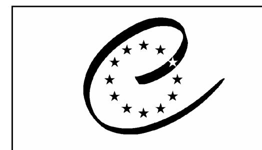

Strasbourg, 15 September 2000

<cdl\doc\2000\cdl-ju\37-e>

Restricted

CDL-JU (2000) 37

Or. Engl./Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Moldova** as well as précis published in the Bulletin on Constitutional Case-Law

This document will not be distributed at the meeting. Please bring this copy.
Ce document ne sera pas distribué en réunion. Prière de vous munir de cet exemplaire.

Moldova
Constitutional Court

Introduction

1. Date and context of establishment

On 29 July 1994 the Parliament of the Republic of Moldova - an independent State from 27 August 1991 - adopted the new Constitution, creating the Constitutional Court of the Republic of Moldova and provided for its structure and functions as well as its place amongst the public authorities.

On 23 February 1995 the Constitutional Court started its activity.

On 16 June 1995 the Parliament adopted the Code of Constitutional Jurisdiction. The Court delivers its judgments, decisions and opinions in conformity with this Code.

2. Position in the hierarchy of the legal institutions

The Constitutional Court is not part of the hierarchy of ordinary courts in the country. It is a unique constitutional judicial body, which is autonomous and independent from the executive, the legislature and the judiciary. The Constitutional Court is responsible for guaranteeing the supremacy of the Constitution, for ensuring the principle of separation of State powers into the legislative, executive and judicial branches, and for guaranteeing the observance of the State's responsibility towards the citizen and the citizen's responsibility towards the State. When an application in a particular case is made to it, the Constitutional Court interprets the Constitution and undertakes the review of constitutionality of the Parliament's laws and decisions, of the decrees of the President of the Republic of Moldova and of the acts of the government.

I. Basic texts

- Articles 134-140, 141.2, Chapter VII "The Final and Transitory Provisions" of the Constitution.

- Law on the Constitutional Court No. 317-XIII of 13 December 1994, modified through Law No. 917-XIII of 11 July 1996, and Law No. 1221-XIII of 26 June 1997.
- Code of Constitutional Jurisdiction No. 502-XIII of 16 June 1995.

II. Composition and organisation

1. Composition

The Constitutional Court of the Republic of Moldova is composed of 6 judges, appointed for a 6-year term. Two of them are appointed by the Parliament, two by the President of the Republic of Moldova, while the two remaining members are appointed by the Judicial Service Commission. When the Constitutional Court was first established, the legal system was in the process of being reorganised, and in fact the Judicial Service Commission, provided for by the Constitution, had not yet been established. That is why, in the initial composition of the Constitutional Court, the judges who had to be appointed by the Judicial Service Commission

were elected through a secret ballot at the general meeting of the judges of the Republic of Moldova which took place on 7 February 1995.

According to the Constitution, any person who possesses has higher legal training, high professional competence and at least 15 years' experience in a legal profession or in legal education or research may be appointed to the function of judge of the Constitutional Court.

The Law on the Constitutional Court stipulates an age limit for appointment as a judge of the Constitutional Court, which is 65.

According to the Constitution, for the duration of their term the judges of the Constitutional Court are irremovable and independent and subject only to the Constitution.

The expiration of the judge's term and the vacation of his or her functions is declared only in the case of:

a. death;
b. expiration of the term;
c. the judge's dismissal;
d. annulment of the appointment, which is only possible when the judge:

    - is unable to fulfil his duties because of ill health;
    - has not observed his oath or failed to fulfil his duties;
    - has been convicted by a court of an offence;
    - has allowed incompatibilities with his functions to arise.

The expiration of the 6-year term and the vacation of a judge's functions are declared exclusively by the Constitutional Court.

The judicial function is incompatible with any other public office or remunerated activity, except of a teaching or scientific nature. The legal provisions stipulate that the judges of the Constitutional Court must give up any activity in political parties or any other public organisation.

After taking the oath in front of the authorities that appointed them, the judges of the Constitutional Court elect its President by secret ballot.

2. Procedure

The procedure of the Court is governed by the Constitution, the Law on the Constitutional Court and the Code of Constitutional Jurisdiction.

Under the Constitution and the Law on the Constitutional Court, the following parties may petition the Constitutional Court:

- the President of the Republic of Moldova;
- the Government;
- the Minister of Justice;
- the Supreme Court of Justice;
- the Economic Court;
- the Prosecutor-General;
- a member of Parliament;
- a parliamentary group;
- the Popular Assembly of Gagauzia (Gagauzia-Yeri is an autonomous territorial unit of the Republic of Moldova).

The Constitutional Court exercises constitutional jurisdiction only upon appeal by the subjects provided for by the Law on the Constitutional Court.

Individual citizens have no right to petition the Constitutional Court. The Constitutional Court has no right to examine a case of its own motion either. Appeals are made to the Constitutional Court in written form, in the official State language, and submitted to its President with no charge for the procedure.

The examination of the appeal consists of 2 stages: the preliminary examination and the examination of the substance of the case.

If the appeal is in accordance with the conditions laid down by court procedure, in order to make a preliminary examination, the President of the Court arranges for the material to be transmitted to one or more judges of the Court, to a Secretary's subdivision or to an assistant judge.

The report regarding the preliminary examination must be presented not later than 60 days after registration of the application. In cases where a large amount of investigation is necessary, the time limit can be extended by 30 days.

After the preliminary examination of the appeal the rapporteur judges present the report to the Court. The members of the Court decide on the admissibility for examination of the substance of the case and its inclusion in the agenda in order to be examined at the public session. If the appeal is deemed admissible, the President of the Court designates a rapporteur judge and fixes the time-limit for examination and presentation of the report.

The rapporteur judge (or judges) prepares the file for the examination, transmits a copy of the appeal and of the annexed documents to the parties, studies the other party's written objections to the appeal, solicits the materials regarding the case from the relevant institutions, orders expert opinions and requests the opinion of the Scientific-Consultative Council concerning the examined question where appropriate and takes any other measures necessary.

When the file is made up, the rapporteur judge informs the members of the Court and the participants in the case of the place, date and time of the session not later than 10 days before the session itself.

The parties may appear before the Constitutional Court either in person or through their legal representatives. The representatives of a party can be lawyers, specialists and other persons.

The representatives' scope of authorisation is indicated in the letter of attorney.

Throughout proceedings the parties have equal procedural rights and access to all documents of the case file.

The Court can request and obtain additional information and documents necessary for the examination of the case. The Constitutional Court's requests and summonses are binding on all public authorities, officials, institutions and organisations. Non-fulfilment of the Court's requests is punishable by law.

In public plenary sessions the constitutional jurisdiction operates under the adversarial principle. The number of judges necessary to constitute a quorum is two-thirds of the judges. Each application is dealt with at a single hearing. The Court cannot examine another appeal until judgment concerning the current application has been pronounced or the case is suspended.

Where publicity could threaten the interests of the State and the public order, the Constitutional Court declares that the hearing will be held *in camera*.

After the examination of the case, the Court deliberates in private in the consultation room. Judges have no right to divulge the content of deliberations.

The Constitutional Court delivers judgments, decisions and opinions. Where the application is examined, judgment is handed down or an opinion is issued. If the problem is not resolved, a decision is adopted.

The issued opinions concern:

- proposals to revise the Constitution;
- reviewal of the circumstances which may justify the dissolution of Parliament, the suspension from office of the President of the Republic of Moldova or the interim office of the President of the Republic of Moldova;
- decisions regarding the constitutionality of parties etc.

Court rulings are adopted by a majority of the judges' votes. Judges do not have the right to abstain from deliberations or to refuse to vote. The President of the session votes last. Where there are equal numbers of opposing votes, the President has the casting vote.

