ANNUAL REPORT 2023

CONSTITUTIONAL COURT
OF THE REPUBLIC OF MOLDOVA

This Report on the exercise of constitutional jurisdiction in 2023 was published
by the Constitutional Court of the Republic of Moldova

Editura Arc
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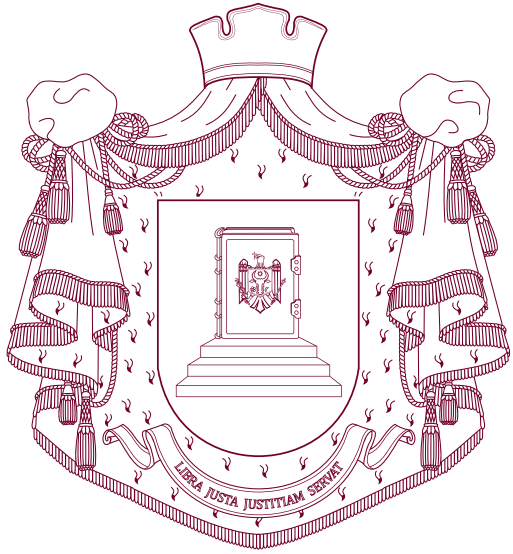
Descrierea CIP a Camerei Naționale a Cărții din Republica Moldova

Republic of Moldova. Constitutional Court. Annual report ... / Constitutional Court of the Republic of Moldova. – Chișinău: Arc, 2024 (Service-Eurotipar) – . – ISBN 978-9975-0-0835-8.

... 2023. – 2024. – 135, [1] p.: diagr., fot. color. – Referințe bibliogr. în subsol. – [100] ex. – ISBN 978-9975-0-0836-5.

342.565.2(478)(047)
R 46

Imprimat la S.R.L. SERVICE-EUROTIPAR



ANNUAL REPORT 2023

CONSTITUTIONAL COURT
OF THE REPUBLIC OF MOLDOVA

Republic of Moldova
CONSTITUTIONAL COURT

JUDGMENT

on the approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2023

Chişinău,
16 January 2024

IN THE NAME OF THE REPUBLIC OF MOLDOVA,
THE CONSTITUTIONAL COURT COMPOSED OF:

Ms. Domnica MANOLE, *President*,
Ms. Viorica PUICA,
Mr. Nicolae ROȘCA,
Ms. Liuba ȘOVA,
Mr. Serghei ȚURCAN,
Mr. Vladimir ȚURCAN, *judges,*

with the participation of Ms. Elena Tentiuc, Head of the Court's Secretariat,

having examined in the plenary sitting the Report on the exercise of constitutional jurisdiction in 2023,

guided by the provisions of Article 26 of Law no. 317 of 13 December 1994 on the Constitutional Court, Article 61 para. (1) and Article 62 f) of the Constitutional Jurisdiction Code no. 502 of 16 June 1995,

based on Article 10 of the Law on the Constitutional Court, Article 5 i) and Article 80 of the Constitutional Jurisdiction Code,

HOLDS:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2023, according to the Annex.
2. This Judgment shall be published in the *"Official Gazette of the Republic of Moldova"*.

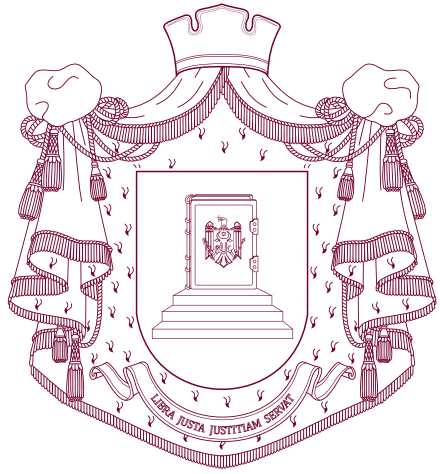
President Domnica MANOLE

Chișinău, 16 January 2024,
JCC no. 1

Approved
by Judgment of the Constitutional Court
no. 1 of 16 January 2024

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2023



TITLE

I

THE AUTHORITY OF CONSTITUTIONAL JURISDICITON IN THE REPUBLIC OF MOLDOVA

TITLE

I

THE AUTHORITY OF CONSTITUTIONAL JURISDICITON IN THE REPUBLIC OF MOLDOVA

A | THE STATUS AND POWERS OF THE CONSTITUTIONAL COURT

The status of the Constitutional Court, the only authority of constitutional jurisdiction in the Republic of Moldova, autonomous and independent from the legislative, executive, and judicial powers, is enshrined in the Constitution, which establishes, at the same time, the principles, and main functional attributions of the Court. The status of the Constitutional Court is determined by its primary role to ensure the observance of the values of the rule of law:

