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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**OPINION**

**ON**

**THE DRAFT LAW ON THE CONSTITUTIONAL COURT**

**Adopted by the Venice Commission  
at its 142<sup>nd</sup> Plenary Session  
(Venice, 14-15 March 2025)**

**On the basis of comments by**

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## I. Introduction

1. By letter of 6 November 2024, Ms Veronica Mihailov-Moraru, Minister of Justice of the Republic of Moldova, requested an opinion of the Venice Commission on the Draft Law on the Constitutional Court ([CDL-REF\(2025\)001](#)) (hereinafter “the Draft Law”).
2. Ms Barić, Mr Bußjäger and Mr Dimitrov acted as rapporteurs for this opinion.
3. On 10 and 11 February 2025, a delegation of the Commission composed of Mr Dimitrov, Mr Bußjäger and Ms Barić, accompanied by Mr Vahe Demirtshyan from the Secretariat, travelled to Chişinău and had meetings with the Minister of Justice and the representatives of the Ministry, members of Parliament, representatives of the Constitutional Court, members of the Superior Council of Magistrates as well as with representatives of civil society and international organisations. The Commission is grateful to the Moldovan authorities as well as the Council of Europe Office in Chişinău for the excellent organisation of this visit.
4. This opinion was prepared in reliance on the English translation of the Draft Law. The translation may not accurately reflect the original version on all points.
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 10 and 11 February 2025. Following an exchange of views with the Minister of Justice of Moldova, it was adopted by the Venice Commission at its 142<sup>nd</sup> Plenary Session (Venice, 14 March 2025).

## II. Background

### A. The establishment of the Constitutional Court and its place in the system of State Authorities

5. In the early 1990s, constitutional reform in the Republic of Moldova was driven by the need to establish a legal and institutional framework reflecting the country’s transition to a sovereign, democratic, and rule-of-law state. This reform was prompted by the necessity to redefine the political and economic systems of the country in the post-Soviet era.
6. The establishment of an independent constitutional authority was strongly advocated by national legal experts and was eventually incorporated into the work of parliamentary bodies and the commission tasked with finalising the draft Constitution. This resulted in the adoption of Title V of the Constitution of 1994, providing for the creation of the Constitutional Court as the sole authority in matters of constitutional jurisdiction. The detailed framework governing the Court was subsequently elaborated in Law on the Constitutional Court (Law No. 317/1994)<sup>1</sup> and in the Code of Constitutional Jurisdiction (Law No. 502/1995).<sup>2</sup> The Constitutional Court was officially established on 23 February 1995.
7. Pursuant to the Constitution of the Republic of Moldova,<sup>3</sup> the Constitutional Court is the sole authority on constitutional jurisdiction, is independent of other public authorities, and is responsible for ensuring the supremacy of the Constitution as well as the adherence to the rule of law and human rights. The Court’s activity is regulated by seven articles in Title V (Articles 134–140) of the Constitution and is further elaborated in Law on the Constitutional Court (Law No. 317/1994) and in the Code of Constitutional Jurisdiction (Law No. 502/1995).

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<sup>1</sup> [Law on the Organisation and Operation of the Constitutional Court Nr. 317-XIII dated 13.12.1994.](#)

<sup>2</sup> [Constitutional Jurisdiction Code Nr.502-XIII, dated 16.06.1995.](#)

<sup>3</sup> [Constitution of the Republic of Moldova](#)

8. Title V of the Constitution also sets out the competences of the Constitutional Court (Article 135), the status of constitutional judges (Articles 137, 138, and 139), and the binding nature of its acts (Article 140).

9. As the sole body entrusted with constitutional jurisdiction, the Constitutional Court operates independently of the legislative, executive, and judicial branches. The Constitution guarantees this independence, mandating the Court to safeguard the supremacy of the Constitution, uphold the principle of separation of powers, and ensure mutual accountability between the state and its citizens.

## **B. Competences of the Constitutional Court**

10. The Constitutional Court is responsible for reviewing the constitutionality of legal norms and regulatory acts, providing authoritative constitutional interpretations, and ensuring compliance with constitutional principles. It operates under the principles of independence, security of tenure, collegiality, legality, and publicity. The competences of the Constitutional Court are set out in Article 135 of the Constitution, Article 4 of the Law on the Constitutional Court (Law No. 317/1994), and Article 4 of the Code of Constitutional Jurisdiction (Law No. 502/1995). They include:

- exercising constitutionality control over laws, regulations, and decisions of Parliament, decrees of the President, decisions and orders of the Government, and international treaties to which the Republic of Moldova is a party;
- interpreting the Constitution;
- issuing opinions on proposals for constitutional review;
- confirming the results of national referendums and of parliamentary and presidential elections;
- validating the mandates of Members of Parliament and of the President;
- confirming the circumstances that justify the dissolution of Parliament, the dismissal of the President, the President's interim office, or the President's inability to exercise presidential powers for more than 60 days;
- examining exceptions of unconstitutionality of legal acts referred by the Supreme Court;
- deciding on the constitutionality of a political party.

11. The decisions of the Constitutional Court are final and binding. When it declares a regulatory act or its provisions unconstitutional, the act ceases to have legal effect. However, the modification or repeal of such acts remains the responsibility of the issuing authority. In fulfilling its mandate, the Constitutional Court serves as the ultimate arbiter of constitutional matters, ensuring the primacy of the Constitution within the legal order of the Republic of Moldova.

## **C. Overview of the Draft Law**

12. The Draft Law on the Constitutional Court consists of 7 chapters and 52 articles. Chapter I outlines the general provisions, including the principles of the Court's operation, its jurisdiction, and its constitutional role. Chapter II focuses on the organisation of the Court, detailing its composition, the election and powers of its President, and its procedural rules. Chapters III and IV address the status and independence of the judges, eligibility criteria, guarantees of independence, inviolability, and disciplinary liability. The jurisdictional activity of the Court is regulated, specifying procedures for appeals, admissibility criteria, and the resolution of constitutional disputes. Chapter V delineates the types of acts issued by the Court and their binding nature. Chapters VI and VII provide for the institutional support necessary for the Court's operations, including the roles of judicial counsellors, the Secretariat, and the Court's financial and logistical arrangements.

13. The Draft Law aims to unify the existing framework governing the Constitutional Court by consolidating the Code of Constitutional Jurisdiction (Law No. 502/1995) and the Law on the Constitutional Court (Law No. 317/1994). According to the authorities, the purpose of this legislative initiative is to enhance the autonomy of the Court and preserve the guarantees and immunities of its judges.<sup>4</sup>

14. As noted in the explanatory note to the Draft Law, the coexistence of two parallel laws—the Code of Constitutional Jurisdiction (Law No. 502/1995) and the Law on the Constitutional Court (Law No. 317/1994)—creates redundancy and fails to meet the standards of clarity and unity in legislation. In its Judgment No. 2/2018, the Constitutional Court underscored the need for laws to be clear, unified, and free from parallelism so as to avoid legal uncertainty.<sup>5</sup>

15. In addition to the provisions already contained in the Code of Constitutional Jurisdiction (Law No. 502/1995) and the Law on the Constitutional Court (Law No. 317/1994), the Draft Law introduces several new measures, including the *a priori* review of the constitutionality of international treaties, improvements to the accountability mechanism for judges (disciplinary sanctions), amendments to the content and manner of taking the oath, the introduction of incompatibilities and restrictions on holding office (prohibition on membership in political parties), and revised procedures for filling judicial vacancies.