Judgments and opinions are adopted on behalf of the Republic of Moldova. The judgments of the Constitutional Court cannot have retrospective effect, are final and cannot be appealed against.

Laws and other legal acts or some of their provisions become null and void from the moment that the Constitutional Court passes the appropriate decisions to that effect.

Reconsideration of a judgment or opinion is possible only on the Court's initiative through a decision adopted with the majority of votes of judges.

A judge whose opinion differs from the pronounced judgment or issued opinion can set out his point of view in written form. The judgments and opinions of the Constitutional Court, together with dissenting opinions if there are any, are published in "*Monitorul Oficial*" of the Republic of Moldova not later than 10 days after the date of their announcement.

3. Organisation

The Secretariat of the Constitutional Court is responsible for providing assistance in all informational, organisational, scientific and other such matters, for the preliminary appeal examination and for preparation of the file.

The Secretariat's rules, organisational structure and human resources are adopted by the Constitutional Court itself.

The head of the Secretariat is responsible for all the administrative work.

The personnel of the Secretariat consists of 20 people. (The Chancellery - 5 persons, the International Relations Section - 3 persons, the Legal Section - 4 persons, the Editorial Section - 3 persons, the law clerk, the Financial-Administrative Section - 4 persons).

The President of the Constitutional Court manages the financial and human resources of the Court.

The Constitutional Court has its own budget which is an integral part of the State budget. This is established each year by the Parliament within the State budget.

The Scientific-Consultative Committee also functions within the Constitutional Court.

III. Powers

In pursuance of Articles 135 and 141.2 of the Constitution and according to the procedures established by the Code of Constitutional Jurisdiction, the Constitutional Court:

undertakes, upon application, constitutional review of laws, regulations and orders of Parliament, Presidential decrees, decisions and orders of government, as well as international treaties to which the Republic of Moldova is party. This is *ex post facto* review. Any normative act as well as any international treaty to which the Republic of Moldova is a party is considered to be constitutional until the moment when its unconstitutionality is proved during the exercising of constitutional jurisdiction.

Only normative acts adopted after the entry into force of the new Constitution on 27 August 1994, are subject to the constitutional review.
The Constitutional Court considers only the problems falling within its jurisdiction. If in the examination process questions arise over which other organs have competence, the Court sends the materials to them. The Constitutional Court ascertains the limits of its competence itself. While undertaking the review of the contested normative act, the Court can deliver judgments concerning other normative acts whose constitutionality completely or partially depends on the constitutionality of the contested act.

During 1995-1997 about 128 normative acts of Parliament, the President of the Republic of Moldova and the government were subjected to constitutional review.

Constitutional review of international treaties was not undertaken.

The Constitutional Court also:

- interprets the Constitution. In the period of 1995-1997, articles of the Constitution were interpreted by the Court 11 times. The majority of interpretations concern the competence of public authorities and the principle of separation and collaboration of State powers;

- decides on initiatives aiming at revising the Constitution. In accordance with the Constitution the subjects empowered to initiate the constitutional review can present drafts of constitutional laws only if they are accompanied by the Constitutional Court's opinion. This shall be adopted through a vote by no less than 4 judges. In spite of the fact that the Court's opinions concerning the draft do not have binding force, in practice the Parliament is guided by them. To date the Court has expressed its opinion on 3 initiatives concerning the modification of the Constitution. One of the drafts, dealing with the new conditions for appointment to the function of judge in the judicial system, was adopted by Parliament;

- confirms the results of republican referenda. Before the establishment of the Constitutional Court of the Republic of Moldova there were no such referenda;

- confirms the results of parliamentary and presidential elections in the Republic of Moldova. In December 1996 the Court confirmed the results of the election of the President of the Republic of Moldova, elected in conformity with the Constitution's provisions. On 9 April 1998 the Court confirmed the results of the election of the Parliament of the Republic of Moldova;

- ascertains the circumstances justifying the dissolution of Parliament, the suspension from office of the President of the Republic of Moldova or the interim office of the President of the Republic of Moldova;

- resolves cases on the unconstitutionality of legal acts, as signalled by the Supreme Court of Justice;

- decides on matters relating to the constitutionality of political parties. To date there have been no such cases in the practice of constitutional review.

In order to guarantee the judges' irremovability, the Court is the only authority empowered to revoke the judge's immunity and release them from office.

The Constitution expressly determines the functions of the Constitutional Court, which can be neither increased nor limited through a law. Its functions can be modified only if the Constitution is changed accordingly.

Moldova

Identification: MDA-2000-1-003

a) Moldova / **b)** Constitutional Court / c) / d) 20.04.2000 / e) 16 / f) Interpretation of certain provisions of Articles 73, 82, 86, 94, 98, 100 and 101 of the Constitution / g) *Monitorul Oficial* (Official Gazette) / h).

Keywords of the systematic thesaurus:

3.4 **General Principles** - Separation of powers.
3.12 **General Principles** - Legality.
4.4.1 **Institutions** - Head of State - Powers.
4.4.1.2 **Institutions** - Head of State - Powers - Relations with legislative bodies.
4.4.1.5 **Institutions** - Head of State - Powers - International relations.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.5.8 **Institutions** - Legislative bodies - Relations with the executive bodies.
4.6.2 **Institutions** - Executive bodies - Powers.

Keywords of the alphabetical index:

Law, national budget / Head of State, guarantor of the Constitution / Government, resignation.

Headnotes:

Interpretation of Articles 73, 82, 86, 94, 98, 100 and 101 of the Constitution.

Summary:

The application by the President of the Republic with regard to the interpretation of certain provisions of Articles 73, 82, 86, 94, 98, 100 and 101 of the Constitution was the basis for considering whether the President of the Republic is empowered:

- when the government has resigned and parliament is dissolved, to adopt decrees of a general, binding nature in the socio-economic field in order to secure the proper functioning of the state, its economic security in particular and national security in general;

- when the government has resigned, to present to parliament for approval, by virtue of the right to initiate legislation, a draft budgetary law for the current year and to negotiate and sign international treaties in accordance with Article 86.1 of the Constitution;

- when the government has resigned following a motion of censure in parliament:

    - to appoint another government member to act as interim Prime Minister;
    - to appoint a provisional government until the members of the government are sworn in.

Having examined the arguments set out in the application and the case file, the Court found that the President of the Republic is not competent to adopt decrees of a general, binding nature in the socio-economic field, even if parliament has been dissolved and the government has resigned, because, according to Article 60.1 of the Constitution, parliament is the sole legislative authority of the state.

The Court also found that, even if the government has resigned, it is not only empowered but obliged to present the draft budgetary law to parliament for approval. Under no circumstances is the President of the Republic competent to submit a draft budgetary law to parliament.

With regard to the procedure for forming a government, set out in Article 98 of the Constitution, the Court found that, since the Constitution does not refer to the notion of a "provisional government", neither the Head of State nor parliament is competent to form a government.

As far as the resignation of the Prime Minister is concerned, the Court had previously ruled that, when the Prime Minister ceases his/her activity within the government, the President of the Republic must designate another government member to act as interim Prime Minister to discharge the latter's duties until a new government is in place.

In view of the above, the Constitutional Court ruled that the part of the proceedings referring to the interpretation of Article 101.2 of the Constitution concerning the competence of the President of the Republic, if the government has resigned, to appoint another government member to act as interim Prime Minister should be suspended.

According to Article 86.1 of the Constitution, the President of the Republic is empowered, on behalf of the Republic, to take part in negotiations, conclude international treaties and submit them to parliament for ratification within a certain period laid down by law.

