Gagauzia (Gagauz-Yeri) - in cases of constitutionality review of laws, regulations 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 until their entry into force for the Republic of Moldova, which do not comply with art. 109 and art. 111 of the Constitution, respectively.

(2) The subjects referred to in par. (1) may submit applications on matters within their competence, with the exception of applications concerning:

a) revision of the Constitution, which may be submitted by the subjects indicated in article 141 of the Constitution;
b) determination of circumstances justifying the dissolution of Parliament, which may be submitted by the President of the Republic of Moldova;
c) determination of the circumstances justifying the dismissal of the President of the Republic of Moldova or the interim President of the Republic of Moldova, which may be submitted on the basis of a resolution of Parliament signed by the President of Parliament;
d) constitutionality of a party, which may be submitted by the Parliament, the President of the Republic of Moldova, the Government, the Minister of Justice or the Prosecutor General;
e) raising of the objection of unconstitutionality, which may be submitted by the subjects indicated in par. (1) letter e).

(3) The results of the republican referendum, of the elections to the Parliament and of the election of the President of the Republic of Moldova shall be confirmed after the report of the Central Electoral Commission has been examined.

(4) The Central Electoral Commission shall submit the materials on the declaration of the substitute candidate as a Member of the Parliament.

Article 26. Action of the contested act

(1) The action of the contested act, which affect or relate to the fields set out in par. (2), may be suspended until the merits of the case have been settled by a decision.

(2) The action may be suspended in order to avoid imminent and irreparable damage and adverse consequences of a significant serious and irreparable nature:

1) acts which affect or relate to the following fields:
a) sovereignty and state power;
b) fundamental human rights and freedoms;
c) democracy and political pluralism;
d) separation and collaboration of powers;
e) national unity and the right to identity;
f) economic or financial security of the state;
g) other fields that the Constitutional Court considers necessary to suspend the action of the challenged act;

2) individual acts issued by the Parliament, the President of the Republic of Moldova or the Government, which refer to state officials representing a particular public and/or 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 challenged act shall be adopted by the plenum of the Constitutional Court with the vote of at least 4 judges. If it is impossible to convene the

Constitutional Court in plenary session, the decision of suspension shall be issued by an order of the President of the Constitutional Court, with subsequent compulsory confirmation by the Constitutional Court in plenary session.

(5) The decision to suspend the challenged normative act shall enter into force on the date of its adoption and shall be published in the Official Monitor of the Republic of Moldova.

(6) In the event of suspension of the challenged normative act, the Constitutional Court shall examine the merits of the application, as a matter of priority, within the shortest possible time

Article 27. Stages for examining the applications

(1) The stages for examining the applications are:

- a) examination of the admissibility of the application;
- b) examination of the merits of the admissible application.

(2) The admissibility of the applications shall be examined by the Constitutional Court in plenary session without the participation of the parties, in accordance with the provisions of the Regulation of the Constitutional Court.

(3) Applications shall be declared inadmissible if:

- a) the resolution of the application does not fall within the competence of the Constitutional Court;
- b) there is a judgment/decision of the Constitutional Court regarding the challenged provisions in the light of the same unconstitutionality criticisms and the application cannot change the jurisprudential practice;
- c) the challenged provisions have been amended or repealed, unless they continue to produce effects on the author of the objection of unconstitutionality;
- d) the author raises a question of interpretation and application of organic and ordinary laws;
- e) the subject-matter of the application exceeds the competence of the application subject;
- f) the application is manifestly unfounded.

(4) The applications of exceptions of unconstitutionality shall be declared inadmissible according to par. (3) and in the following cases:

- a) the subject matter of the exception does not fall within the category of acts enumerated in article 135 par. (1) letter a) of the Constitution;
- b) the exception of unconstitutionality is raised by a third person, who is not a party to the proceedings or its representative;
- c) the challenged provisions are not to be applied in the resolution of the case;
- d) no fundamental right has been established.

(5) Applications declared admissible shall be examined in open session of the Court, in accordance with the provisions of the Regulation of the Constitutional Court.

Article 28. Language of proceedings

The Constitutional Court's judicial proceedings and secretarial work are conducted in Romanian language.

Article 29. Time limit for settling the appeal

The Constitutional Court shall examine the application within 6 months from the date of its registration. At the request of the Judge-Rapporteur or of the participants in the proceedings, the Constitutional Court may extend the time limit for dealing with the application.

Article 30. Parties to the constitutional jurisdiction proceedings

(1) Parties to the constitutional jurisdiction proceedings are:

- a) the author of the appeal;
- b) the officials or public authorities whose acts are challenged.

(2) Where legislative acts are challenged, the Government shall also be a party to the constitutional jurisdiction proceedings.

(3) The judge who raised the objection of unconstitutionality in a case pending before him or the party to the dispute (its representative) if the objection was raised by the latter is a party to the proceedings. If the objection of unconstitutionality is raised by a panel of the Constitutional Court, the appeal shall be defended in public sitting of the Constitutional Court by a delegated judge of the panel.

(4) The parties may exercise their procedural rights in person or through a representative, in the manner established by the Regulation of the Constitutional Court. The personal participation of a party in the proceedings shall not preclude the participation of representatives.

(5) The absence of a party who has been notified of the date, time and place of the session shall not prevent the case from being examined.

Article 31. Rights of parties

(1) Parties in constitutional jurisdiction proceedings shall enjoy equal procedural rights.

(2) The parties shall have access to the proceedings, may present arguments and participate in their examination, put questions to other participants in the proceedings, submit oral and written explanations, object to the arguments and considerations of other participants in the proceedings. At the Constitutional Court session, the parties shall present the facts and points of law of the case.