#### **D. Opinions and reports of the Venice Commission**

16. All relevant opinions of the Venice Commission are compiled in the document “The Compilation of Venice Commission opinions, reports and studies on constitutional justice”<sup>6</sup> which gathers extracts of opinions, reports, and studies on constitutional justice adopted by the Venice Commission, with a view to providing an overview of its doctrine on this matter.

17. In 2002, the Venice Commission adopted a Draft Opinion on the Draft Law on the Constitutional Court and Corresponding Amendments to the Constitution of the Republic of Moldova.<sup>7</sup> The Commission observed that issues such as the list of subjects entitled to appeal to the Constitutional Court and the immunities of its judges should be regulated at the constitutional level.<sup>8</sup> It also noted that excessive procedural details should be included in the Court’s internal rules of procedure rather than in legislation.<sup>9</sup> Moreover, in 2002 the Commission found that certain powers—such as verifying the circumstances justifying the dissolution of Parliament—risked involving the Court in political matters and should be removed from the draft. Finally, provisions on the introduction of individual appeals required greater clarity.<sup>10</sup>

#### **E. Scope of the Opinion**

18. In this Opinion, the Venice Commission will assess all new modifications introduced by the Draft Law in light of international standards and best practices, particularly those concerning the rule of law, separation of powers, legal certainty, legality, equality before the law, access to justice, fair trial guarantees, and other relevant principles.

19. The Opinion may also address certain aspects of the Draft Law that are already present in the current Code of Constitutional Jurisdiction (Law No. 502/1995) and the Law on the

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<sup>4</sup> [CDL-REF\(2025\)001](#), page 17.

<sup>5</sup> *Ibid.*, page 16.

<sup>6</sup> Venice Commission, [CDL-PI\(2022\)050](#), The “Compilation of Venice Commission opinions, reports and studies on constitutional justice.”

<sup>7</sup> Venice Commission, [CDL\(2002\)102-e](#), Draft Opinion on the Draft Law on the Constitutional Court and Corresponding Amendments to the Constitution of the Republic of Moldova.

<sup>8</sup> *Ibid.* para 15.

<sup>9</sup> *Ibid.* paras 5 and 6

<sup>10</sup> *Ibid.* paras 12 and 13.

Constitutional Court (Law No. 317/1994) where further attention appears necessary. These pre-existing provisions, while not newly incorporated, nonetheless warrant attention. Therefore, where they raise concerns regarding ambiguities, potential inconsistencies, or insufficient alignment with international standards, the Commission deems it appropriate to offer recommendations for their improvement.

20. The Venice Commission underlines that the fact that this Opinion does not explicitly address other aspects of the Draft Law should not be interpreted as an endorsement by the Venice Commission or as indicating that these aspects will not be raised in the future.

### III. Analysis

#### A. *A priori* control for constitutionality of international treaties

21. According to Article 135 (1) (a) of the Constitution, the Constitutional Court exercises, upon appeal, the review of constitutionality over laws and decisions of the Parliament, decrees of the President, decisions and ordinances of the Government, as well as over international treaties to which the Republic of Moldova is a party.

22. Pursuant to Article 4(1)(a) of the current Law of the Republic of Moldova on the Constitutional Jurisdiction Code (Law No. 502/1995), the Constitutional Court is authorised, upon appeal, to review the constitutionality of international treaties to which the Republic of Moldova is already a party, in the exercise of its constitutional jurisdiction.

23. Article 4(1)(a) of the Draft stipulates that, for the purpose of exercising its constitutional jurisdiction, the Constitutional Court, among other tasks, shall conduct on request a review of the constitutionality of international treaties to which the Republic of Moldova intends to become a party.

24. The Venice Commission observes that the Draft Law seeks to introduce an *a priori* constitutional control of international treaties, but that such a possibility does not stem explicitly from the Constitution of the Republic of Moldova, which, on the contrary, does not provide for a *a priori* constitutional scrutiny of international treaties.

25. It is true that *a priori* constitutional review of international treaties has a solid rationale in principle, because the absence of such review may risk breaching the international principle of *pacta sunt servanda*. Moreover, it underscores that when a conflict arises between an international treaty and the Constitution, or where applicable, constitutional (organic) laws, the conflict is particularly delicate, since it confronts a potential conflict between the highest domestic legal instruments and commitments undertaken at the international level. States therefore endeavour to prevent such conflicts wherever possible.

26. One mechanism often employed to avoid such conflicts is the constitutional prohibition against ratifying treaties that contradict the Constitution; one such example can be found, for instance, in the Constitutions of Armenia (Article 116): A variant of this approach is provided in Article 9 of the Constitution of Ukraine, which stipulates that concluding international treaties contrary to the Constitution is permissible only after relevant constitutional amendments have been enacted. Similarly, in Spain, pursuant to Article 95.1 of the Constitution, a constitutional amendment is required if a treaty conflicts with the Constitution; otherwise, the treaty may not be ratified. Furthermore, several countries, such as Belgium, the Czech Republic, France, and the Netherlands, require or at least permit a preliminary review of the compatibility of international treaties with the constitution prior to ratification, thereby reducing the risk of coexistence between

two incompatible norms, both of a fundamental nature, within the same legal order.<sup>11</sup> In the United States, for example, this is done through the treaty transmittal package, which the State Department includes with any treaty sent to the Senate for its advice and consent, and which includes an extensive analysis regarding how compliance would work in accordance with domestic law (both constitutional and statutory), including whether any changes would need to be made to domestic law.

27. The Venice Commission has previously noted that declaring a ratified international treaty—or any part thereof—unconstitutional “shall bring about its denunciation”.<sup>12</sup> Once ratified, a treaty creates legal obligations vis-à-vis other contracting parties. If the Constitutional Court were to annul such a treaty, it could lead to international complications and potentially engage the State’s responsibility under public international law. In this respect, Article 27 of the Vienna Convention on the Law of Treaties expressly provides that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

28. Consequently, denouncing a valid treaty on the grounds of its incompatibility with the Constitution is not the most appropriate approach, given the international legal order and the values it embodies even if it is one of the competences of the Constitutional Court in some states (Austria, Liechtenstein). In this context, the Venice Commission highlights that the prevailing trend is to harmonise the domestic legal systems, including national constitutions, with the existing international obligations.<sup>13</sup> By way of illustration, one of the key limitations on amending the Constitution of Lithuania is the prohibition of adopting amendments that would conflict with existing international obligations, including those undertaken by international treaties, unless those obligations have been duly denounced in accordance with international law.<sup>14</sup>

29. Notwithstanding the above, the Venice Commission underlines that care must be taken when introducing a mechanism for *a priori* constitutional review of international treaties, even if such a mechanism exists in many European jurisdictions. Vigilance is required with regard to both the normative framework and its practical application. In particular, the constitutional principles of the rule of law and the separation of powers—which are fundamentally interlinked—should not be pitted against each other.

30. Against this backdrop, although the Venice Commission finds the new wording of Article 4(1)(a) of the Draft Law (“international treaty to which the Republic of Moldova intends to become a party”) acceptable, it nonetheless finds that introducing the phrase “before ratification” would better clarify the distinct prerogatives of the various institutions involved in the decision-making process. The same also may extend to Article 25(1)(i) of the Draft Law, where the phrase “until their entry into force” is employed with regard to international treaties.

31. It would further be advisable to introduce, notably in Article 43 of the Draft Law,<sup>15</sup> a provision specifying that an unconstitutional treaty cannot be ratified, in order to avoid the adverse implications of ratification of an unconstitutional international treaty.

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<sup>11</sup> Venice Commission, [CDL-AD\(2014\)036](#), Report on the Implementation of International Human Rights Treaties in Domestic Law, para 89.