The Court noted that, although treaties concluded by the President of the Republic do not have immediate legal force, since they only come into force if ratified by parliament, the Head of State is free to sign or to choose not to sign treaties, regardless of whether the government has resigned.

Languages:

Romanian.

Identification: MDA-2000-1-002

a) Moldova / **b)** Constitutional Court / c) / d) 11.04.2000 / e) 15 / f) Constitutionality of Articles 150.1 and 150.2 of the Electoral Code / g) *Monitorul Oficial* (Official Gazette) / h).

Keywords of the systematic thesaurus:

3.3.2 **General Principles** - Democracy - Direct democracy.
3.4 **General Principles** - Separation of powers.
4.4.1 **Institutions** - Head of State - Powers.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.9.1 **Institutions** - Elections and instruments of direct democracy - Instruments of direct democracy.

Keywords of the alphabetical index:

President of the Republic, guarantor of the Constitution / Referendum, consultative, legislative.

Headnotes:

Article 150 of the Electoral Code, set out in Act no. 480-XIV of 2 July 1999, sets out the procedure for adoption of an order or decree concerning the holding of a republican referendum.

According to paragraph 1 of the aforementioned article, within six months of receiving a proposal to initiate the referendum procedure, parliament has to adopt one of the following types of order:

- an order declaring that a referendum is to be held (at least sixty days after adoption of the order);
- an order rejecting a proposal by members of parliament or citizens that a referendum be held;
- an order on the solution of the problems forming the subject of the proposed referendum, which therefore does not take place.

Article 150.2 stipulates that an order rejecting a proposal that a legislative or consultative referendum be held requires a majority of the votes of elected members of parliament, and that an order rejecting a

proposal that a constitutional referendum be held requires a majority of two-thirds of the elected members.

Summary:

The application by the President of the Republic for the purpose of determining the constitutionality of Articles 150.1 and 150.2 of the Electoral Code was the basis for consideration of the question whether parliament can reject a referendum proposal put forward by the citizens or by the President of the Republic, and whether parliament is empowered to amend a bill tabled by the President of the Republic or by the citizens before making it the subject of a constitutional referendum.

Having examined the arguments set out in the application, the Constitutional Court noted that the disputed provisions of Articles 150.1 and 150.2 of the Electoral Code contravene Articles 2, 38, 77 and 88 of the Constitution, both by their content and in the meaning conferred on them by judicial practice, and prevent citizens from exercising their constitutional rights.

If parliament, under the terms of Article 150.1.b of the Electoral Code, rejects a referendum proposal by the citizens, it contravenes the provisions of Articles 2.1 and 39.1 of the Constitution. Rejection of an initiative of the people, in whom national sovereignty is vested and who are entitled to give their opinion on matters of national interest, constitutes a restriction of their constitutional right to express their will.

The provisions of Articles 75, 77, 88.f and 141.1.c of the Constitution, examined in their entirety together with the constitutional provisions concerning the status of the Head of State, indicate that the referendum is a legal instrument of the Head of State. The Constitution makes no provision for the placing of certain statutory restrictions on the President’s right to call a referendum.

Consequently, when the holding of a referendum on a revision of the Constitution is initiated by the citizens pursuant to Article 152 of the Electoral Code, or by the President of the Republic, parliament is not empowered to reject the proposal.

In the Constitutional Court’s opinion, the citizens and the President of the Republic are entitled to initiate the holding of any type of republican referendum in accordance with Articles 2.1, 38.1, 39.1, 75.1 and 88.f of the Constitution, which enshrine the principle of sovereignty and the people’s right to resolve by referendum, in conformity with the Constitution and the law, problems of the utmost importance to society or the state.

In view of the above, the Constitutional Court declared unconstitutional the phrase “or by the citizens” in Article 150.1.b of the Electoral Code, as well as the provisions of Article 150.2 of the Electoral Code.

Languages:

Romanian.

Identification: MDA-2000-1-001

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 11.01.2000 / **e)** 1 / **f)** Constitutionality review of some provisions of the Decree of the President of the Republic no. 930-II of 22 March 1999 and of the Electoral Code, in the wording of Law no. 480-XIV of 2 July 1999 / **g)** *Monitorul Oficial* (Official Gazette) / **h)**.

Keywords of the systematic thesaurus:

3.1 **General Principles** - Sovereignty.
3.3 **General Principles** - Democracy.
3.4 **General Principles** - Separation of powers.
3.12 **General Principles** - Legality.
4.5.7 **Institutions** - Legislative bodies - Relations with the Head of State.
4.9.1 **Institutions** - Elections and instruments of direct democracy - Instruments of direct democracy.
5.3.23 **Fundamental Rights** - Civil and political rights - Right to information.

Keywords of the alphabetical index:

Separation of powers / Republican referendum / Right of access to information / Substitute members of Parliament.

Headnotes:

The Constitution states that problems of utmost gravity or urgency confronting society or the state shall be resolved by referendum, and the President of the Republic is empowered to request the citizens of the Republic to express their will by way of referendum on matters of national interest (Articles 75 and 88.f).

The wording of the Constitution guarantees a person's right of access to any information of public interest (Article 34). The Constitution charges the public authorities with correlative obligations, such as: to inform citizens correctly not only on issues of public interest, but of personal concern as well, to guarantee the right to television broadcasting.

The office of the member of Parliament could be obtained, following the pronouncement of his mandate as vacant.

Summary:

A member of Parliament lodged an appeal with the Court for the constitutional review of the Decree of the President of the Republic regarding the unfolding of the republican-consultative referendum on the issue of changing the system of government in the Republic, as well as the constitutional review of Article 150.3 of the Electoral Code. Simultaneously, the President of the Republic referred to the Court claiming the constitutional review of the Law on the amendment and completion of the Electoral Code.

The member of Parliament argued that the Law ostensibly empowers the President of the Republic not only to initiate republican referenda, but also to issue Decrees on their unfolding, which exceeds the President's constitutional powers.

The Head of the State argued that the Parliament by passing the law encroached upon some provisions of the Constitution, having restricted the right of the subjects and even of the citizens entitled to initiate referenda by way of which the people could express their will on matters of national interest.

Taking into account that the Decree of the President of the Republic has ceased to have legal force at the date on which the application was lodged – 24 May 1999 and at the date of its examination - 11 January 2000, the Court found it had to suspend the process of constitutional review of the Decree in question.

The Parliament being the sole legislative authority of the state, the main power of which is passing the laws, which can be constitutional, organic or ordinary, the Court noted that the President of the Republic should not disregard parliamentary proceedings on the organisation of either a constitutional or legislative republican referendum.

The argument brought forward by the President of the Republic according to which the provisions of Article 47 of the Electoral Code violate the right of citizens to free access to information has been disclaimed by the Court on the following grounds.

The content of the right of access to information is deemed to be complex. Article 34 of the Constitution guarantees a person's right of access to any information of public interest, which includes: the right of a person to be promptly, correctly and clearly informed on the stipulated matters, particularly on actions undertaken by public authorities; free access to sources of public information; the possibility to receive radio and television programs directly and in the appropriate conditions; the obligation on public authorities to establish the appropriate financial and judicial conditions for free and thorough broadcast of any kind of information.

In securing the right of access to any information, the Constitution charges the public authorities with correlative obligations, such as: to inform citizens correctly not only on matters of public interest, but of personal concern as well; to guarantee the right to television broadcasting. All the rulings and details laid down by the legislator through the provisions defined in Article 47.3 of the Electoral Code violate neither a

person's right of access to information nor the obligation on public authorities to ensure that citizens are correctly informed.