(3) The parties shall have the right to a closing speech. The Constitutional Court may, upon request, allow the parties time to prepare the closing speech, for which purpose the interruption of the session shall be announced.

(4) The parties may not use their right to speak in the Constitutional Court for political statements.

(5) The participants in the proceedings shall have the right to acquaint themselves with the materials of the case-file under the conditions determined by the Constitutional Court.

Article 32. Liability for violations of the constitutional jurisdiction procedure

(1) In the process of exercising constitutional jurisdiction, the Constitutional Court may impose the following sanctions on participants in the meeting:

a) warning;

b) removal from the court room;

(2) The warning shall be issued by the presiding judge to the person who disturbs public order during the examination of the case in open sitting.

(3) Removal from the court room may be applied by the Constitutional Court if the person, who has been warned in accordance with par. (2) repeatedly disturbs public order during the session, threatens the security of the participants in the proceedings, shows disrespect for the Constitutional Court by disobeying the instructions of the President of the session, and commits acts which show manifest contempt for the Constitutional Court and the procedure of constitutional jurisdiction.

Article 33. Sessions of the Constitutional Court

(1) The Constitutional Court shall examine pending appeals in public sessions, except in cases where the law provides for the examination of appeals in closed sessions.

(2) The appeals concerning the interpretation of the Constitution, as well as initiatives for the revision of the Constitution, shall be examined in closed sessions without the participation of the parties, unless the Constitutional Court decides otherwise. The operative part of decisions on the interpretation of the Constitution and opinions on initiatives to amend the Constitution shall be pronounced in public. The parties shall be informed of the date, time and place of public pronouncement of the operative part.

(3) The information about the date, time and agenda of the Constitutional Court's sessions shall be announced on the official website of the Constitutional Court.

(4) If the publicity of the sessions may be detrimental to the security of the State and public order, the Plenum of the Constitutional Court may order a closed session. When the case is examined in closed session, the procedure of constitutional jurisdiction shall be observed.

(5) The session of the Constitutional Court shall be chaired by the President of the Constitutional Court or, as the case may be, by the presiding judge, in accordance with the Regulation of the Constitutional Court.

(6) The instructions of the President of the session shall be binding on all those present at the session.

(7) At public sessions, after the parties have delivered their closing speeches, the President of the session shall announce the Constitutional Court's withdrawal to the Council Chamber for deliberation.

Article 34. Recusal of judges

The judge of the Constitutional Court shall abstain from examining the case or may be recused if:

a) he/she is a close person, within the meaning of Law No. 133/2016 on the Declaration of assets and personal interests, with the participants in the session or their representatives;

b) was previously involved in the decision-making in the case under examination, participated in the adoption of the contested act, with the exception of the drafting and adoption of the Constitution;

c) has publicly expressed his/her opinion on the constitutionality of the challenged act;

d) there are other circumstances that cast reasonable doubt on the impartiality of the judge.

Article 35. Procedure for examining requests for recusal

(1) The parties may submit a request for recusal up to the beginning of the session or, in the case of closed sessions, up to the date the closed session at which the case is to be heard shall take place. The request must state the reasons for the Judge's objection.

(2) The judge in respect of whom the request for recusal has been lodged shall have the right to state his/her reasons for the recusal.

(3) The request for the recusal of a judge shall be examined by the Constitutional Court in plenary session. The decision shall be adopted by a majority of the votes of the judges of the Constitutional Court, and in the event of a tied vote, the recusal shall be admitted.

(4) A request for recusal shall be examined in accordance with the provisions of this Article.

Article 36. Deliberation and voting

(1) The Judges of the Constitutional Court deliberate in the Council Chamber. The deliberations shall be secret.

(2) At the end of the deliberations, the President of the session shall put to the vote the proposals of the Judge-Rapporteur and of the other Judges. Judges may not abstain from voting.

(3) Acts of the Constitutional Court shall be adopted by a majority of the Judges.

(4) Acts of the Constitutional Court shall be adopted by open vote. At the decision of the Plenary, some acts may be voted on by secret ballot.

(5) A judge of the Constitutional Court who disagrees with the judgment or opinion delivered may express his/her separate opinion in writing. The separate opinion of the Judge shall form an integral part of the adopted act and shall be annexed to it.

(6) If during the deliberations there is an equality of votes, the President of the session shall decide to resume the examination of the case in order to consider new arguments or circumstances essential to the decision of the case. In such cases, the President of the session shall announce the interruption of the session or adjourn the case examination.

(7) If the decision on the constitutionality of the normative act is adopted by an equality of votes, the normative act shall be presumed to be constitutional and the case shall be suspended. In other cases of an equality of votes, the judgment, decision or opinion shall be deemed not to have been adopted and the case shall be deemed to be discontinued, except in the cases referred to in article 4 par. (1) letters d), e), f) and h), when the consideration of the case shall be postponed.

Chapter V

ACTS OF THE CONSTITUTIONAL COURT

Article 37. Acts of the Constitutional Court

(1) The Constitutional Court shall adopt judgments, decisions and issue opinions.

(2) In the event of a decision on the merits of the application, the Constitutional Court shall adopt a judgment or issue an opinion. Decisions and opinions shall be adopted on behalf of the Republic of Moldova. If the appeal is not decided on the merits, the Constitutional Court shall adopt a decision.

(3) Acts of the Constitutional Court shall be pronounced in public, signed by the President of the Constitutional Court and published on the official website and in the Official Monitor of the Republic of Moldova.

(4) The acts of the Constitutional Court shall not be subject to any appeal, shall be final and shall enter into force on the date of pronouncement of the operative part.