<sup>12</sup> Venice Commission, [CDL\(2002\)102-e](#), Draft Opinion on the Draft Law on the Constitutional Court and Corresponding Amendments to the Constitution of the Republic of Moldova, para 10.

<sup>13</sup> Venice Commission, [CDL-AD\(2002\)16](#), Opinion on the Draft Law on the Constitutional Court and Corresponding Amendments of the Constitution of the Republic of Moldova, para. 9.

<sup>14</sup> Venice Commission, [CDL-AD\(2022\)001](#), Report on the Domestic Procedures of Ratification and Denunciation of International Treaties, para. 36.

<sup>15</sup> Article 43 of the Draft Law: 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.

32. In conclusion, the Venice Commission recommends adding the words “before ratification” to Article 4(1)(a) of the Draft Law. It also advises including a clear provision in the domestic legal framework stipulating that an international treaty deemed unconstitutional cannot be ratified without a prior amendment to the domestic legal system.

33. While constitutional amendments fall outside the scope of this Opinion, the Venice Commission emphasises that an amendment to Article 135(1)(a) of the Constitution would eliminate the current uncertainty bringing the constitutional framework into alignment with best comparative constitutional practice.

### **B. Double term of office and age limit for the appointment**

34. According to Article 136 (1) of the Constitution, the Constitutional Court consists of 6 judges appointed for a 6-year term of office. According to Article 5 of the Law on the Constitutional Court (Law No. 317/1994), (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. Meanwhile, Article 6 (1) of the same law on the Constitutional Court, stipulates that the Constitutional Court consists of six judges, appointed for a six-year term.

35. The Draft Law also stipulates the possibility of two terms: according to Article 9 (1) of the Draft Law, 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.

36. First and foremost, the Venice Commission underlines the ambiguity and possible contradiction between the two provisions – Article 5 and 6 (1) of the current law. Unless it is a matter of translation, the term of mandate of the judge of the Constitutional Court cannot be “unlimited” and six years at the same time.

37. With regard to the term of office, the Venice Commission generally favours long, non-renewable terms or, at most, a single re-election. Non-renewability significantly enhances the independence of constitutional court judges,<sup>16</sup> and a long term of office ensures independence, particularly from the bodies that elected them. An alternative approach could be to allow re-appointment after a certain period, thereby excluding only consecutive mandates.

38. The Venice Commission acknowledges that extending a single term of office—such as increasing it to 12 years without the possibility of re-election<sup>17</sup>— is preferable; however, it may require constitutional amendments, which lie beyond the scope of this opinion. Nevertheless, the Commission encourages the Moldovan authorities to consider this issue in the context of possible future constitutional reforms.

39. As regards the age limit, the Constitution does not foresee any age limit for the appointment of the constitutional judge: according to Article 138 of the Constitution, the judges of the Constitutional Court 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, whereas Article 11(2) of the Law on the Constitutional Court (Law No. 317/1994) states that the maximum age limit for being appointed as judge of the Constitutional Court is 70 years old.

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(3) The legal effects of the normative act or some parts thereof declared as unconstitutional are removed pursuant to the legislation in force.

<sup>16</sup> Venice Commission, [CDL-AD\(2009\)042](#), Opinion on Draft Amendments to the Law on the Constitutional Court of Latvia, para 14.

<sup>17</sup> Venice Commission, [CDL-AD\(2011\)016](#), Hungary - Opinion on the new Constitution, para 95.



40. The Draft Law reduces the maximum age of appointment as a judge and stipulates in Article 13 (1) that, 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. Both the current law and the Draft Law appear not to provide for a retirement age or a maximum age limit for judges of the Constitutional Court. Unless it is a matter of translation, the Commission finds that the term “may” in this article should be replaced with “must” to ensure clarity and eliminate discretion where a binding obligation is intended.

### **C. Content and manner of the oath**

41. According to Article 14 of the Draft Law,

“(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”.

42. Article 12 of the current the Law on the Constitutional Court (Law No. 317/1994) stipulates that, at the commencement of the term of office, the judge of the Constitutional Court shall take the following oath before 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”.

43. The Venice Commission underlines that, although a judge’s oath to the Constitutional Court is a ceremonial formality, it nonetheless carries important legal significance. In particular, it marks the official commencement of the judge’s mandate, during which he or she is bound by the undertakings contained in the oath. Moreover, the Commission emphasises that the oath must not be employed to block a validly appointed judge from taking office.

44. Consequently, there should be a strict and clear deadline for the authority administering the oath so that no political actor can exploit delays or refusals. In this respect, any legal framework that is ambiguous regarding the oath-taking process risks jeopardising judicial independence and legal certainty. Therefore, the law (or even the Constitution) should clearly regulate the procedure for administering the oath, thus preventing political interference in a lawfully appointed judge’s assumption of office.<sup>18</sup>

45. The Venice Commission previously welcomed the provision under which, the oath is ordinarily taken before the Constitutional Court itself.<sup>19</sup> This approach significantly reduces the risk that the political actors might delay or prevent members of the Court from assuming office, thereby avoiding an undesirable increase in the influence of other branches of power over the Constitutional Court.<sup>20</sup> In addition, the Commission observes that taking the oath before the Constitutional Court is logically more consistent and unambiguous. While in some jurisdictions

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<sup>18</sup> See also, Venice Commission, [CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland.

<sup>19</sup> Venice Commission, [CDL-AD\(2016\)034](#), Ukraine - Opinion on the draft Law on the Constitutional Court, para 21.

<sup>20</sup> See also, Venice Commission, [CDL-AD\(2015\)024](#) Opinion on the draft institutional law on the Constitutional Court of Tunisia, para 27.

the solemnity of the occasion is heightened by adding phrases such as “in the presence of” other state institutions, this could give rise to confusion or manipulation. If such institutions were to deliberately abstain from attending, the phrase “in the presence of” could be construed as a mandatory prerequisite, thereby creating legal uncertainty and potentially obstructing the process.

46. Nonetheless, the Draft Law appears not to adopt this approach. Moreover, in the Commission’s view, provision of Article 14(3) of the Draft Law, where a judge is unable to take the oath in accordance with paragraph (2), he or she may do so before the Plenum of the Constitutional Court, does not adequately address the underlying concern, as the Commission considers that primary role should be accorded to the Plenum from the outset. In such circumstance if even the oath is taken before the mentioned state institutions, their participation shall have only a ceremonial nature so that their absence would not impede the commencement of the judge’s mandate.

47. Article 21(3) of the Draft Law specifies that a judge of the Constitutional Court whose term of office has expired shall remain in office until the newly appointed judge takes the oath. However, it seems that the Draft Law does not provide a precise timeframe for the newly appointed judge to take the oath. The Venice Commission considers that it is crucial for the legislation to require the oath to be administered within a short, clearly defined period (for example, within a specified number of days following a judge’s appointment). This safeguard is necessary to prevent any potential for undue delay or refusal of the oath for political reasons.

48. As regards the content of the oath, the Explanatory Note to the Draft Law states that the allegedly “archaic” words “honest,” “conscientious,” and references to “good faith in the performance of the duties of a judge” and to “protection of the supremacy of the Constitution and of fundamental human rights and freedoms” have been removed from the current text of the oath.

49. While the Venice Commission does not consider it to be within its purview to comment extensively on the exact wording of the oath, it is nevertheless surprised by the assertion that terms such as “honest” and “conscientious” are archaic, or that references to “good faith” are superfluous.

50. In light of the foregoing, the Venice Commission recommends specifying that the oath should primarily be taken before the Plenum of the Constitutional Court. The Commission further recommends introducing a strict and unambiguous deadline for administering the oath, to preclude any possibility of politicised delay or refusal.