The Court dismisssed, therefore, the argument of the President of the Republic pursuant to which the republican referendum could not be held on the same day as parliamentary, presidential or general local elections, on account of a violation of the subjects' right to initiate referenda. Relying on Article 72.3.b of the Constitution, the Parliament should regulate by organic law the organisation and carrying out of the referendum, which it did by the Law subjected to constitutional review.

Being an exclusive prerogative of the Parliament, the regulation of the organisation of a referendum and its unfolding cannot be qualified as a restriction of the President's power relative to the initiation of referenda.

While exercising its power of constitutional review, the Court held points 2, 8, 9.1, 9.2, 10, and 15 of the Law on the amendment and completion of the Electoral Code to be constitutional, as well as Article 150.3 of the Electoral Code.

The Court pronounced as unconstitutional points 3 and 4 and the syntagm "the substitute members of Parliament" of points 5.1, 6.2 and 6.3 of the Law on the amendment and completion of the Electoral Code.

The process aimed at the constitutional review of the Decree of the President of the Republic regarding the republican consultative referendum on the issue of changing the system of government in the Republic was suspended.

Languages:

Romanian.

Identification: MDA-1999-3-005

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 21/12/1999 / **e)** 71 / **f)** Constitutionality of certain provisions of Act no. 186-XIV of 06/11/1998 and Act no. 295-XIV of 19/02/1999 / **g)** *Monitorul Oficial al Republicii Moldova* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.1 **Sources of Constitutional Law** - Categories - Written rules - Constitution.
2.1.1.11 **Sources of Constitutional Law** - Categories - Written rules - European Charter of Local Self-Government of 1985.
3.3 **General Principles** - Democracy.
3.8.1 **General Principles** - Territorial principles - Indivisibility of the territory.
4.6.9.1.1 **Institutions** - Executive bodies - Territorial administrative decentralisation - Principles - Local self-government.
4.6.9.2.2 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Municipalities.
4.6.11 **Institutions** - Executive bodies - The civil service.
4.8.2.4 **Institutions** - Federalism and regionalism - Institutional aspects - Administrative authorities.
4.9.1 **Institutions** - Public finances - Principles.
3.12 **General Principles** - Legality.

Keywords of the alphabetical index:

Self-government, co-operation, principles / Administration of public finances / Local council / County council / Mayor / Chief county administrative officer / Unit, territorial administrative.

Headnotes:

Article 109.1 of the Constitution stipulates that public administration in the administrative/territorial units shall be based on the principles of local self-government ["autonomy"], the decentralisation of public

services and the eligibility of local public administration authorities, and of consulting the citizenry on local problems of special interest.

Elected local councils and mayors are the public administrative authorities through which local self-government in villages and towns is exercised. They operate under the law as autonomous administrative authorities and are assigned the task of regulating public affairs in villages and towns. The methods by which local councils and mayors are elected and their powers are established by law (Article 112 of the Constitution).

Under Article 72.3.f of the Constitution, Parliament is empowered to pass organic laws governing the organisation of local administration and of the national territory, and the general functioning of local self-government ["autonomy"].

Act no. 186-XIV/1998 on local public administration (Section 2.1) defines and regulates the organisation and functioning of public administrative authorities in the administrative/territorial units.

Summary:

The Court was asked to rule on the constitutionality of Sections 19.1 and 36.1 of the above mentioned Act where they stipulate that terms of office of local councils and mayors may be extended in exceptional circumstances by organic law; on the term "in exceptional circumstances" in Section 37.2; on Sections 33, 40, 41 and 44; on the provisions in Chapter X on the management of public finances by county councils; on the concepts of "mayor", "county council" and "chief county administrative officer" [prefect] in Act no. 186-XIV/1998 on local public administration; and on Act no. 295-XIV/1999 on the extension of the terms of office of village (communal) and town (municipal) councils, and mayors.

The applicant considered that in passing the above legislation, Parliament failed to take account of the explicit provisions of Articles 2, 38, 54, 72, 109-113 and 131 of the Constitution.

The Court noted, in examining the basis of the applications, that they concerned the status, institutions, functions, rights and powers of the bodies responsible for local public administration under Act no. 186-XIV. It found, in its examination of the issues raised by the applicant, that it was necessary to apply the basic principles of local self-government.

Under Article 2 of the European Charter of Local Self-Government, the constitutional and legal foundation for local self-government entails its recognition in principle in domestic legislation and, as far as possible, in the Constitution. This is reflected in Chapter VIII of the Moldovan Constitution, entitled "Public administration", establishing the legal nature and fundamental principles of local public administration.

Local self-government denotes the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

The Court found that the Constitution does not include rules applicable in a differentiated manner to the various authorities responsible for local public administration. Under Article 113.3 of the Constitution, the interrelationships of public authorities must be based on the principles of self-government ["autonomy"], legality and co-operation in solving common problems. In order to build on the provisions of the Constitution, Act no. 186-XIV regulates the organisation and functioning of public administrative authorities in the administrative/territorial units.

In the light of the constitutional provisions and relevant international instruments, the Court was not convinced by the applicant's argument that mayoral functions could not be performed by the deputy mayor or clerk of the council, and that mayors were not entitled to delegate their responsibilities.

Article 112 of the Constitution defines the institution of mayorship as an autonomous administrative authority and stipulates that mayors shall regulate public affairs in villages and towns. The institution of mayorship is an expression of the principle of local self-government. Mayors have powers in relation to public self-government that are underpinned by the statutory provisions for their election and confirmation in office.

Section 5 of Act no. 186-XIV stipulates that local councils, as deliberative authorities, are the authorities of local self-government in villages (communes) and towns (municipalities), and that mayors are the executive authorities. Section 52.1 provides that mayors and their teams shall comprise the executive organ of the local council - the "town hall".

Only local councils and mayors are thus recognised as authorities. Empowered by statute to issue binding regulations, they exercise their powers at local level through the public services. The organic law refers to these administrative services as the "town hall".

Application of the principles of local self-government, as set out in Article 109 of the Constitution, requires that local communities - villages (communes), towns (municipalities) and counties - have freely elected representative bodies. Under Section 7.1 of Act no. 186-XIV, councils are elected in each county and in the municipality of Kichinev as public administrative authorities to co-ordinate the activities of local councils in order to deliver public services for the county or municipality.

The concept of the county is identical to that of the district in Article 110 of the Constitution and designates the second tier of territorial administration. In its Decision no. 50 of 5 October 1999 the Court recognised that the concepts of village, town and district were constitutionally equivalent to those of commune, municipality and county. Relations between public authorities at county level and at local level are governed by the principles of self-government, legality and co-operation in solving common problems. In exercising their functions, local public administrative authorities enjoy the independence guaranteed them by the Constitution and other laws. The Court held that there is no legal basis for declaring the concept of a "county council" to be unconstitutional.

The Court was not convinced by the applicant's arguments contesting the constitutionality of the provisions of Act no. 186-XIV Chapter X, regulating relationships for the management of public funds by county councils. Moreover, it emphasised that local authorities' financial responsibilities were crucial to ensuring that they were genuinely self-governing.

Under Sections 12 and 107 of Act no. 186-XIV, the government appoints by order - which is then confirmed by the President of the Republic - a chief administrative officer [prefect] for each county, for the self-governing territorial entity with special status, and for the municipality of Kichinev. These officials are the government's direct representatives in the local administrative units. They run the public services for which ministries, departments and other central public authorities devolve administrative responsibility, and they ensure compliance with the law, presidential decrees, government orders and the regulations issued by specialised central authorities.