Article 38. Judgments of the Constitutional Court

(1) By judgment, the Constitutional Court:

a) rules on the constitutionality of 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 intends to become a party;

b) interprets the Constitution;

c) confirms the results of republican referendums

d) confirms the results of the election of the Parliament and the President of the Republic of Moldova;

e) resolves exceptions of unconstitutionality of normative acts, referred by the courts of law;

f) rules on the constitutionality of a party;

g) approves the annual report on the exercise of constitutional jurisdiction.

(2) The Constitutional Court shall adopt its reasoned judgment within 45 calendar days at the latest from the date of the public session.

Article 39. Advisory opinions

In advisory opinions, the Constitutional Court gives its ruling on:

a) initiatives to revise the Constitution;

b) circumstances justifying the dissolution of Parliament;

c) circumstances justifying the removal of the President of the Republic of Moldova from office;

d) circumstances justifying the office of interim President of the Republic of Moldova;

e) other cases falling within its competence for which advisory opinions are required.

Article 40. Decisions

Decisions shall be adopted by the plenary of the Constitutional Court in all cases when it is not necessary to adopt a judgment or deliver an advisory opinion.

Article 41. Requests

If, when examining the case, the Constitutional Court finds that there are gaps in the legislation due to the failure to implement certain provisions of the Constitution, it shall draw the attention of the public authorities concerned, by means of a request, to the need to remedy such omissions.

Article 42. Review of the judgment and advisory opinion

(1) Revision of the judgment and advisory opinion shall be carried out only at the initiative of the Constitutional Court, by a majority vote of its judges, if:

a) new circumstances have arisen, unknown at the time of the adoption of the judgment and the delivery of the advisory opinion, if those circumstances are such as to fundamentally change the judgment and the advisory opinion;

b) the European Court of Human Rights has found by a judgment, a violation of fundamental rights or freedoms and the Constitutional Court has contributed to that violation.

(2) The judgment and advisory opinion shall be reviewed in accordance with the procedure of constitutional jurisdiction.

Article 43. 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 44. Liability of public authorities on the enforcement of the Constitutional Court acts

(1) The Government shall, within 6 months from the date of the Constitutional Court judgment publication, submit to the Parliament the draft law on the amendment of the normative act or parts thereof declared as unconstitutional. The draft law shall be considered by Parliament as a matter of priority.

(2) The President of the Republic of Moldova or the Government shall, within 3 months from the date of publication of the Constitutional Court's judgment at the latest, amend the act or parts thereof declared unconstitutional and, as the case may be, issue or adopt a new act.

(3) The remarks of the Constitutional Court regarding the omissions of the normative regulations, due to the non-enforcement of constitutional provisions indicated in the request, shall be examined by the authority concerned, which shall, within 3 months at the latest, inform the Constitutional Court about the results of the examination.

Article 45. Reports of the Constitutional Court

(1) The Constitutional Court shall draw up an annual report on the exercise of constitutional jurisdiction.

(2) The report on the exercise of constitutional jurisdiction shall be placed on the official website of the Constitutional Court.

Chapter VI

ENSURING THE WORK OF THE CONSTITUTIONAL COURT

Article 46. Assistant Judges

(1) The judges of the Constitutional Court shall be assisted in their work by 6 assistant judges, who shall form the body of assistant judges, under the conditions of this law and the rules of the Constitutional Court.

(2) The assistant judges shall be remunerated under the conditions and in the manner laid down by the legislation on the system of remuneration in the budgetary sector.

(3) The body of assistant judges shall work under the direction of the President of the Constitutional Court.

(4) Assistant judges shall be appointed by the president of the Constitutional Court, after the promotion of a public competition. The rules governing the competition commission and the procedure for the competition for the position of assistant judge shall be approved by the Plenum of the Constitutional Court.

(5) The candidate for the office of assistant judge must be a citizen of the Republic of Moldova, be of irreproachable reputation, have a superior legal education and at least 8 years of seniority in legal activity or higher legal education, have knowledge of the Romanian language and meet the medical requirements for the exercise of the office.

(6) A person may not be appointed as an assistant judge of the Constitutional Court if he/she is disqualified from holding a public office or public dignity by a final decision.

(7) The assistant judge shall have the duties provided for in art. 19 letters a), d), e), f).

(8) The professional evaluation of assistant judges is carried out every 3 years by the Evaluation Commission, which is composed of judges of the Constitutional Court, at the proposal of the President of the Constitutional Court. The purpose of the professional evaluation of assistant judges is to determine their level of professional competence with a view to improving their professional performance and increasing the efficiency of the work of the Constitutional Court. The evaluation methodology shall be laid down in a regulation approved by the plenum of the Constitutional Court.

(9) The assistant judge may be held liable to disciplinary action under the conditions of article 23.

(10) The dismissal of the assistant judge shall take place in the cases provided for in article 22 par. (1) or following a negative professional evaluation and shall be ruled by order of the President of the Constitutional Court, which shall be communicated to the assistant judge within 5 working days from the date of issue.

Article 47. Secretariat of the Constitutional Court

(1) The Secretariat of the Constitutional Court shall provide the judges of the Constitutional Court with information, organizational, scientific and other assistance.

(2) The Secretariat of the Constitutional Court shall be headed by the general secretary, who shall be assisted by a deputy general secretary.

(3) The Regulations of the Secretariat of the Constitutional Court, the organizational chart and the status of staff shall be approved by the Constitutional Court.

(4) The Secretariat of the Constitutional Court shall consist of civil servants, to whom the provisions of Law No. 158/2008 on the public office and the status of civil servants shall apply, and contractual staff, to whom the provisions of the labour legislation shall apply.

Article 48. Financing the Constitutional Court activities

(1) The Constitutional Court has its own budget, which is an integral part of the state budget.