#### **D. Incompatibilities and restrictions on holding office**

51. According to Article 18 of the Draft Law, (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.

52. According to Article 11 (3) of the Law on the Constitutional Court (Law No. 317/1994), the appointment of the judge of the Constitutional Court 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.

53. The primary change introduced by the Draft Law is that judges of the Constitutional Court will no longer merely be required to suspend their political activities; instead, they will be prohibited from maintaining membership in any political party.

54. The Venice Commission's general position on the issue of incompatibility for judges of Constitutional Courts is that judges should not hold any other office concurrently. This general rule aims to protect judges from potential influences that may arise from their involvement in external activities beyond their judicial functions. In some cases, the incompatibility between the role of a constitutional judge and another position may not be immediately apparent, even to the judge concerned. However, such conflicts of interest can be effectively prevented through strict incompatibility provisions.<sup>21</sup> Furthermore, the Venice Commission has underlined that the purpose of such stringent rules is to insulate judges from any undue influence that could stem from their engagement in activities outside the Court.<sup>22</sup>

55. The Venice Commission finds that the stricter incompatibility provisions in the Draft Law concerning membership in political parties are fully consistent with the principles of judicial independence and the requirement for judges to remain loyal exclusively to the Constitution. These provisions serve to eliminate any potential political influence over judges and enhance public confidence in the Court's impartiality. Moreover, the Commission finds that this amendment also seems to be an acceptable clarification of the rather general constitutional text of Article 139 of the Constitution of Moldova. Consequently, the Venice Commission welcomes this approach as a step towards strengthening judicial independence and ensuring the integrity of the Constitutional Court.

56. As regards the term "creative activity". The Venice Commission notes that this term is imprecise and somewhat unconventional in this context. The broad and undefined nature of "creative activity" may lead to uncertainties regarding its practical application and interpretation. During the meetings in Chişinău, it was agreed that the drafters would reconsider this issue.

57. The Commission hence recommends maintaining in the Draft Law the wording of Article 139 of the Constitution, which stipulates that 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.

#### **E. The mechanism for filling vacancies of Constitutional Court judges**

58. Article 13(2) of the Draft Law stipulates that three months prior to the expiry of a judge's term of office, the President of the Constitutional Court must inform, in writing, the appointing authority of the procedure for appointing a new judge. The competent authority is then required to appoint a new judge before the expiry of the current judge's term. Article 21 of the Draft Law addresses the termination of office on grounds other than the expiration of the term, such as resignation, dismissal, or death of a Constitutional Court judge. It establishes a shorter time frame for filling such vacancies: within three days of a vacancy arising, the President of the Constitutional Court must notify the appointing authority to initiate the procedure for appointing a new judge. The competent authority must complete the appointment within 45 days from the date of notification. Furthermore, Article 21(3) provides that a judge whose term of office has expired shall remain in office until the newly appointed judge takes the oath of office.

59. In comparison, Article 20(2) of the Law on the Constitutional Court (Law No. 317/1994) specifies a deadline of fifteen days for the competent authority to appoint a new judge from the date of the President of the Constitutional Court's appeal.

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<sup>21</sup> Venice Commission, [CDL-STD\(1997\)020](#), The Composition of Constitutional Courts - Science and Technique of Democracy, no. 20 (1997), pages 15-16.

<sup>22</sup> Ibid. page 21.

60. The Explanatory Note to the Draft Law explains that this differentiated approach is based on the distinct grounds for the termination of a judge's office. Specifically, the expiry of the judge's term is a foreseeable event, unlike other causes such as resignation or death. As a result, the necessary procedural arrangements for appointing a new judge can be initiated well in advance, thus minimising the risk of having vacant positions.

61. The Venice Commission finds this distinction between the predictable and unpredictable termination of office to be reasonable. It has previously recommended that to ensure continuity in the membership of the Constitutional Court, a judge whose term has expired should remain in office until their successor has taken office.<sup>23</sup> The Commission also recommended that there should be either a procedure allowing the incumbent judge to pursue his/her work until the formal nomination of his/her successor or a provision specifying that a procedure of nomination of a new judge could start some time before the expiration of the mandate of the incumbent one.<sup>24</sup> The Commission notes that both safeguard are present in the draft which is a welcome approach.

62. Furthermore, it should be mentioned that the proposed mechanism will function only in cases when the judge's term has expired and only if the judge agrees to continue their tenure. Therefore, it does not provide a solution for other grounds of termination of office, such as death, resignation, or dismissal. Hence, the Venice Commission recommends ensuring more robust mechanism to guarantee the stability of the Constitutional Court's activity covering all grounds of termination of office.

63. The Commission emphasises that, while provisions for the terms of office and reappointment of judges are crucial, they can be undermined in the face of political opposition to the court. Consequently, a more robust mechanism is necessary to guarantee the stability, and even subsistence of constitutional jurisdictions. In this context, the provision allowing a judge to remain in office until a successor is appointed is an important safeguard, though it should not be seen as a long-term solution to the potential instability of the court.

64. Moreover, the Draft Law does not provide any criteria to ensure the transparency of the process. The Venice Commission acknowledges that the appointment of Constitutional Court judges is a sovereign prerogative of the nominating bodies and reflects the trust vested in the candidates. Therefore, this process cannot be equated with the bureaucratic, purely merit-based selection process applicable to public servants.

65. Nevertheless, the introduction of certain criteria aimed at promoting transparency would significantly enhance public confidence in the Constitutional Court without undermining the independence of the judiciary or the sovereign nature of the appointment process. Consequently, the Venice Commission recommends that the Draft Law include specific provisions to enshrine the principle of transparency in the nomination process for judges of the Constitutional Court.

#### **F. Immunity of Constitutional Court judges**

66. According to Article 17 (1) – (5) of the Draft Law, judges of the Constitutional Court may not be held legally liable for votes or opinions expressed during their term of office. 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*. Prosecution of a judge of the Constitutional Court may be initiated only by the Prosecutor General

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<sup>23</sup> See for example, Venice Commission, [CDL-AD\(2011\)040](#), Opinion on the law on the establishment and rules of procedure of the Constitutional Court of Turkey, para 27.

<sup>24</sup> Venice Commission, [CDL-INF \(2001\) 2](#), Opinion on the Constitutional Law on the Constitutional Court of the Republic of Croatia, para 17.

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.

67. In the case of commission by the judge of the offenses specified in articles 243, 324, 326 and 330<sup>2</sup> of the Criminal Code of the Republic of Moldova,<sup>25</sup> 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. 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. 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.

68. The main difference between Article 17 of the Draft Law and Article 10 of the Code of Constitutional Jurisdiction (Law No. 502/1995), which regulates the same issue, lies in the scope of immunity and the procedure applicable in cases of *flagrante delicto*. Under the current law, immunity covers all criminal offences without exception (Article 10(1)). Moreover, in cases of *flagrante delicto*, the Constitutional Court is required to render a final decision within 24 hours.

69. Procedurally, the Constitutional Court judges are protected by inviolability, i.e., prosecution must seek the agreement of the Constitutional Court before it can institute criminal proceedings, but the Constitutional Court is obliged to lift this inviolability unless the case is related to the expression of the legal opinion or there is an obvious abuse on the side of the prosecution.<sup>26</sup>

70. As regards the specific articles of the Criminal Code, it may be argued that treating corruption-related offences differently from other criminal acts reflects a selective approach that lacks a clear and legitimate justification. However, the inherently secretive nature of corruption, typically involving two parties, necessitates distinct investigative methods compared to other offences. In corruption cases, advance notice to the suspect may allow for the destruction of critical evidence. Requiring prior notification to a relatively large body, such as the Constitutional Court, about a pending investigation could alert the judge concerned, giving them an opportunity to obstruct or undermine the investigation.