Application of the principle of local self-government depends on the devolution of public services and centralised administrative functions and on the lawful supervision by government of the activities of local public administrative bodies. The Court held that the system of chief administrative officers was part of the organisation of local administration and was not at odds with the constitutional principles of local self-government, confirming that the provisions in Act no. 186-XIV for the institution of chief administrative officer were constitutional.

Sections 19.1, 36.1 and 37.2 of Act no. 186-XIV provide that the terms of office of local councils and mayors may, in exceptional circumstances, be extended under organic law and that a deputy mayor or clerk of council may perform the functions of mayor. The Court noted that the Act's explicit failure to define what constitutes exceptional circumstances inevitably results in violations of Article 38.1 of the Constitution, stipulating that the foundation of state power is the will of the people. The people's will is to be made known through free elections held at regular intervals and based on universal, equal, direct, secret and free suffrage. Under Article 54.1 of the Constitution, the exercise of this right may be restricted only under the law and only as required for the defence of national security, public order, health or morals, or citizens' rights and freedoms, for the conduct of investigations in criminal cases, or for preventing the consequences of a natural calamity or technological disaster.

The fact that these provisions of Act no. 186-XIV are unconstitutional also renders unconstitutional Act no. 295-XIV, which, on the basis of Act no. 186-XIV, provides for the terms of office of village (communal) and town (municipal) councils and mayors to be extended until (respectively) newly elected councils have been declared to be legally constituted or the election of new mayors has been officially validated. It should be noted that Act no. 295-XIV does not define the concept of exceptional circumstances which, on 19 February 1999 (the date the Act was passed), was used to justify extending the terms of office of local councils and mayors. This Act, which has remained in force for an unspecified period, has led to legal

uncertainty about whether local councils and village (communal) and town (municipal) mayors are lawfully mandated. Act no. 295-XIV is unconstitutional inasmuch as its single section violates Articles 38, 54, 109 and 112 of the Constitution.

Exercising its function of ruling on matters of constitutional law, the Court declared unconstitutional the provisions of Sections 19.1 and 36.1 where they stipulate that terms of office of local councils and mayors may be extended in exceptional circumstances by organic law; the words "in exceptional circumstances" in Section 37.2 of Act no. 186-XIV/1998 on local public administration; and Act no. 295-XIV/1999 on the extension of the terms of office of village (communal) and town (municipal) councils and mayors. The Court recognised the constitutional nature of Sections 33, 40, 41 and 44, the provisions in Chapter X on the management of public finances by county councils, and the concepts of "mayor", "county council" and "chief county administrative officer" in Act no. 186-XIV/1998.

Cross-references:

Constitutional Court Decision no. 50 of 05/10/1999.

Languages:

Romanian, Russian.

Identification: MDA-1999-3-004

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 03/11/1999 / **e)** 57 / **f)** Interpretation of Articles 75, 141.2 and 143 of the Constitution / **g)** *Monitorul Oficial al Republicii Moldova* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

1.4.3 **Constitutional Justice** - The subject of review - Constitution.
2.1.1.1 **Sources of Constitutional Law** - Categories - Written rules - Constitution.
2.3.5 **Sources of Constitutional Law** - Techniques of interpretation - Logical interpretation.
3.1 **General Principles** - Sovereignty.
3.3.2 **General Principles** - Democracy - Direct democracy.
3.9 **General Principles** - Rule of law.
3.12 **General Principles** - Legality.
4.1.1 **Institutions** - Constitution-drafting body - Procedure.
4.4.1 **Institutions** - Head of State - Powers.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.6.7 **Institutions** - Executive bodies - Relations with the legislative bodies.
5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.

Keywords of the alphabetical index:

Parliament, supreme representative body / Head of State, guarantor of the Constitution / Referendum, conduct / Constitution, amendment, draft submission.

Headnotes:

Article 60.1 of the Constitution stipulates that Parliament is the supreme representative body of the people and the sole legislative authority of the state. Articles 66.a and 66.b of the Constitution define the first two basic powers of Parliament as being "to pass laws" and "to declare the holding of referenda".

Article 75.1 of the Constitution provides that problems of utmost gravity or urgency confronting society or the state shall be resolved by referendum. Accordingly, under Article 88.f of the Constitution, the President of the Republic can request the citizens to express their will by way of referendum on matters of national interest.

Summary:

A number of members of Parliament applied to the Constitutional Court for a ruling on the interpretation of Articles 75, 141.2 and 143 of the Constitution. They asked whether, when the President of the Republic initiated the procedure for amending the Constitution by referendum, there had to be a six-month interval between the start of the procedure and the holding of the referendum, and whether the President was empowered under the Constitution to call a referendum, or simply to initiate the procedure for doing so - the actual holding of the referendum, and the allocation of funding to pay for it, depending on a decision by Parliament.

The Constitutional Court found that amending certain constitutional provisions, for whatever reasons and by whatever procedures, without applying Articles 141, 142 and 143 of the Constitution, could in fact constitute a revision of the Constitution and might thus be in breach of it.

Article 141.1 of the Constitution contains an exhaustive list of those entitled to initiate a revision of the Constitution.

Article 141.2 of the Constitution stipulates that draft constitutional legislation may only be tabled in Parliament if the Constitutional Court issues an appropriate recommendation supported by at least four judges. Having studied these provisions, the Court found that the Constitution was framed in such a way as to stipulate (a) who is entitled to initiate constitutional revision, and (b) that only Parliament can effect such revision.

Article 142 of the Constitution uses two criteria for fixing the limits of any revision: its purpose and the circumstances in which it is sought. Under the first, a revision may, on the one hand, be considered inadmissible *a priori* if it could compromise the democratic values of the state (under Article 142.2 of the Constitution no revision shall be allowed if it results in the suppression of the fundamental rights and freedoms of citizens, or of the guarantees of those rights and freedoms). On the other hand, provisions regarding the sovereignty, independence and unity of the state, as well as those concerning its permanent neutrality may be revised only by referendum based on a majority vote of registered voting citizens (Article 142.1 of the Constitution). According to the second criterion, there are circumstances (the existence of a state of national emergency, martial law or war) in which no constitutional revision is permissible (under Article 142.3 of the Constitution).

Article 143 of the Constitution sets out clearly and precisely the procedure for constitutional revision - a prerequisite for the smooth functioning of constitutional institutions.

The following are thus stipulated:

- the body entitled to propose constitutional revision;
- the body that must vote on such proposals;
- the number of votes needed for a proposal to be adopted.

It is clear from an analysis of Article 143 of the Constitution that Parliament is the body empowered to revise it and that it requires no special confirmation of this power. None the less, there are differences between the process of debating and adopting a bill or proposal for constitutional revision and that of debating and adopting other types of legislation: a constitutional revision can only be passed on a two-thirds majority of members of Parliament, and only after at least six months have elapsed from the submission of the revising initiative.

The Court pointed out that the procedure for constitutional revision combines representative democracy (in Parliament) with direct democracy (by referendum).

A parliamentary decision to revise the Constitution cannot take effect until ratified by a referendum, which under Article 142.1 of the Constitution is mandatory and must always follow the passing of the revision bill or proposal by Parliament.

Article 75 of the Constitution stipulates that the most important problems confronting society and the state are to be submitted to referenda, which thus constitute a direct expression of the popular will. A referendum can concern either draft legislation, when it is declared by Parliament in accordance with

Article 66.b of the Constitution, or matters of national interest on which the people are asked to express their will, when it is initiated by the President under the powers invested in him by Article 88.f of the Constitution.

On the basis of the wording of Article 88 of the Constitution, stipulating that the President may ask the citizens to express their will by way of referendum on matters of national interest, the Constitutional Court holds that the intention in framing the Constitution was for the President to be empowered to go directly to the electorate only in relation to major problems confronting the country, and not in order to seek approval or rejection of legislation seeking to amend the Constitution.