(2) The budget of the Constitutional Court shall be drawn up, approved and administered in accordance with the principles, rules and procedures laid down in the legislation on public finance and budgetary-fiscal responsibility.

Article 49. Seal

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

Article 50. 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 51. 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 VII FINAL AND TRANSITIONAL PROVISIONS

Article 52.

(1) This Law shall enter into force within 3 months from the date of its publication in the Official Monitor of the Republic of Moldova.

(2) Until the date of entry into force of this Law, the Constitutional Court shall adopt the normative acts necessary for the implementation of this Law.

(3) As of the date of entry into force of this Law, the Law no. 317/1994 on the Constitutional Court (Official Monitor of the Republic of Moldova, 1995, no. 8, art. 86), as amended, and the

Code of Constitutional Jurisdiction approved by Law no. 502/1995 (Official Monitor of the Republic of Moldova, 1995, no. 53-54, art. 597), as amended, are repealed.

(4) In Chapter I, Section 3, Function Code „A03” of the Annex to Law No. 155/2011 on the approval of the Single qualifier of state Positions (Official Monitor of the Republic of Moldova, 2011, No. 164-165, Art. 480), as subsequently amended, the position 'Head of the Constitutional Court Secretariat' shall be replaced by the position 'Secretary General of the Constitutional Court' and the position 'Deputy Head of the Constitutional Court Secretariat' shall be replaced by the position 'Deputy Secretary General of the Constitutional Court'.

President of the Parliament

REASONING NOTE
to the draft law on the Constitutional Court

Name of the author and, where appropriate, of the participants in the project drafting
The draft law on the Constitutional Court is drawn up by the Ministry of Justice.
The conditions which led to the draft legislative act and the aims pursued
<p>The Constitutional Court is the sole authority of constitutional jurisdiction, independent of any other public authority. It is the guarantor of the supremacy of the Constitution and a veritable guardian of respect for the principles of the rule of law and human rights enshrined in the fundamental law.</p> <p>At the level of the Basic Law, the Constitutional Court is regulated in the seven articles of Title V (art. 134-140), and their provisions are further developed in Law No. 317/1994 on the Constitutional Court and the Code of Constitutional Jurisdiction, approved by Law No. 502/1995.</p> <p>The organic law regulation of the organization and functioning of the Constitutional Court derives from the provisions of art. 72 par. (3) letter e) of the Basic Law, being also stated in art. 135 par. (2) of the same framework, only with a certain specificity. Interpreting those provisions of the Constitution, the Court held in Judgment no. 6/2013:</p> <p style="padding-left: 40px;"><i>„(§57) [...]the meaning of the rule contained in art. 72 par. (3) letter e) of the Constitution, to regulate the organization and functioning of the Constitutional Court, is to allow the legislator to enhance and extend the functionality and mechanisms of the Constitutional Court.”</i></p> <p>At the same time, the existence of two normative acts (<i>Law no. 317/1994 and Law no. 502/1995</i>) containing several identical provisions does not meet the requirement of quality of normative acts, ensuring the uniqueness of regulations and avoiding parallelism in legislation. In its case law, the Constitutional Court has constantly emphasized the importance and the need to respect the principles related to the lawmaking process. Thus, in Judgment No. 2/2018 the Court emphasized:</p> <p style="padding-left: 40px;"><i>„(§45) [...]the law must regulate in a unitary manner, ensure a logical-legal link between the provisions it contains and avoid legislative parallelism, which generates legal uncertainty and insecurity. In the process of lawmaking, it is prohibited to lay down the same rules in several articles or paragraphs of the same legislative act or in two or more legislative acts.</i></p> <p style="padding-left: 40px;"><i>46. Therefore, the Court notes that predictability and clarity are sine qua non elements of the constitutionality of a rule, which cannot be omitted in the activity of lawmaking.”</i></p> <p>Analysing the relevant normative framework, we note that the Constitution is the basis for a single legislative act intended to regulate the organization and functioning of the Constitutional Court. Thus, the aim of the new draft law on the Constitutional Court is to merge the provisions of Law no. 317/1994 on the Constitutional Court with the provisions of the Code of Constitutional Jurisdiction no. 502/1995 and, as a consequence, to repeal the latter two.</p> <p>The current regulatory framework is redundant and confusing because it repeats certain provisions of Law no. 317/1994 on the Constitutional Court in the Code of Constitutional Jurisdiction, but at the same time the latter regulates a procedure before the Court which has lost its relevance and needs to be amended.</p> <p>The institution of a single legislative framework for the organization and functioning of the Constitutional Court is also an objective reflected in the following policy documents:</p> <ul style="list-style-type: none"> • Action Plan for the implementation of the Strategy for ensuring the independence and integrity of the justice sector for the years 2022-2025, approved by Law no. 211/2021 (action 1.1.5 letter b) objective 1.1.1 of Strategic Direction I);

-
- National Action Plan for the Moldova's accession to the European Union for 2024-2027, approved by Government Decision no. 829/2023 (action no. 3 of Cluster I Political criterion);
- Government Action Plan for 2024, approved by Government Decision no. 887/2023 (action no. 208).

All these documents have **set the following action**: „Elaboration/adoption of the law on the Constitutional Court in the new version (merging the Law on the Constitutional Court and the Code of Constitutional Jurisdiction)”.

As **sources of information** for the drafting of the new law on the Constitutional Court, the following were used:

- **The study on „Strengthening the role of the Constitutional Court”¹**, elaborated for the implementation of the 2011-2016 Justice Sector Reform Strategy. Authors of the study: *Evgeni Tanchev* - Vice President of the Venice Commission, former President of the Constitutional Court of Bulgaria; *Tudorel Toader* - member of the Venice Commission, judge of the Constitutional Court of Romania; *Mirosław Granat* - judge of the Polish Constitutional Tribunal; *Vitali Catana* - constitutional law expert.