71. Furthermore, the rationale for singling out these specific offences should be carefully examined. However, it appears that these crimes are indeed those most commonly associated with corrupt judicial conduct, thus justifying the distinct treatment in this context.<sup>27</sup>

72. Moreover, the Venice Commission has stated that it is indisputable that judges have to be protected against undue external influence. To this end they should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes).<sup>28</sup>

73 As regards the immediate notification of the arrest of a Constitutional Court judge caught in *flagrante delicto*, the procedure following such notification remains unclear. The formulation “shall express its opinion on the arrest within 24 hours” is ambiguous and leaves room for differing interpretations, potentially leading to inconsistent practices.

74. The Venice Commission is of the view that a mere expression of opinion is an insufficient response from the Constitutional Court in such critical cases. The Plenum of the Court should be

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<sup>25</sup> The relevant articles of the Criminal Code are Article 243: Money laundering; Article 324: Passive corruption; Article 326: Profiting from influence; Article 330<sup>2</sup>: Illicit enrichment.

<sup>26</sup> Venice Commission, [CDL-AD\(2019\)028](#), Moldova - *amicus curiae* brief on the criminal liability of constitutional court judges, para 33.

<sup>27</sup> Venice Commission, [CDL-AD\(2013\)008](#), *Amicus curiae* brief on the Immunity of Judges for the Constitutional Court of Moldova, paras 43-46.

<sup>28</sup> Venice Commission, [CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution, para 67.

vested with the authority to formally approve or annul the arrest. In the event of annulment, the judge must be released without delay to safeguard judicial independence and prevent any arbitrary deprivation of liberty.

75. The Venice Commission thus recommends that in case of the arrest of a Constitutional Court judge caught in *flagrante delicto*, the Plenum of the Constitutional Court should be granted the authority to formally approve or annul the arrest and where the arrest is annulled, the judge should be released without delay.

## **G. Disciplinary liability of judges and the prerogative of the Constitutional Court to regulate the issues concerning its activity**

### **1. Disciplinary liability of judges**

76. Article 23 of the Draft Law sets out provisions concerning the disciplinary liability of judges of the Constitutional Court:

“(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).<sup>29</sup>

(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”.

77. Under Article 84(1) of the Code of Constitutional Jurisdiction (Law No. 502/1995), disciplinary proceedings against a judge of the Constitutional Court may only be initiated upon a written complaint signed by the appointing authority. The Code further provides that disciplinary sanctions are imposed by a majority vote of the Court's judges. In contrast, the Draft Law grants full competence for disciplinary matters to the Constitutional Court and stipulates that dismissal requires a two-thirds majority vote of the Plenum.

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<sup>29</sup> According to Article 22 (2) of the Draft Law, 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.

78. The Venice Commission stresses that any disciplinary framework applicable to judges of the Constitutional Court must be based on transparent procedures and clearly defined criteria to safeguard judicial independence and ensure compliance with due process. The grounds for disciplinary action should be explicitly established by law, and sanctions must be proportionate to the gravity of the misconduct. Furthermore, disciplinary proceedings must be free from external interference or political influence, which could compromise judicial impartiality and public trust in the Court.

79. With regard to dismissal, the most severe sanction, the Venice Commission underscores that the authority to impose disciplinary measures, including dismissal, should rest with a competent body that operates independently and is protected from undue external pressures. Such safeguards are essential to maintaining the integrity of the judiciary by ensuring that judges can discharge their duties without fear of arbitrary removal.

80. The Venice Commission welcomes the provision in the Draft Law that excludes the President, Parliament, and other external bodies from the power to dismiss judges of the Constitutional Court. This provision eliminates the risk of political pressure being exerted on judges. The Commission has previously stated that disciplinary and dismissal procedures should involve a binding vote by the Court itself and any dismissal rules for judges and the presiding judge should be very restrictive.<sup>30</sup> Moreover, it also recommended in its opinions that the dismissal of a judge should require a decision adopted by a majority of no less than two-thirds of the total number of judges.<sup>31</sup>

81. The approach taken by the Moldovan authorities in the Draft Law appears, in general, to align with the principles endorsed by the Venice Commission, which is commendable. However, the Draft Law does not specify the voting threshold required for disciplinary sanctions other than dismissal. It remains unclear whether such decisions, like those concerning dismissal, require a two-thirds majority vote. Article 23(2) of the Draft Law implies that this issue will be regulated by the Constitutional Court's Internal Regulations, adopted pursuant to Article 3 of the Draft Law. Additionally, the Draft Law does not address procedural guarantees for the application of disciplinary measures.

82. The Venice Commission finds that the law shall regulate the disciplinary process or at least provide for essential procedural safeguards. At a minimum, it should include references to the fundamental principles of a fair trial. For instance, in cases of dismissal, safeguards should include provisions stipulating that dismissal should only be imposed as a last resort, in exceptional cases, and subject to a proportionality assessment. While the Commission acknowledges that some procedural rules can be detailed in the Court's internal Regulations, it considers it necessary for the law or the Constitution to set forth fundamental procedural guarantees.<sup>32</sup>

83. Furthermore, the above-mentioned is reinforced by the fact that sometimes the grounds for disciplinary responsibility may extend to a judge's conduct during deliberations and the issuance of rulings, which are intrinsically linked to judicial decision-making and the interpretation of the law. Consequently, such provisions risk encroaching upon the fundamental principle of judicial independence and the core function of adjudication in accordance with the Constitution and the law.<sup>33</sup>

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<sup>30</sup> Venice Commission, [CDL-STD\(1997\)020](#), The Composition of Constitutional Courts - Science and Technique of Democracy, no. 20 (1997), chapter 10.

<sup>31</sup> Venice Commission, [CDL-AD\(2016\)034](#), Ukraine - Opinion on the draft Law on the Constitutional Court, para 26

<sup>32</sup> Venice Commission, [CDL-AD\(2016\)009](#), Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, para 35.

<sup>33</sup> Venice Commission, [CDL-AD\(2007\)009](#), Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, para 18.

84. As regards the relationship between different provisions of the Draft Law regulating the issue of dismissal, the Venice Commission observes that the relationship between Article 23 (disciplinary liability) and Article 22 (dismissal) of the Draft Law lacks clarity. In particular, Article 22(1)(b) provides that a judge's term shall be terminated in the event of a "violation of the oath and duties of office". However, it remains unclear whether a dismissal based on the violation of the oath requires disciplinary proceedings under Article 23, or if such a violation is considered separately from the breach of official duties.