guaranteeing the supremacy of the Constitution, ensuring the principle of separation of powers in the State, ensuring the responsibility of the State towards the citizen and of the citizen towards the State. These major functions are performed through the instruments guaranteed by the Constitution.

The constitutional powers, provided by Article 135 of the Constitution, are further developed in Law no. 317 of 13 December 1994 on the Constitutional Court and the Constitutional Jurisdiction Code no. 502 of 16 June 1995, which regulates, *inter alia*, the procedure for examining applications, the manner of electing the judges of the Constitutional Court and the President of the Court, their powers, rights, and responsibilities. Thus, based on the constitutional provisions, the Constitutional Court:

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

b) interprets the Constitution;

c) formulates its position on initiatives of revision of the Constitution;

d) confirms the results of the republican referendums;

e) confirms the results of the parliamentary and presidential elections in the Republic of Moldova, and validates the mandates of the members of parliament and the President of the Republic of Moldova;

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

g) resolves the pleas of unconstitutionality of legal acts;

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

B | JUDGES OF THE CONSTITUTIONAL COURT

The 2023 was marked by certain institutional changes, namely, the election of the President of the Court and filling the vacancy of a constitutional judge.

Thus, by Decision no. AG-1 of 25 April 2023, Mr. Nicolae Roşca, was elected as President of the Constitutional Court, with a majority of votes. On 9 November, Mr. Nicolae Roşca resigned from the position of President of the Constitutional Court, as a result, by Decision no. AG-3 of 10 November 2023, Mrs. Domnica Manole, was elected as President of the Constitutional Court, with a majority of votes, being in her second mandate as President. On 24 November 2023, Mrs. Viorica Puica was appointed as a constitutional judge by the Superior Council of the Magistracy, on the vacant position.

Therefore, from 27 November 2023 the Plenum of the Constitutional Court works in full composition, namely:

Ms. Domnica MANOLE, President,

Ms. Liuba ȘOVA,

Ms. Viorica PUICA,

Mr. Nicolae ROȘCA,

Mr. Serghei ȚURCAN,

Mr. Vladimir ȚURCAN, judges.

In 2023, the Constitutional Court continued to carry out its activity based on the organizational structure approved by Decision no. 9 of 23 March 2018.

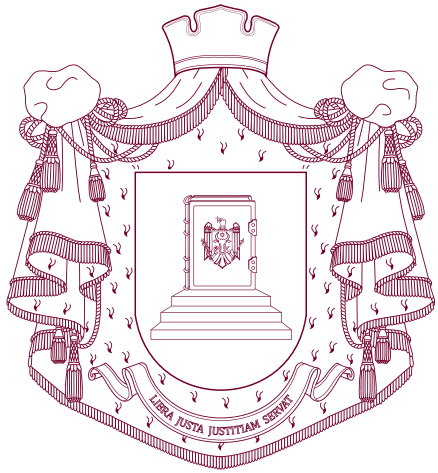
C | LODGING AN APPLICATION WITH THE COURT

The Constitutional Court exercises its powers upon application by the subjects empowered with this right. Thus, according to Article 25 of the Law on the Constitutional Court, including the amendments operated by Law no. 99 of 11 June 2020, and Article 38 para. (1) of the Constitutional Jurisdiction Code, the right to lodge an application with the Constitutional Court has:

a) the President of the Republic of Moldova;
b) the Government;
c) the Minister of Justice;
d) the judges/panels of the Supreme Court of Justice, the courts of appeal and the courts;
d[1]) the Superior Council of Magistracy;
f) the Prosecutor General;
g) Members of Parliament;
h) Parliamentary factions;
i) the Ombudsman;
i[1]) the Ombudsman for children;

j) the councils of the first and second level administrative-territorial units, the People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases of exercising the constitutional review of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions, ordinances and provisions of the Government, as well as the international treaties that the Republic of Moldova is a party to, which do not comply with Article 109 and, respectively, Article 111 of the Constitution of the Republic of Moldova.