- **„ Evaluation Report of the Constitutional Court” prepared by European Union experts in the context of the Peer review mission in the field of justice²** Authors of the report: *Dr. Alexander Balthasar (Austria)* - President of the Institute for State Organization and Administrative Reform of the Austrian Federal Chancellery (Prime Minister's Office), member of the Bureau of the Steering Committee on Democracy and Governance of the Council of Europe, unpaid professor (Priv.-Doz.) of constitutional law and general political theory at the Karl-Franzens University of Graz; *Mr. Michael Groepper (Germany)* - former judge of the German Supreme Administrative Court (Bundesverwaltungsgericht).

- **Comments and recommendations of Hungarian experts „on the legal framework governing the work of the Constitutional Court”** Authors of the report: *Balazs Majtenyi, Andras Pap, Gabor Sulyok, Balazs Vizi* (Hungarian Academy of Sciences).

- **Compilation of opinions of the Venice Commission, studies and reports on constitutional justice³** adopted at the 132nd plenary meeting on October 21-22, 2022 and updated on December 7, 2022.

Thus, the provisions of the draft law join the recommendations of the documents listed above, pursuing the following **objectives**:

- unified regulation of the organization and functioning of the Constitutional High Constitutional Authority;
- give the Constitutional Court greater autonomy in regulating internal procedures, including the carrying out of jurisdictional work;
- preserve the guarantees for judges and the Constitutional Court already enshrined in the regulatory framework in force;

¹ The study can be accessed at the following link:

https://www.constcourt.md/public/files/file/Publicatii/Studiu_-_Consolidarea_rolului_Curtii_Constitutionale.pdf

² The report can be accessed at the following link:

https://www.constcourt.md/public/files/file/presa/2016/Raport_Peer_review_ro.pdf

³ The Venice Commission's report can be accessed at the following link:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)050-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)050-e)

- improve some institutions such as: the regime of incompatibilities and restrictions in the exercise of the office of constitutional judge, the mechanism of accountability of Constitutional Court judges, as well as the mechanism for filling vacancies.

Main project provisions and highlighting new elements

The draft law on the Constitutional Court is structured in 7 chapters and 52 articles. In the respective elements of the structure of the draft legislative act are regulated:

- statute of the Constitutional Court;
- subject-matter jurisdiction and limits of jurisdiction of the Constitutional Court;
- the organization of the Constitutional Court;
- the eligibility criteria and the selection of candidates for the position of judge of the Constitutional Court;
- obligations, guarantees of independence and disciplinary liability of judges of the Constitutional Court;
- judicial activity and acts of the Constitutional Court;
- ensuring the work of the Constitutional Court.

The new version of the Law on the Constitutional Court **faithfully transposes several regulations in force**, including those on which a political consensus has been reached and which have recently amended the Law no. 317/1994 on the Constitutional Court, such as:

1. the setting up of the cabinet of the President of the Constitutional Court in order to provide assistance in the exercise of his/her duties (amendments made by Law no. 47/2024). The administrative work of the President of the Court is significant and the volume of tasks has increased with the taking over by the Constitutional Court of the Republic of Moldova of the Presidency of the Conference of European Constitutional Courts (CECC) for a three-year term. Holding this honorary term of office, not only for the Constitutional Court of the Republic of Moldova, but also for the country, creates a complex agenda of activities. In accordance with the provisions of Article 13 of Law 199/2010 on the status of persons holding public dignity positions, a person holding dignity positions may be assisted by a private cabinet, under the conditions provided by law. And according to the Annex to Law no. 199/2010, the President of the Constitutional Court holds a position of public dignity.

2. implementation of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, in order to create the necessary mechanism for cooperation and interaction between the Constitutional Court and the European Court of Human Rights (amendments made by Law no. 84/2023). The Constitutional Court may therefore request the European Court of Human Rights to issue an advisory opinion on questions concerning the interpretation or application of fundamental human rights and freedoms in a pending case, with a view to the exercise of constitutional jurisdiction.

3. extending the circle of subjects entitled to bring a case before the Court in order to exercise constitutional jurisdiction (amendments made by Law no. 99/2020). Pursuant to the provisions of art. 135 par. (1) letters a) and g) of the Constitution of the Republic of Moldova, the right to refer a case to the court of constitutional jurisdiction has been extended to ordinary courts, in addition to the Supreme Court of Justice, as provided for in the previous regulations. As a result, the judges/panel of judges of the Supreme Court of Justice, courts of appeal and judges have become subjects with right to refer.

While the representatives of the executive and legislative powers have had the right to refer cases since the adoption of Laws no. 317/1994 and 502/1995, the Superior Council of Magistracy did not have this right until 2020. In view of its role as guarantor of the judiciary, Law no. 99/2020 has been amended so that the Superior Council of Magistracy is also subject to referral to the Constitutional Court.

The *latest rulings of the Constitutional Court* have also been taken into account in the preparation of this draft:

1. Judgment no. 18 of 09-07-2021 on the constitutionality of art. 19 par. (1) letter e) of Law no. 317/1994 on the Constitutional Court with reference to the dismissal of a judge of the Constitutional Court following the establishment by a definitive act establishing a breach of the legal rules on conflicts of interest.

2. Judgment No. 27 of 31-10-2019 (financial autonomy of independent authorities), declaring unconstitutional including art. 37 par. (1) of Law No. 317 of December 13, 1994 on the Constitutional Court. As a result, the Constitutional Court has its own budget, which is an integral part of the state budget and is not limited to the budgetary allocations approved by the annual budget law.