85. In most member states of the Consultative Council of European Judges (CCJE), the grounds for disciplinary liability are prescribed in law and cover judicial and extrajudicial misconduct. The content and wording may vary. Due to cultural diversity, which affects the public's expectations of the behaviour of judges, the grounds for disciplinary liability differ, particularly in relation to the private behaviour of judges. While judges may express politically controversial opinions on social media in one country, they may not do so in another country. In some countries, the grounds for judicial liability are enumerated in a strictly formulated exhaustive list, in other countries they are enshrined in formulations that are more open-ended.<sup>34</sup>

86. The Venice Commission observes that the concept of "violation of the oath" is potentially too broad and imprecise. Such a formulation may lead to uncertainty and inconsistent interpretation. The Commission also notes that Article 23(1) of the Draft Law already provides a detailed description of disciplinary offences, covering a wide range of actions that could give rise to disciplinary proceedings. As an alternative to the current wording of the Draft Law, the Venice Commission suggests revising Article 22(1)(b) by replacing the reference to "*violation of the oath and duties of office*" with the more specific formulation "commission of an offence incompatible with the discharge of judicial duties,"<sup>35</sup> while cross-referencing the offences listed in Article 23(1). This clarification would contribute to the principles of legal certainty and foreseeability, ensuring that legal norms are sufficiently precise and predictable to enable judges to regulate their conduct accordingly and avoid the risk of arbitrary enforcement.<sup>36</sup>

87. In light of the above, the Venice Commission recommends clarifying the decision-making process for disciplinary sanctions other than dismissal, including the required voting threshold within the Plenum. Furthermore, it recommends incorporating procedural guarantees for disciplinary measures within the law and ensuring legal clarity between Articles 22(1)(b) and 23 of the Draft Law regarding the dismissal of the judge as a disciplinary measure.

## **2. The prerogative of the Constitutional Court to regulate the issues concerning its activity**

### **a. Internal Regulation of the Constitutional Court**

88. The Draft Law grants the Constitutional Court greater discretion in regulating its internal procedures. This enhanced autonomy is evident from various provisions within the Draft Law, including Article 3, Article 23(2), Article 24(2), Article 27(2) and (5), Article 30(4), Article 33(5), and several other related provisions.

89. Specifically, the Draft Law stipulates that the Constitutional Court shall establish, through its own regulations, the organisation and procedures governing constitutional jurisdiction. This includes, among other matters: the determination and application of disciplinary sanctions; the criteria for the admissibility of appeals; the substantive and formal requirements for submitting an appeal to the Constitutional Court; the manner in which parties to constitutional proceedings may

<sup>34</sup> Council of Europe, [CCJE\(2024\)5](#), CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 25.

<sup>35</sup> Venice Commission, [CDL-AD\(2013\)014](#), Ukraine - Opinion on the draft Law on the amendments to the Constitution, strengthening the independence of judges (including an explanatory note and a comparative table) and on the changes to the Constitution proposed by the Constitutional Assembly, paras 52.

<sup>36</sup> ECtHR, *The Sunday Times v. the United Kingdom* (No. 1), 6538/74, 26 April 1979, para 49.



exercise their procedural rights; the conditions under which the President of the Constitutional Court may preside over Court sessions; the establishment of procedural time limits; and the limitations on the possibility of withdrawing an appeal at any stage of the process.

90. The Explanatory Note to the Draft Law justifies this approach by highlighting the unity of the subject matter and the coherence of the legislation governing the Constitutional Court. It also underscores the regulatory autonomy granted to the Court by its statute, which affirms that the Court is independent and bound solely by the Constitution.

91. The Venice Commission reiterates that institutional judicial independence focuses on the independence of the judiciary from the other branches of state power (external institutional independence). The relationship between courts within the same judicial system should also be taken into account (internal institutional independence). Institutional independence can be assessed by four criteria (administrative, financial matters, independent decision-making power and independence in determining jurisdiction).<sup>37</sup> The independence in administrative matters means that the judiciary should be allowed to handle its own administration and make decisions without any external interference. It should also be autonomous in deciding the allocation of cases.<sup>38</sup>

92. As a general principle, the Venice Commission considers that the unique position of the Constitutional Court as “the sole authority on constitutional jurisdiction, independent of other public authorities, ensuring the supremacy of the Constitution and adherence to the rule of law and human rights” makes it not only natural, but indeed necessary, for the Court to have the ability to regulate its own activities through regulations grounded in the Constitution and the Law, as outlined in Article 3 of the Draft Law. Hence, the approach of the drafters to regulate the activities of the Court through its own regulations is a welcome step.

93. However, the Venice Commission emphasises the need for greater clarity regarding the scope of the procedural rules of the Constitutional Court, particularly in relation to the exercise of the rights of the parties and their representatives. Article 30(4) of the Draft Law stipulates that parties may exercise their procedural rights either in person or through a representative, in accordance with the procedure established by the Regulations of the Constitutional Court. However, Chapter IV of the Draft Law, entitled “Procedural Activity,” already contains numerous provisions detailing procedural rights and their implementation, such as Article 31 (“Rights of Parties”) and Article 35 (“Procedure for Examining Requests for Recusal”). This overlap necessitates a more precise delineation of the procedural framework to avoid inconsistencies and ensure legal clarity.

94. The Venice Commission has previously cautioned against an excessively liberal approach in this regard, which would entail leaving critical matters affecting individual rights solely to internal regulations.<sup>39</sup> Instead, it is essential to delineate which aspects should be regulated by law, and which may be entrusted to internal regulations.

95. Fundamental aspects related to the organisation and functioning of Constitutional Courts, such as the status of judges, access to the Court, the core procedural framework, the nature of decisions the Court may render, and the principles governing its internal organisation, should be enshrined in law. Conversely, secondary matters may be addressed through internal regulations for several reasons.

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<sup>37</sup> See OHCHR, *Human Rights in the Administration of Justice: Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9, New York and Geneva, 2003, pp. 113-158; and D. S. Law, *Judicial Independence*, *International Encyclopaedia of Political Science*, Vol. 5, 2010, pp. 1369-1372.

<sup>38</sup> Venice Commission, [CDL-AD\(2012\)014](#), Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, paras 78-79.

<sup>39</sup> Venice Commission, [CDL \(97\) 18 rev.](#), Opinion on the law on the Constitutional Court of Ukraine, para 11.

96. Firstly, from a constitutional perspective, such matters are of lesser significance compared to fundamental procedural rules. Secondly, the Constitutional Court, as a specialised body, is better positioned than the legislature to determine the internal rules that best suit its operations and to adapt them as necessary to evolving circumstances. Lastly, allowing a degree of autonomous regulation ensures the Court's operational flexibility and efficiency.<sup>40</sup>

97. Furthermore, similar concerns arise regarding the sensitive issue of determining and applying disciplinary sanctions under internal regulations, as outlined in Article 23(2) of the Draft Law. In the preceding paragraphs of this opinion, the Venice Commission has already highlighted the issue of the voting threshold required for imposing disciplinary sanctions other than dismissal, as well as the necessity of incorporating procedural safeguards within the law. Given the significance of these matters, the Commission considers it essential to enshrine at least the guiding principles for disciplinary measures within the legal framework, rather than leaving them entirely to internal regulations.

98. In light of the above considerations, the Venice Commission recommends that Article 30(4) of the Draft Law should not refer exclusively to the Regulations of the Constitutional Court. Instead, it should clearly define the respective regulatory domains of the law and internal regulations, eliminating any ambiguities. This approach would strengthen legal certainty and predictability while ensuring coherence between statutory provisions and internal rules, thereby safeguarding fundamental procedural guarantees.

#### b. Requirements for admissibility

99. Article 27 of the Draft Law outlines the procedural stages for the examination of applications, the first of which concerns the admissibility assessment. According to the Explanatory Note, the primary objective of this amendment is to establish clear and precise criteria for the admissibility of appeals. In contrast to the existing regulations, and with the aim of enhancing legal certainty and predictability, Article 27(3) of the Draft Law provides an exhaustive list of circumstances under which appeals shall be deemed inadmissible by the Constitutional Court.

100. 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.