The applications lodged by the subjects empowered with this right need to be motivated and to meet the formal and substantial requirements provided by Article 39 of the Code of Constitutional Jurisdiction.



TITLE

II

JURISDICTIONAL ACTIVITY

TITLE II

JURISDICTIONAL ACTIVITY

A | THE COURT'S ASSESMENT DEDUCED FROM THE JUDGMENTS DELIVERED

Throughout the year 2023, the Court issued 22 judgments, of which 16 judgments consolidated constitutional jurisprudence in the following areas.

1. THE DEFENDANT'S WAIVER OF THE RIGHT TO BE PRESENT AT THE COURT HEARING

On 24 January 2023, the Constitutional Court issued Judgment no. 3 on the plea of unconstitutionality of Article 321 para. (2) point 3) and para. (4) of the Criminal Procedure Code[1].

The Court has decided to examine the application on the merits considering the Articles 20 and 54 of the Constitution.

According to the contested rules, a person who did not evade the trial, who was not in detention, and who was accused of a non-minor offense was obligated to participate in the trial. The law did not provide any plea to the rule of trying the case in the presence of the defendant under such circumstances.

[1] Judgment no. 3 of 24 January 2023 on the plea of unconstitutionality of article 321 para. (2) point 3) and para. (4) of the Criminal Procedure Code.

The court envisioned the situation of individuals who, due to advanced age or health conditions, could not attend the trial but wished for their case to proceed. Applying the contested rules, the court was compelled to indefinitely postpone the trial because their situation did not fall within any pleas provided by law. For these individuals, such a solution would have amounted to a denial of the right to a fair trial within a reasonable time. Their forced presence would not remedy the problem; on the contrary, it could exacerbate it, as it might violate their rights to dignity or health.

The Court noted that, although the presence of the defendant in the hearing is of particular importance to ensure the fair and adversarial nature of the proceedings, and the legislator has a positive obligation to establish mechanisms to ensure their presence, these should not paralyze the court's procedure, simply hindering the progress of the trial. The court emphasized that when balancing these two principles, the legislator must find the correct equilibrium, meaning a solution that does not permanently subordinate one principle to the detriment of the other.

Analyzing the provisions of the Criminal Procedure Code, the Court noted that the legislator has regulated the situation of individuals who implicitly refuse to exercise their right to be present at the trial (e.g., defendants who evade trial). Additionally, the legislator has addressed the possibility of an express waiver of the right to be present for individuals in pretrial detention, regardless of the category of offenses they are accused of. On the other hand, individuals not in pretrial detention and not evading trial could expressly waive the right to be present at the hearing only if accused of committing minor offenses. The Court could not identify any reasonable grounds justifying such a legislative solution. Moreover, Article 321 of the Criminal Procedure Code, paragraph (3), provides the guarantee that, in the case of the trial proceeding in the absence of the defendant, the participation of the defense counsel and, if applicable, their legal representative is mandatory.

For these reasons, the Court concluded that the wording "examination of causes related to the commission of minor offenses" in Article 321 paragraph (2) point 3) of the Criminal Procedure Code did not allow certain categories of accused individuals to enjoy the right to a fair trial, contrary to Article 20 of the Constitution.

However, the Court noted that in such situations, the courts will have to verify: (I) whether there are exceptional circumstances and objective reasons justifying the absence of the defendants from the hearing (e.g., health condition or advanced age); (II) whether the waiver is voluntary, unequivocal (e.g., solemnly declared in a previous hearing or presented in a document countersigned by the defense counsel expressing this desire) and based on an informed choice (the person foresees the consequences of their conduct); (III) whether the waiver does not contravene a more significant public interest. Under these conditions, the Court issued an Address to the Parliament for the regulation of these guarantees in accordance with the considerations of the decision.