THE DRAFT LAW CONTAINS NOVELTIES AS REGARDS:

1. *A priori control of the constitutionality of international treaties to which the Republic of Moldova is a party*

In the meaning of the findings of the Constitutional Court judgment no. 12 of 07.05.2021, *international treaties that have become enforceable* for the Republic of Moldova, i.e. to which the Republic of Moldova is a party, *cannot be reviewed in terms of constitutionality*, because the State would not be able to execute its commitments resulting from the treaty, contrary to the principle *pacta sunt servanda*. The Republic of Moldova may not invoke provisions of its domestic law as justification for its failure to execute a treaty to which it is a party (see DCC no. 24 of October 9, 2014, § 80; DCC no. 17 of November 7, 2013, §§ 32, 60; DCC no. 1 of March 15, 2010; DCC no. 5 of September 24, 2002).

The phrase „international treaty to which the Republic of Moldova is a party” in the Code of Constitutional Jurisdiction No. 502/1995 and Law No. 371/1994 on the Constitutional Court is defective, generating, if implemented, a violation of the principle *pacta sunt servanda* (art. 26 of the Vienna Convention on the Law of Treaties of 1969, in force for the Republic of Moldova since January 26, 1993). It will be noted that the expression “party” in art. 2 par. (1) letter g) of the same Convention, means the State which has consented to be bound by the treaty and in respect of which the treaty has entered into force.

In this context, the draft law operates with the phrase „international treaty to which the Republic of Moldova intends to become a party” or the exercise of constitutional review of „international treaties before their entry into force for the Republic of Moldova”.

2. *Strengthening the accountability mechanism of Constitutional Court judges*

Given that disciplinary liability is related to the status and guarantees of the office, the regulation in art. 23 of the draft aims to ensure clarity of the facts constituting disciplinary offenses and predictability of the application of disciplinary sanctions to judges of the Constitutional Court.

The draft establishes the following disciplinary sanctions: *warning, reprimand and dismissal as a judge of the Constitutional Court*. The types of disciplinary sanctions represent the unitary regulatory framework in the field of disciplinary liability of judges of ordinary courts and are listed in line with the new regulations of Law 178/2014 on disciplinary liability of judges.

According to art. 23 par. (6) of the draft, the most severe disciplinary sanction „dismissal of a judge of the Constitutional Court” is applied by a decision of the plenary, adopted by a vote of 2/3 of the judges of the Constitutional Court. Such a regulation involving disciplinary sanction by the body of High Court judges themselves is in line with the standards of the Venice Commission (CDL-PI(2022)050 § 4.6.1 Disciplinary liability), according to which „*Disciplinary rules for judges and rules for their dismissal should involve a binding vote by the court itself. Any dismissal rules for judges and the presiding judge should be very restrictive.*”

On the other hand, in order to ensure a higher degree of protection against arbitral decisions, the dismissal of the Constitutional Court judge will be decided by the plenary of the Court by a vote of 2/3 of the judges. This guarantee corresponds to the Venice Commission's recommendation set out in Opinion CDL-AD(2009)014 on the Law on the High Constitutional Court of the Palestinian National

Authority, § 20: *„In order to balance the vagueness of the term „non-dignity” in Section 16 ACC, which allows for the exclusion of a member from the Court, procedural guarantees should be introduced, for example, providing that the decision of exclusion be taken by a majority of at least two thirds or even unanimity of the other judges.”*

According to art. 23 par. (2) of the draft, disciplinary offenses will be examined by the Plenum of the Constitutional Court, and the procedure of examination, the type of offenses and the application of sanctions will be determined by the Constitutional Court. Such a regulation is also found in Romanian law, which provides in art. 42 of Law 47/1992 on the organization and functioning of the Constitutional Court that the determination of disciplinary offences, sanctions and the manner of their application to judges is the exclusive competence of the Constitutional Court Plenum.

3. Modification of the content of the oath and the manner of taking it

Upon taking office, the judge of the Constitutional Court, like other high dignitaries, solemnly pronounces a promise containing a series of obligations that define the importance and status of the office of judge of the High Constitutional Court, as well as the values to be promoted in the exercise of the term of office.

According to the draft (art. 14), the Constitutional Court judge will exercise his/her duties from the date of taking the following oath:

„I swear to fulfil in good faith my duties as a judge of the Constitutional Court, to uphold the constitutional order of the Republic of Moldova, to protect the supremacy of the Constitution, the fundamental human rights and freedoms and to submit in the exercise of my office only to the Constitution”.

The archaic words „fair”, „conscientious”, „ordering”, have been deleted from the text of the current oath and replaced with the following words: „good faith in the fulfilment of the duties of a judge”, „protection of the supremacy of the Constitution and of the fundamental human rights and freedoms”.

4. Incompatibilities and restrictions in exercising the position (art. 18 of the draft)

According to the provisions of Law 317/1994, if the candidate for the position of judge of the Constitutional Court is a member of a political party or other political organization, the agreement must include the candidate's commitment to *suspend* his/her activity in the party or other political organization. The novelty of the draft is that the judge of the Constitutional Court will not only be barred from political activity, but *will not be allowed to remain a member of any political party*.

The Venice Commission regularly recommends establishing mechanisms to help ensure a balanced composition of constitutional courts. In its 1997 report, the Commission explained what it meant by pluralism:

§24” Constitutional justice must, through its composition, guarantee independence from different interest groups and contribute to the creation of a body of jurisprudence that takes account of this pluralism. The emphasis here is on the independence of judges and respect for pluralism, not on „representing” party interests.