The Court noted that the provisions of Article 75.2 of the Constitution, under which decisions passed in consequence of the results produced by referendum have supreme legal force, do not affect the procedure for constitutional revision laid down in Articles 141-143 of the Constitution and do not offer any means of amending the Constitution other than that laid down in those articles.

With regard to the allocation of funding for referenda, the Court found that this was a matter for Parliament because it is empowered, under Article 72.3.b of the Constitution, to pass laws for the organisation and carrying out of referenda, and the allocation of funding clearly comes under this heading.

Exercising its function of ruling on matters of constitutional law, the Court found that only Parliament may revise the Constitution, either directly or by calling a referendum in accordance with the procedure laid down in Article 66.b of the Constitution, subject to the provisions of Articles 75, 141, 142 and 143 of the Constitution.

Parliament may only revise the Constitution's provisions concerning the sovereign, unitary, independent and indivisible nature of the state and its permanent neutrality if the revision is subsequently approved in a referendum by a majority vote of registered voting citizens.

Under Article 141.1.c of the Constitution, the President of the Republic may instigate the constitutional revision procedure in Parliament, by submitting it draft constitutional amendments, only if the Constitutional Court has issued an appropriate recommendation supported by at least four judges.

It is up to Parliament to decide on the allocation of financial resources for the holding of the referendum.

Languages:

Romanian, Russian.

Identification: MDA-1999-2-003

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 18/05/1999 / **e)** 27 / **f)** Constitutionality of certain Sections of Act no. 156-XIV of 14 October 1998 / **g)** *Monitorul Oficial al Republicii Moldova* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.8 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Economic, Social and Cultural Rights of 1966.
2.1.1.14 **Sources of Constitutional Law** - Categories - Written rules - Other international sources.
5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.2.4.1.3 **Fundamental Rights** - Civil and political rights - Equality - Scope of application - Social security.
5.3.12 **Fundamental Rights** - Economic, social and cultural rights - Right to social security.
5.3.14 **Fundamental Rights** - Economic, social and cultural rights - Right to a sufficient standard of living.

Keywords of the alphabetical index:

Social security pension / Social security contributions.

Headnotes:

The practice of deducting, from the pensions of retired people with earnings on which social security contributions are payable, the amount by which the pension exceeds twice the level of the minimum retirement pension, if it limits their right to earn a living, in effect deprives retired people of equality in exercising their right to work, and in their entitlement to a retirement and invalidity pension.

Summary:

Entitlement to retirement, invalidity and survivor's pensions is governed by the State Social Security Pensions Act, no. 156-XIV of 14 October 1998. The Act stipulates that a deduction shall be made from the pension of retired people with earnings on which social security contributions are payable, equivalent to the amount by which their pension exceeds twice the level of the minimum retirement pension.

Mr Alexei Potânga, parliamentary lawyer, applied to the Constitutional Court for a ruling on the constitutionality of certain provisions of the Act of 14 October 1998, in particular Section 17 on the payment of retirement pensions, which, he claimed, was in breach of Article 47 of the Constitution, concerning the right to receive social assistance and protection.

Under Section 17 of the contested Act, a deduction is made from the pensions of retired people with earnings on which social security contributions are payable, equivalent to the amount by which their pension exceeds twice the level of the minimum retirement pension. The applicant claimed that the right to receive a pension was a constitutional entitlement which could not be restricted, and that the fact that retired persons received an income, enabling them to maintain a decent standard of living, did not constitute grounds for limiting what was a personal financial right.

The Constitutional Court took into consideration the situation in the country with regard to the safeguarding of citizens' basic rights, and the premise that problems with social security are not the fault of the public. Entitlement to pension cover is governed by Act no. 156-XIV, which defines a social insurance pension as a sum of money payable to the insured person in accordance with the Act and in relation to the obligation to contribute to the state social insurance scheme. This scheme represents a statutory system of social welfare, within which citizens can exercise their right to a pension. That right is directly dependent on the nature of their socially useful activity, and is exercised in accordance with the relevant legislation through the public scheme of insurance against the social risks of loss of capacity to work (because of age or disability) and loss of livelihood.

The following types of pension are provided under the state insurance scheme:

- retirement pension;
- invalidity pension;
- survivor's pension.

A retirement pension is payable to persons who have been employed or engaged in other activities recognised by the law as socially useful, when they reach retirement age, and is based on contributions. It is paid by a pension fund.

Elderly people who are unfit for work and are not entitled to retirement pension can claim a social pension as a minimum subsistence income.

Under the same Act, social insurance contributions are specifically earmarked, and the pension fund's receipts may be used only for the payment of pensions. Social insurance contributions to the pension fund are compulsorily deducted from wages. By contributing a statutory proportion of their pay, wage-earning members of the public are directly involved, via the compulsory social insurance scheme, in constituting the state's social insurance budget.

Under Article 47.2 of the Constitution, citizens have the right to receive a pension fixed by statute (Act no. 156-XIV). The terms of Sections 17, 23 and 50.4 of the Act in question are in breach of the Constitution.

In the grounds for its decision, the Court states that these Sections violate Articles 1.3, 16.2, 43.1, 43.2, 47.2 and 54 of the Constitution; Article 7 of the Universal Declaration of Human Rights (stipulating that "all are equal before the law and are entitled without any discrimination to equal protection of the law"); and Article 2.2 of the International Covenant on Economic, Social and Cultural Rights (under which the States Parties undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind). Where the application of Sections 17, 23 and 50.4 of the contested Act limits the right of retired persons to earn a living, it is in effect discriminatory as regards the exercise of the right to work, and retirement and invalidity pension entitlement.

Under Article 140 of the Constitution, Sections 1.3.a, 1.3.c, 26.4 and 26.5 of the Constitutional Court Act and Articles 62 and 68 of the Code of Constitutional Jurisdiction, the Court declared Sections 17, 23 and 50.4 of Act no. 156-XIV of 14 October 1998 to be unconstitutional.

Languages:

Romanian, Russian.

Identification: MDA-1999-2-002

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 06/05/1999 / **e)** 24 / **f)** Constitutionality of Section 20.2 of the Act Providing for the Special Status of Gagauzia/Gagauz-Yeri, no. 344-XIII of 23 December 1994 / **g)** *Monitorul Oficial al Republicii Moldova* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

3.4 **General Principles** - Separation of powers.
3.8.1 **General Principles** - Territorial principles - Indivisibility of the territory.
4.7.4 **Institutions** - Jurisdictional bodies - Organisation.
4.8.4.2.1 **Institutions** - Federalism and regionalism - Distribution of powers - Implementation - Distribution *ratione materiae*.
5.2.9.8 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Independence.

Keywords of the alphabetical index:

Independence of courts / Judge, appointment / Independence, powers, representative bodies.

Headnotes:

Under the Constitution, members of the judiciary, including the President and members of the Supreme Court of Justice, are appointed by the President of the Republic or the parliament following a proposal submitted by the Judicial Service Commission.

The basic principle on which the state is organised and run is that the legislature, the executive and the judiciary shall be separate (Article 6 of the Constitution).

Areas in the south of the Republic of Moldova may be granted special forms and conditions of autonomy in accordance with special provisions as to their status enacted in the form of organic laws (Article 111 of the Constitution).

Gagauzia's exercise of its powers is circumscribed by the Constitution.

The Judicial Service Commission appoints, transfers, promotes and disciplines judges (Article 123 of the Constitution).