101. The Venice Commission underscores the importance of establishing clear and precise admissibility criteria for applications submitted to the Constitutional Court. Admissibility criteria serve as an essential safeguard to prevent the Court from being overwhelmed with unfounded or irrelevant cases, thereby ensuring that it can focus on matters of genuine constitutional significance. Clearly defined criteria enhance legal certainty, contribute to procedural efficiency, and uphold the integrity of constitutional adjudication. It is crucial that such criteria are enshrined in law to provide transparency and predictability for applicants while preserving the Court's ability to fulfil its mandate effectively.

102. However, the Venice Commission notes that Article 27(3)(b) of the Draft Law, which stipulates that "applications shall be declared inadmissible if there is a judgment/decision of the Constitutional Court regarding the challenged provisions in the light of the same

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<sup>40</sup> Venice Commission, [CDL \(2002\) 102](#), Draft Opinion on the Draft Law on the Constitutional Court and Corresponding Amendments of the Constitution of the Republic of Moldova, paras 4 and 5.

unconstitutionality criticisms and the application cannot change the jurisprudential practice” may raise some concerns. This provision may unduly restrict the Constitutional Court’s ability to revisit and adapt its own jurisprudence when necessary. It unnecessarily limits the power of the Court to decide on the constitutional issues when they (re)appear in the law.<sup>41</sup>

103. Constitutional courts must retain a certain degree of discretion to reconsider their earlier decisions when warranted by evolving legal standards, or new interpretations arising from subsequent cases. The mere existence of a previous decision by the Court should not automatically bar the admissibility of a new application. The inadmissibility may be restricted to instances where the circumstances of the case do not require a new constitutional review from a different perspective.<sup>42</sup>

104. For these reasons, the Venice Commission recommends leaving the Constitutional Court some discretion to find applications admissible, even when they concern issues previously adjudicated, provided that the circumstances of the new case warrant a fresh constitutional review.

#### c. Assistant judges

105. Article 46 of the Draft Law establishes the legal framework governing assistant judges of the Constitutional Court, outlining their appointment, duties, remuneration, and evaluation. The provision stipulates that the judges of the Constitutional Court shall be supported by six assistant judges, who operate under the authority of the Court’s President in accordance with the law and the Court’s internal regulations. The recruitment of assistant judges is conducted through a competitive selection process overseen by the President, with the competition rules approved by the Plenum of the Court. The article further sets out eligibility criteria, including citizenship, professional qualifications, and an impeccable reputation, while disqualifying individuals with legal restrictions on holding public office. Assistant judges are subject to periodic professional evaluations every three years to assess their competence and improve their efficiency, with procedures approved by the Plenum. Additionally, the article provides for disciplinary liability and outlines conditions for dismissal, including negative professional evaluations and circumstances specified in the law.

106. The practice of appointing assistant judges is well established both within and beyond Europe, taking various forms depending on the legal traditions of each jurisdiction. Such positions include judge-rapporteur (Turkey), judge in charge of research (South Korea, ROC), assistant magistrate (Israel, Latvia, Romania, Russian Federation), referendary (Belgium, CJEU), scientific assistant (Liechtenstein), judicial assistant (Italy, Lithuania), assistant (Czech Republic, Poland, Spain, Ukraine), legal adviser (Austria, Cyprus, Croatia, Georgia, Germany, Moldova, Portugal, Slovakia, Hungary), adviser (Albania, Czech Republic, Latvia, Portugal, Serbia, Slovenia), research consultant (Ukraine), and judicial expert (Bulgaria).

107. The role of the judicial assistant follows from the role of the judge. Judicial assistants must support judges in their role, not replace them. Whatever their duties are, they must be supervised by the judge or judges who remain responsible for the decision-making in all aspects. However, by supporting judges in their adjudicative process, judicial assistants are involved in the exercise of judicial tasks. Therefore, they must comply with the highest professional and ethical standards and thereby help to build high public trust in judicial institutions.<sup>43</sup>

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<sup>41</sup> Venice Commission, [CDL-AD\(2014\)020](#), Opinion on the draft Constitutional Law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, para 37.

<sup>42</sup> Venice Commission, [CDL-AD\(2021\)010](#), Kazakhstan - Opinion on the Concept Paper on improving the legal framework of the Constitutional Council, para 46.

<sup>43</sup> Council of Europe, [CCJE\(2019\)6](#), CCJE Opinion No. 22 (2019) on the Role of Judicial Assistants, para 19.

108. The Venice Commission welcomes the proposed regulations contained in the Draft Law. However, it emphasises the need to clearly distinguish the role of assistant judges from that of constitutional judges, who hold one of the highest offices in a democratic system. While the Draft Law provides a conceptual distinction between two fundamentally different roles—a position based on professional legal expertise attained through examinations, career progression, or competitive selection, and a judicial office endowed with democratic legitimacy—the Commission considers that this distinction could be further strengthened. During the meetings of the delegation of the Venice Commission in Chişinău the authorities agreed to consider this matter.

109. To this end, the Venice Commission recommends retaining the term “judicial counsellor”, as used in the previous version of the Draft Law, to better reflect the different nature of the role, so that requirements such as the taking of an oath, immunity, and other judicial safeguards be clearly excluded from the conditions applicable to assistant judges or judicial counsellors.

#### **H. The legal status of the Law on the Constitutional Court and the introduction of individual constitutional complaint**

110. While acknowledging that the Republic of Moldova is not currently undertaking constitutional amendments, the Venice Commission considers it important to highlight certain issues that could be addressed in the event of future constitutional reforms.

111. First and foremost, Article 72(3)(e) of the Constitution of the Republic of Moldova classifies matters concerning the Constitutional Court under the remit of organic laws. It is true that according to Article 72 (2) of the Constitution, Constitutional laws are exclusively aimed at revising the Constitution. In the Commission’s view, however, a law defining the operation of such a pivotal constitutional body should itself be of constitutional rank—that is, deemed and treated as a constitutional law. Unlike organic laws,<sup>44</sup> constitutional laws are subject to a higher adoption threshold, requiring a two-thirds majority vote in Parliament (Article 143(1) of the Constitution). Given the Court’s critical role in safeguarding the Constitution and upholding constitutional standards, it would be more relevant that its very functioning could not be shaped solely by legislation adopted at the behest of the majority in Parliament at any given time. While the basic requirements for judicial independence are the same for both ordinary and constitutional court judges, the latter must be protected from any attempt of political influence due to their position, which is particularly exposed to criticism and pressure from other state powers.<sup>45</sup>

112. Secondly, in 2004, the Venice Commission has already welcomed then initiative of Moldova to incorporate in the Constitution an individual complaint procedure and underlined that the possibility of individual complaint would definitely serve the better and more effective protection of fundamental rights.<sup>46</sup> Moreover, among the member and observer States of the Venice Commission, it is relatively rare not to provide at least some form of individual access to challenge the constitutionality of legal norms or individual acts. Furthermore, in several member States of the Council of Europe, an individual complaint to a constitutional court or an equivalent body may be recognised by the European Court as an effective remedy against violations of the European Convention on Human Rights, thereby serving as a filter for potential cases before they reach the Strasbourg Court.<sup>47</sup>

113. Although these matters are closely tied to the guarantees of independence and effectiveness of the Constitutional Court, the Commission underscores that they fall outside the

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<sup>44</sup> According to Article 74 (1) of the Constitution, organic laws shall be adopted by the vote of the majority of the elected members of Parliament, following at least two readings.

<sup>45</sup> Venice Commission, [CDL-AD\(2008\)029](#), Kyrgyzstan - Opinion on the Draft Laws amending and supplementing (1) the Law on Constitutional Proceedings and (2) the Law on the Constitutional Court, para 14.

<sup>46</sup> Venice Commission, [CDL-AD\(2004\)043](#), Opinion “On the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court)”, para 23.