[...]While Members of Parliament legitimately represent the ideas of political parties, this is very different from the role of Constitutional Court judges. Constitutional judges owe a „duty of ingratitude” to the authority that elected or appointed them. They may well be nominated by a party and elected by the parliamentarians of that party, but

*they can never represent that party. As judges they are independent, their loyalty is to the Constitution, not to those who elected them.*⁴

In his analysis⁵, the professor Tudorel Toader emphasizes that *guaranteeing the independence of the Constitutional Courts*, implicitly of the judges who compose them, is the fundamental condition for the fulfilment of their role, which is subordinate to ensuring the supremacy of the Constitution. The doctrine has emphasized in this respect that the independence of the constitutional judge derives from the inherent quality of constitutional justice - that of being subject only to the Constitution and its organic law [...]. Any *form of dependence* on any public authority or normative act issued by it, other than the Basic Law, would not only be incompatible with the purpose of the Constitutional Court - to guarantee the supremacy of the Constitution - but would simply make it impossible for the constitutional judge to fulfil his/her duties.

Since the independence of the Constitutional Court judges is essential not only for the proper functioning of constitutional justice but also, ultimately, of the rule of law, the concern to remove any influence or suspicion of such influence on the jurisdictional activity of the constitutional courts appears to be justified. This is all the more so as these courts are called upon to ensure, both by reviewing the constitutionality of certain legislative acts and by settling legal disputes of a constitutional nature, the supremacy of the Constitution in socio-politically sensitive situations, whether in terms of the impact of the measures enshrined in the legislative acts in question or of relations between public authorities.

In the light of the above considerations, the Constitutional Court judge must not only suspend his/her political activity but must also give it up in order to uproot his/her political affiliation and exclude any influence of the political factor.

5. Revision of the mechanism for filling the vacancy of a judge of the Constitutional Court

Starting from the role of the Constitutional Court, it is imperative that this entity be empowered with human resources in order to be able to fulfil the mission assigned by the Constitution. The Court is composed of 6 judges, appointed on a representative basis: two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy (art. 136 of the Constitution). For the Court to be functional, the authorities concerned are obliged to appoint judges, and any vacancy of a constitutional judge reduces the Court's ability to operate effectively.

According to art. 18 of Law no. 317/1994 on the Constitutional Court, the term of office of a judge of the Constitutional Court shall cease and the office shall be declared vacant in case of: a) expiration of the term of office; b) resignation; c) dismissal; d) death (provisions, which are found in art. 21 of the draft).

The procedure for filling a vacancy in the office of judge of the Constitutional Court is currently regulated by art. 20 of Law 317/1994. Thus, in the event of a judge's term of office coming to an end, the President of the Court shall refer the matter to the competent authority within three days of the date on which the vacancy is declared, asking it to appoint a new judge. The competent authority appoints the judge within **15 days** of the date on which the President of the Constitutional Court is notified.

Unlike the grounds listed in art. 21 par. (1) letters b) - d) of the draft (resignation, dismissal, death), the date of occurrence of which is uncertain, in the case of the ground provided for in art. 21 par. (1) letter a) (expiry of the term of office of a judge of the Constitutional Court) there is certainty, in view of an expiry date, which can be brought forward in order to avoid a possible institutional deadlock.

⁴ CDL-AD(2015)027 Ukraine - Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015.

⁵ I. Deleanu – Constitutional Institutions and Procedures - in Romanian and Comparative Law - C.H. Beck, p.818, see T. Toader, Z.V. Puskas, Separation of power and independence of Constitutional Courts, National Report of the Constitutional Court of Romania, 2nd Congress of the World Conference Courts, Rio de Janeiro, 2011.

Thus, the draft law proposes to regulate separately the time limits (*depending on the grounds for termination of the term of office of a constitutional judge*) for the referral of the matter to the authorities competent to appoint judges to the Constitutional Court.

In the event of resignation, dismissal and death of a judge of the Constitutional Court, the provisions of art. 21 par. (4) of the draft shall be applied. Thus, the President of the Court will be obliged to notify the competent authority no later than *3 days from the date on which the vacancy of office is established* and the authority will appoint the judge within **45 days** from the date of receipt of the notification.

In the event of the expiry of the term of office of the constitutional judge, the Court shall refer the matter to the competent authority *three months before the expiry of the term of office*, in accordance with art. 13 par. (2) of the draft. In this case, the competent authority will initiate the procedure for the appointment of the constitutional judge and will fill the vacancy within **3 months** from the date of the referral.

The proposal formulated in the draft law is in line with the opinion of the Venice Commission set out in Opinion CDL-AD(2016)034 on the draft law on the Constitutional Court of Ukraine:

§14“[...] *“In addition, default mechanisms should be put into place, in the interest of the Constitutional Court’s institutional stability, and to avoid any institutional blockage. It is of the utmost importance to ensure that the position does not remain vacant for a prolonged period of time after the end of office of a judge. Rules of procedure on filling a vacant judge’s position at the Constitutional Court should foresee the possibility of inaction by the nominating authority. There should either be a procedure that allows the incumbent judge to pursue his or her work until the formal nomination of his or her successor – this solution might require amendments to the Constitution – or a provision which specifies that a procedure of nomination of a new judge could start at least three months before the expiration of the mandate of the incumbent judge”.*

6. Granting the Constitutional Court itself the prerogative to regulate the issues concerning the Constitutional Court's activity

The unity of the subject matter and the coherence of the legislation governing the Constitutional Court, at the same time the regulatory autonomy stemming from the Court's statute, according to which it is independent and subject only to the Constitution, require that the Court's activity be regulated by the Law on the Constitutional Court, and that the Court's internal procedures be regulated by a regulation drafted and adopted by the High Court itself, as is the case in most states.

Based on this conclusion drawn by the authors of the study on „Strengthening the role of the Constitutional Court”, the draft law has given more discretion and freedom to the Court to regulate its internal procedures. This can be deduced from the provisions of the draft in art. 3, art. 23 par. (2), art. 24 par. (2), art. 27 par. (2) and (5), art. 30 par. (4), art. 33 par. (5).