Summary:

The Minister of Justice applied to the Court for a ruling on the constitutionality of Section 20.2 of the Act Providing for the Special Status of Gagauzia/Gagauz-Yeri, which stipulates that members of the judiciary

in Gagauzia shall be appointed by Order of the President of the Republic following a proposal by the People's Assembly *(Halc Toplosu)* of Gagauzia and with the approval of the Judicial Service Commission.

The applicant maintained, however, that, under the Constitution, members of the judiciary, including the President and members of the Supreme Court of Justice, are appointed by the President of the Republic or the Parliamentary Speaker following a proposal from the Judicial Service Commission.

Under the principle that the legislature, the executive and the judiciary are separate, each occupies its own sphere within the overall authority of the state and has its own distinguishing powers. Each has its own prerogatives and none may interfere in the others' areas of responsibility.

Public administration in the administrative and territorial entities, which is an executive function, is based on the principles of local self-government, the decentralisation of public services, the election of local authorities, and public consultation on local problems of special interest (Chapter VIII of the Constitution).

Gagauzia/Gagauz-Yeri is an administrative and territorial entity with special status under organic legislation (Act no. 344-XIII of 23 December 1994).

The Court held that the People's Assembly is a representative authority that has law-making powers within its sphere of responsibility, and is subject, in its activities, to the general principles laid down in the Constitution.

However, the judiciary throughout the Republic - including the territory of Gagauzia - exercises its responsibilities solely within the bounds fixed for it.

Genuine justice depends upon the principle of judicial independence (see Articles 114 and 116.1 of the Constitution), and the relationship between the judiciary and the other public authorities is significant in this respect. Judges cannot be subordinate to or dependent upon these other authorities, whatever their nature or their rank in the hierarchy of the state.

Members of the judiciary are appointed by the President of the Republic or the Parliamentary Speaker following a proposal from the Judicial Service Commission. The latter is the only body constitutionally empowered to propose to the President of the Republic or the Parliamentary Speaker judicial candidates for appointment, transfer or promotion.

The Court held that the Constitution accorded powers in this sphere exclusively to the Judicial Service Commission and not to other bodies.

Likewise, it considered that, when the Constitution was adopted, the legislature - in order to safeguard the independence of the judiciary - laid down a single principle, applicable throughout the Republic, that judges should be appointed by the President of the Republic or by the Parliament following a proposal from the Judicial Service Commission.

The Court therefore ruled that Section 20.2 of the Act Providing for the Special Status of Gagauzia/Gagauz-Yeri is unconstitutional.

Judges Nicolae Kisseev and Ion Vasilati delivered a dissenting opinion, maintaining that Act no. 344-XIII of 23 December 1994 complies with the Constitution.

They held that Section 20.2 of the Act, which stipulates that the approval of the Judicial Service Commission is needed, cannot be construed as either unconstitutional or an interference in the activity of the Judicial Service Commission, but is simply a provision whereby the People's Assembly of Gagauzia makes use of one aspect of the particular status accorded to it under special legislation pursuant to Article 111 of the Constitution.

Significantly, the dissenting judges considered that Section 25 of the Act no. 344-XIII of 23 December 1994 makes the Republic the guarantor for Gagauzia's exercising of the powers attributed to it.

Languages:

Romanian, Russian.

Identification: MDA-1999-2-001

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 04/05/1999 / **e)** 21 / **f)** Constitutionality of Rule 76.2 of the Rules of Parliamentary Procedure adopted under the Laws and Resolutions (Voting Procedure) Act, no. 797-XIII of 2 April 1996 / **g)** *Monitorul Oficial al Republicii Moldova* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

2.3.5 **Sources of Constitutional Law** - Techniques of interpretation - Logical interpretation.
3.3 **General Principles** - Democracy.
3.12 **General Principles** - Legality.
3.19 **General Principles** - Reasonableness.
4.5.6 **Institutions** - Legislative bodies - Law-making procedure.
4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.

Keywords of the alphabetical index:

Parliament, voting procedure / Parliament, speaker, powers.

Headnotes:

The parliament is empowered under Article 72.1 of the Constitution to pass constitutional, organic and ordinary laws. Article 74 of the Constitution stipulates the means by which laws and resolutions shall be passed. Organic laws, i.e. laws governing state authorities, require the vote of a majority of the members after at least two readings; ordinary laws and resolutions are passed by a majority of the votes cast by the members present.

Constitutional laws are aimed at revising the Constitution and require a majority of two-thirds of the members (Articles 72.2 and 143.1 of the Constitution).

The process by which the members consider legislation in parliamentary session is governed by the Rules of Parliamentary Procedure, adopted under Act no. 797-XIII of 2 April 1996. Thus Rule 75 lays down the voting procedure for (constitutional, organic and ordinary) laws and resolutions, and Rule 76.2 stipulates that the Parliamentary Speaker shall have a casting vote if the House is evenly split in a vote on an ordinary law or resolution.

Summary:

The Court was asked to rule on the constitutionality of Rule 76.2 of the Rules of Parliamentary Procedure, under which the Parliamentary Speaker has a casting vote on ordinary laws and resolutions. Citing the rule that each member of parliament is entitled to a single vote, the applicant argued that the contested provision was unconstitutional.

The Court found that, under Article 64.1 of the Constitution, the organisation and functioning of parliament are determined by internal rules, and that parliament adopted such rules under Act no. 797-XIII of 2 April 1996.

The problem raised by the applicant was considered from two angles: in relation to the voting rights and powers of the Parliamentary Speaker, and to the particular requirements of the voting procedure for ordinary laws and parliamentary resolutions.

The Court held that one of the authorities of parliament is its Speaker, who, under Article 64.2 of the Constitution, enjoys special status.

At the same time, under Rules 10 and 12 of the Rules of Parliamentary Procedure, the Speaker has political and administrative powers, including the right to take part in debates and to vote.

The Court held that, in accordance with the voting procedure and the rules of democracy, the opinion of the majority prevails over that of the minority.

Articles 74 and 143.1 of the Constitution on the procedure for passing constitutional and organic laws and resolutions were confirmed in the Rules of Parliamentary Procedure (Rule 75). But there was no legislative stipulation on the means by which ordinary laws and resolutions were to be passed in the case of a split vote. Seeing this as a loophole in the law, parliament laid down, in the Rules of Parliamentary Procedure, that in such cases the Speaker should have a casting vote.

The Court found that the contested Rule 76.2 of the Rules of Parliamentary Procedure is unconstitutional. It justified this conclusion on the basis that members' votes are by nature personal, in general public, freely expressed and of equal weight, regardless of the members' age, status or office and of whether they belong to the majority or the minority in the House. The Court made the point that to give the Speaker a casting vote was to risk undermining the principle of impartiality that must underpin his or her activities.

It held, however, that it was reasonable to interpret the constitutional provisions on the passing of ordinary laws and resolutions, under which a majority vote of the members present is required (Article 74.2 of the Constitution), as implying that a bill or motion falls if it does not receive a simple majority of the votes (even if equal numbers of votes are cast for and against).

The Court therefore found that Rule 76.2 of the Rules of Parliamentary Procedure is unconstitutional.

Languages:

Romanian, Russian.

Identification: MDA-1998-1-003

a) Moldova / **b)** Constitutional Court / **c)** Plenary / **d)** 26/02/1998 / **e)** 9/1998 / **f)** / **g)** *Monitorul Oficial of the Republic of Moldova* (Official Gazette), 03.1998 / **h)** .

Keywords of the Systematic Thesaurus:

4.5.6 **Institutions** - Legislative bodies - Law-making procedure.
4.5.8 **Institutions** - Legislative bodies - Relations with the Head of State.

Keywords of the alphabetical index:

Law, promulgation / Decree, presidential / Promulgation, refusal by Head of State.