<sup>47</sup> Venice Commission, [CDL-AD\(2010\)039rev](#), Study on Individual Access to Constitutional Justice, para 5.

scope of this Opinion, as they would require constitutional amendments. Nonetheless, the authorities may take these considerations into account in the context of any future constitutional reforms.

## **I. Additional observations**

### **1. “The responsibility of the citizen towards the State”**

114. According to Article 1(3) of the Draft Law, 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, and guarantee the responsibility of the State towards the citizen and of the citizen towards the State.

115. While these provisions mirror the exact wording of Article 134(3) of the Constitution, the Venice Commission finds their formulation somewhat ambiguous. In particular, the Commission observes that the actual competences of the Constitutional Court do not appear to provide any means by which it could guarantee that citizens fulfil their responsibilities towards the State. The role of the Constitutional Court is fundamentally to adjudicate on constitutional matters and to safeguard constitutional principles, but it does not have the authority or mechanisms to enforce individual civic duties. The inclusion of such language in the Draft Law may therefore lead to interpretative uncertainties and should be reconsidered to ensure legal clarity and consistency with the established functions of the Court.

### **2. The principle of constitutionality**

116. Article 2 of the Draft Law sets out the fundamental principles governing the activity of the Constitutional Court, namely the principles of legality, independence, collegiality, adversarial proceedings, and transparency.

117. While the Venice Commission agrees that these principles are essential to the proper functioning of a constitutional court, it however considers that the explicit inclusion of the principle of constitutionality would be advisable—unless its omission is merely a matter of translation. The current formulation refers to the principle of legality, which, while potentially encompassing the broader concept of the rule of law, appears too narrow in this specific context.

118. The role of a Constitutional Court is inherently linked to upholding the supremacy of the Constitution, ensuring that all laws and governmental actions comply with constitutional norms. Therefore, the explicit reference to the principle of constitutionality would enhance legal clarity and reinforce the primacy of the Constitution as the foundation of the Court’s mandate. During the meetings of the delegation of the Venice Commission in Chişinău, the authorities agreed to consider this issue.

### **3. Entering into force of the acts of the Constitutional Court**

119. According to Article 37(4) of the Draft Law, 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. The Venice Commission acknowledges that, in some cases, there may be a significant lapse of time—ranging from weeks to even months—between the announcement of the conclusions of a judgment and the publication of its full reasoning.<sup>48</sup> This delay can create legal uncertainty, as the public, as well as the executive and legislative authorities, expect the judgment to be implemented immediately upon the pronouncement of its conclusions. However,

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<sup>48</sup> Venice Commission, [CDL-AD\(2017\)001](#), Slovak Republic - Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court, para 38.

without access to the Court's full reasoning, state authorities may face difficulties in ensuring proper implementation.<sup>49</sup>

120. In this regard, the Venice Commission recalls its Opinion on the Draft Law on the Constitutional Court of Ukraine, in which it welcomed the introduction of an obligation to publish the full judgment immediately after its pronouncement.<sup>50</sup> A similar provision would enhance legal clarity and ensure that all relevant actors have access to the reasoning underpinning the Court's decisions without undue delay. Furthermore, the Venice Commission emphasises that the Constitutional Court must retain full control over the publication of its judgments on its own official website. This is essential to prevent any undue interference by the executive, which could otherwise obstruct or delay the publication of a judgment.<sup>51</sup>

121. Therefore, the Commission recommends that the acts of the Constitutional Court be published immediately, at a minimum, on the Court's official website, if not in the Official Monitor of the Republic of Moldova. This would ensure transparency, accessibility, and proper implementation of the Court's decisions.

#### IV. Conclusion

122. By letter of 6 November 2024, Ms Veronica Mihailov-Moraru, Minister of Justice of the Republic of Moldova requested an opinion of the Venice Commission on the Draft Law on the Constitutional Court.

123. The Venice Commission observes that the Draft Law in general, demonstrates a high degree of alignment with international standards. The Commission is satisfied that the majority of the amendments conform with its own benchmarks, as well as with broader international and constitutional principles and best practices. Moreover, the Commission finds that by consolidating the regulatory framework governing the activities of the Constitutional Court into a single legislative act—rather than maintaining parallel instruments such as the Code of Constitutional Jurisdiction (Law No. 502/1995) and the Law on the Constitutional Court (Law No. 317/1994)—the Draft Law significantly enhances clarity and coherence. Furthermore, the Commission welcomes the drafters for employing gender-sensitive language in the Draft Law.

124. In the context of potential future constitutional reforms, as mentioned above regarding the legal status of the Law on the Constitutional Court, elevating its status from an organic law to a constitutional law would provide an additional safeguard for the Court's independence. This change would shield the Court from potential shifts in political dynamics and strengthen its institutional stability. Regarding the individual constitutional complaint, the Commission considers that its introduction could offer an additional layer of protection for fundamental rights.

125. The Venice Commission offers a number of recommendations aimed at further enhancing the Draft Law on the Constitutional Court, thereby bringing it even closer into conformity with international standards. In particular, the Venice Commission makes the following key recommendations:

- a. As regards the *a priori control* for constitutionality of international treaties, to add the words "before ratification" to Article 4(1)(a) of the Draft Law. In addition, the Venice Commission recommends a clarification of Article 135(1)(a) of the Constitution to the effect that domestic law has to be brought in accordance with new international treaties before ratification at the international level.

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<sup>49</sup> Ibid para 39.

<sup>50</sup> Venice Commission [CDL-AD\(2016\)034](#), Ukraine - Opinion on the draft Law on the Constitutional Court, para 65.

<sup>51</sup> Venice Commission, [CDL-AD\(2016\)017](#), Georgia - Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings, paras 59 and 60.

- b. To specify that the oath of the judge of the Constitutional Court be taken before the Plenum of the Constitutional Court. The Commission further recommends introducing a strict and unambiguous deadline for administering the oath as well as maintaining in the Draft Law the wording of Article 139 of the Constitution, regarding incompatible activities.
- c. To include in the Draft Law specific provisions to enshrine the principle of transparency in the nomination process for judges of the Constitutional Court, and to provide a more robust mechanism to guarantee the stability of the Constitutional Court's activity covering all grounds of termination of office of the judges of the Court.
- d. To ensure that in case of arrest of a Constitutional Court judge caught in *flagrante delicto*, the Plenum of the Constitutional Court be granted the authority to formally approve or annul the arrest and where the arrest is annulled, to ensure that the judge is released without delay.
- e. To clarify the decision-making process for disciplinary sanctions other than dismissal, including the required voting threshold within the Plenum as well as to incorporate procedural guarantees for disciplinary measures within the law and to ensure legal clarity between Articles 22(1)(b) and 23 of the Draft Law regarding the dismissal of the judge as a disciplinary measure.
- f. In Article 30(4) of the Draft Law, not to refer exclusively to the Regulations of the Constitutional Court, instead, to clearly define the respective regulatory domains of the law and internal regulations, eliminating any ambiguities.
- g. As regards the admissibility of the applications to the Constitutional Court, to leave the Constitutional Court some discretion to find applications admissible, even when they concern issues previously adjudicated, provided that the circumstances of the new case warrant a fresh constitutional review.

126. The Venice Commission also recommends adding the principle of constitutionality in Article 2 of the Draft Law, retaining the term “judicial counsellor” instead of “assistant judge” in the Draft Law. The Commission also recommends that the acts of the Constitutional Court—be published immediately, on the Court's official website, if not in the Official Monitor of the Republic of Moldova.

127. The Venice Commission remains at the disposal of the Moldovan authorities for further assistance in this matter.