Thus, according to the draft, the Constitutional Court is to establish by its own regulation, *inter alia*: the organization and procedure of constitutional jurisdiction, including the admissibility of appeals, the substantive and formal requirements for the appeal to the Constitutional Court, the manner of exercise of procedural rights by the parties to the constitutional jurisdiction process, the conditions for the President of the Constitutional Court to preside over the sessions of the Constitutional Court, the procedural time limits, the limitation of the possibility to withdraw the appeal before the Court at any stage of the process, etc.

7. Establishing the admissibility test for references to the Court of Justice

In view of the continuous increase in the number of appeals addressed to the High Court, special attention should be paid to the sorting mechanism within the admissibility procedure in order to keep the workload of the Constitutional Court within reasonable limits in order to maintain its ability to examine appeals within reasonable time limits, respecting the principle of celerity.

This can be achieved by establishing clear criteria for the admissibility of appeals. In this context, the Constitutional Court has drawn up and posted on its website a Practical Guide on the

conditions of admissibility of appeals to the Constitutional Court for the exception of unconstitutionality⁶. At the same time, in order to ensure the precision and predictability of the law, the draft, in art. 27 par. (3) exhaustively lists the cases in which appeals will be declared inadmissible by the Constitutional Court.

Economic and financial justification

No additional financial expenses are necessary for the implementation of the draft law on the Constitutional Court.

We note that the draft law preserves the social guarantees of constitutional judges as enshrined in Law No. 317/1994 on the Constitutional Court. Likewise, the draft does not propose regulations that would require additional financial coverage.

Article 48 of the draft on the financing of the work of the Constitutional Court is identical to the current wording of art. 37 of Law 317/1994 on the Constitutional Court.

How to incorporate the project into the system of normative acts in force.

Following the adoption of the draft law, it will be necessary for the Constitutional Court to draft and adopt the implementing regulation of the law.

Respect transparency in decision-making

In accordance with the provisions of art. 20 of the *Law no. 100/2017 on normative acts*, the elaboration of this draft law was initiated with the publication on the official website of the Ministry of Justice in the „*Decision-making transparency*” department, „*Draft normative acts*” directorate, „*Register of draft normative acts*” of the Announcement on the initiation of the process of drafting the draft law on the Constitutional Court

In order to ensure transparency in the decision-making process, the draft law and the informative note were placed on the official website of the Ministry of Justice www.justice.gov.md, in the, the Directorate of *Draft Legislation*, the *Draft Legislation Projects* Subdivision, the *Draft Legislation Projects Register* Subdivision, and on the governmental platform www.particip.gov.md.

In this context, it is worth mentioning that in the endorsement process received opinions from: Superior Council of Magistracy, Ministry of Labor and Social Protection, Presidential Apparatus, Balti Court of Appeal, Comrat Court of Appeal, Comrat district Court, Chisinau Court, Straseni district Court, Causeni district Court, Cahul district Court, Comrat City Hall, Balti Municipal Council, Public Association Institute of Legislative Creation „LEX SCRIPTA”, C. A. „ROMAN STICI”, the Constitutional Court, the Chisinau Court of Appeal, the Union of Lawyers of the Republic of Moldova, the Supreme Court of Justice, the Moldovan Legal Resource Centre, the Ministry of Finance, the Prosecutor General's Office, the National Social Insurance House, the Chisinau Court of Appeal, the Cahul Court of Appeal, the Council for Equality, the State Chancellery.

Thus, all the proposals and objections submitted by the authorities and civil society in the process of the project's endorsement have been included in the summary of objections and proposals related to the project.

The authorities and institutions that support the promotion of the project and have submitted no proposals and objections are the following: the Superior Council of Magistracy, the Ministry of Labour and Social Protection, Presidential Apparatus, the Balti Court of Appeal, the Comrat Court of Appeal, the Comrat district Court, the Chisinau Court, the Straseni District Court, the Causeni District Court, the Cahul District Court, the Comrat City Hall and the Balti Municipal Council.

In addition, on 16 July 2024, the Ministry of Justice organized public consultations to which all interested parties were invited to present their position on the project. The proposals and objections

⁶ The guidelines can be accessed at:

https://www.constcourt.md/public/files/file/Actele%20Curtii/Ghid_exceptie_neconstitutionalitate_CC_2021.pdf

presented at the public consultations were reflected in the draft law on the Constitutional Court to the extent of their appropriateness.

Findings of the anti-corruption expertise

In compliance with Article 36 paragraph (2) of the Law no. 100/2017 on normative acts, the Ministry of Justice has received the Anti-Corruption Expertise Report no. ELO24/10116 of 15.11.2024.

The conclusions of the expertise conducted by the National Anti-Corruption Center:

- no contradictory norms or conflicts between its provisions and the regulations of other normative acts in force have been identified in the text of the draft;

- the draft regulates the statute of the Constitutional Court, material competence and limits of competence, organization, eligibility criteria and the manner of selection of candidates for the position of judge of the Court, obligations, guarantees of independence and disciplinary liability of judges, jurisdictional activity and acts of the Court;

- the provisions of the draft are without prejudice to fundamental human rights;

- the relative nature of the provision in Art. 9 paragraph (2) of the draft on the discretion to organize open competition will have a negative impact on the implementation, as there is a risk that the responsible subject will apply the rule according to the interests/purposes pursued in the appointment of judges to the Constitutional Court.

The draft was revised on the basis of the recommendations of the anti-corruption expertise. The criticized provision was excluded from the draft.

Minister

Veronica MIHAILOV-MORARU