Headnotes:

The Constitution enables the President to send back to the Parliament a law with his objections for its re-examination.

Such objections shall be submitted to Parliament in writing. They do not, however, have to be in the form of a decree.

Summary:

On 26 February 1998, at an open plenary session, the Constitutional Court examined the appeal of the Parliamentary deputy Victor Cecan, who solicited the interpretation of some provisions of Article 93.2 of the Constitution. The interpretation of this article, which allows the president to send a law back to the parliament for its further examination if he has any objections to it, was necessary because the kind of law concerned (decrees, intercession, letter etc.) is not expressly stated in Article 93.2 of the Constitution.

Upon examination of the appeal, the constitutional Court held that the return of the adopted law to the parliament for re-examination taking into account the President's objections meant in effect that the Head of State had refused to promulgate the law. This refusal to promulgate the law was completed by the President providing written reasons for the refusal.

The Constitutional Court delivered this Judgment based on the following considerations.

According to Article 74.3 of the Constitution the laws adopted by Parliament, in order to be promulgated, are transmitted to the President of the Republic of Moldova. The law's promulgation is the final act of the legislative process and falls exclusively within the competence of the Head of State. This competence is directly defined by Article 93.1 of the Constitution.

Clearly the Head of State must have the possibility of examining the law, in order to exercise his responsibilities in this quality, to ensure the public authorities' function is quite obvious. That is why under Article 93.2, the Constitution permits the President of the Republic of Moldova, in case of any objections to a law, to send it to the Parliament not later than 2 weeks for its reexamination. Only in case when the Parliament maintains its anterior adopted judgment, the President promulgates the law.

Actually, the text of Article 93 of the Constitution does not provide the way, through which the Head of State sends the law to the Parliament for its reexamination. At the same time the Constitutional Court does not support the thesis of the appeal, according to which, the transfer of the law to the Parliament for its reexamination should be done through the Presidential decree. According to Article 94.1 of the Constitution, the decrees, issued by the President of the Republic of Moldova, are obligatory to be executed on the whole territory of State and as a rule have a normative character. The Head of State' objections to a law, indifferently of their nature, are not obligatory for Parliament. This results from the text of Article 93.2 of the Constitution. It stipulates the Parliament's right to maintain the previous decision during the process of the law's reexamination. The Constitutional Court considers that the law's transfer of the President of the Republic of Moldova with his objections to the Parliament for the reexamination, actually, means the rejection by the Head of State to promulgate the law.

Thus, in order to be reexamined, through a written application, the President of the Republic of Moldova has the right to send the laws with his objections to the Parliament.

Languages:

Moldovan.

Identification: MDA-1998-1-002

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 03/02/1998 / **e)** 1/1998 / **f)** / **g)** *Monitorul Oficial of the Republic of Moldova* (Official Gazette), 02.1998 / **h)** .

Keywords of the Systematic Thesaurus:

3.20 **General Principles** - Equality.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.5.4 **Institutions** - Legislative bodies - Organisation.
4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.

Keywords of the alphabetical index:

Parliament, internal regulation / Parliamentary group / Parliament, free mandate / Parliament, regulatory autonomy.

Headnotes:

The Parliament has the right to establish its own method of internal organisation. This includes the power to fix a deadline for the composition of the parliamentary groups.

The right to become or not to become a member of a parliamentary group is a personal decision of each member of the Parliament.

Summary:

Upon the appeal of a member of Parliament, the Constitutional Court examined the constitutionality of Articles 4.3 and 4.4 of the Parliament's Regulations, according to which parliamentary groups are formed within 10 days after the new parliament has been elected. The establishment of other groups for the duration of the Parliament's mandate is not admissible. The applicant considers that the parliamentary groups benefit from the additional technical means necessary for the groups' activity and that the groups determine the composition of the permanent Bureau, the parliamentary committees and the agenda. As for the deputy who does not belong to a parliamentary group, he has no such possibility. In fact, he has no possibility of executing freely his deputy's mandate. This contradicts Article 68 of the Constitution, according to which during his term of office, the deputy is at the people's service. Any mandate under which the deputy is compelled to obey his electors' instructions is considered void.

Studying the parties' arguments, the norms of the Constitution and international practice, the Constitutional Court came to the conclusion that the method of the establishment and operation of the parliamentary groups is based on the principle of the regulatory autonomy of Parliament. The initial Parliamentary election of any parliamentary group has an optional character and not an imperative one. Where a deputy does not participate in at least at one group, this does not mean that he is obliged to adopt any decision against his own will.

Taking into consideration the above reasons, the Constitutional Court decided to dismiss the case, stating that the establishment of the method of organisation and development of the Parliament's activities is undertaken at its own discretion through the execution of its main competences.

Languages:

Moldovan.

Identification: MDA-1998-1-001

a) Moldova / **b)** Constitutional Court / **c)** / **d)** 01/01/1998 / **e)** 2/1998 / **f)** / **g)** *Monitorul Oficial of the Republic of Moldova* (Official Gazette), 02.1998 / **h)** .

Keywords of the Systematic Thesaurus:

1.3.2 **Constitutional Justice** - Types of litigation - Distribution of powers between State authorities.
3.4 **General Principles** - Separation of powers.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
5.2.9.18 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Presumption of innocence.

Keywords of the alphabetical index:

Abuse of power / Privatisation / Criminal code.

Headnotes:

No public authority other than the judiciary can declare anyone guilty or impose a sanction for a presumed offence under the Criminal Code.

Summary:

On 19 January 1998, at the appeal, the Constitutional Court examined the Parliament's orders concerning the illegal privatisation of the sanatorium-preventorium "Legkovik" and the establishment of the committee for the examination of cases, referring to the unlawful privatisation of some other concerns.

In both of these orders, without having a decision of a judicial organ at its disposal, the Parliament found the activity of the two Governmental members to be an abuse of power, insisting that one of them should undergo a disciplinary punishment. According to the internal legislation the notion of an abuse of power is deemed an offence under the Criminal Code and the punishment measures are stipulated. Taking into consideration that according to the constitutional provisions a person can be accused of a criminal offence only during a public judicial process, the author of the appeal states that in finding the activity of the Governmental members to be an abuse of power, the Parliament, in effect, had administered justice, violating the constitutional principle of separation of powers as well as that of presumption of innocence.

Examining the case materials in comparison with the constitutional norms, listening to the arguments of the parties, the Constitutional Court noted that the constitutional characteristics of a State governed by the rule of law consolidated the respect of human rights and fundamental freedoms by the state and, with that end in view established some legal procedures necessary for the assurance of the person's rights and fundamental freedoms. At the same time, one of the constitutional characteristics of a state governed by the rule of law is the obligation of the State, its public authorities and officials to act within their functional limits as defined by the Constitution and laws.

The Constitutional Court noted that the regulation of offences and punishments and the regime of execution of the latter, according to Article 72 of the Constitution falls within the scope of organic laws. With this in mind, the Parliament adopted the Code of Criminal Procedure.

The notion "of abuse of power" is treated as an offence under the Criminal Code. Criminal sanctions are envisaged against its commitment. As for all criminal cases, according to the Code of Criminal Procedure, in the name of law, they fall within the scope of the system of justice.

The Constitutional Court states that the Parliament, using the notion "abuse of power" in its normative acts directed towards individual persons, without basing its actions on any judgments of the court declared during some public judicial proceedings, was in effect administering justice, assuming the function of the judicial authorities.

Consequently, the Constitutional Court declared the notion "of abuse of power" contained in the legislative acts subjected to a review of constitutionality to be unconstitutional.

Languages:

Moldovan.