Considering that the issue raised by the author of the application was resolved by declaring unconstitutional the contested provisions of Article 321 paragraph (2) point 3) of the Criminal Procedure Code, the Court deemed it unnecessary to also pronounce on the criticism of paragraph (4) of the same article, which establishes that the trial is postponed if no exception provided by law is found from the mandatory rule of the defendant's presence at the trial.

Based on the arguments presented, the Court declared unconstitutional the wording "examination of causes related to the commission of minor offenses" in Article 321 paragraph (2) point 3) of the Criminal Procedure Code.

2. LEGAL SUSPENSION OF THE JUDGE IF THE DISCIPLINARY PANEL HAS PROPOSED ITS REMOVAL FROM OFFICE

On 9 February 2023, the Constitutional Court issued Judgment No. 4 on the plea of unconstitutionality of Article 24 paragraph (11) letter b) of Law No. 544 of 20 July 1995, regarding the status of the judge[2].

The applicant mentioned that his in-law suspension from the position of judge affects the principles of independence and immovability of the judge, as well as the principle of proportionality. The applicant argued that the legal suspension, which operates

[2] Judgment no. 4 of 9 February 2023 on the plea of unconstitutionality of article 24 para. (11) lit. b) from Law no. 544 of 20 July 1995 regarding the status of the judge

simultaneously with the proposal for removal from office and without the possibility of challenging this measure separately, violates the right to access of justice.

The Court decided to examine the application on the merits, considering Articles 20 and 116 of the Constitution, which guarantee free access to justice and the independence of judges.

According to the contested provisions, the judge is automatically suspended from office if the Disciplinary Panel has proposed their removal from office. Subsequently, the decision must be adopted by the Superior Council of Magistracy after the expiration of the contestation period. Therefore, from the stage of the disciplinary panel's decision until the competent authority pronounces the annulment of the disciplinary panel's decision, the suspended status of the sanctioned judge cannot be lifted, as Article 24, paragraph (1^1), letter b) of the Law on the Status of Judges establishes automatic suspension without any exceptions.

The Court noted that Article 20 of the Constitution must be interpreted considering Article 6 of the European Convention and the principles set forth in the jurisprudence of the European Court of Human Rights on this matter. The European Court has held that the guarantees of Article 6 § 1 of the Convention are applicable to the temporary suspension procedure of a judge. In the case of *Camelia Bogdan v. Romania*, the European Court observed that the High Court of Cassation and Justice of Romania limited itself to legality review of the decision to suspend judges but did not assess the necessity and proportionality of the suspension (§ 68). The European Court noted that this fact affected the very essence of the claimant's right of access to a court, contrary to Article 6 § 1 of the Convention (§§ 78 and 79).

The Court observed that, under the contested provisions, the suspension begins from the moment the decision of the disciplinary panel is issued and can last for an extended period, as is the case of the author of the application, who was suspended from the judge position on 22 April 2022. The automatic suspension of the judge ceases when the competent authority annuls the decision of the disciplinary panel proposing the removal of the judge from office. Thus, judges in such situations do not benefit, within the period between the issuance of the disciplinary panel's decision and the pronouncement by the competent authority of the annulment of the disciplinary

panel's decision, from any form of judicial protection against the measure of suspension from office.

The measure of suspension is crucial for the civil right of judges to perform their function (see, regarding the issue of provisional measures taken in disciplinary proceedings, *Paluda v. Slovakia*, §§ 33-34, and *Camelia Bogdan v. Romania*, § 70). Although suspended judges continue to receive their salaries, according to Article 24, paragraph (2) of the Law on the Status of Judges, this aspect is important in relation to the redress of the effects of their suspension. Receiving salaries is not directly related to the fact that suspended judges do not have access to justice to challenge the measure of their suspension (see *Paluda v. Slovakia*, § 51). Judges suspended from office remain subject to the regime of incompatibilities and prohibitions established by Article 8 of the Law on the Status of Judges, being practically compelled to stagnate professionally, sometimes with serious consequences for their reputation and private lives in general.

In conclusion, the Court observed that the *ope legis* suspension of the judge for whom the disciplinary panel has proposed removal from office, without providing the possibility to challenge this measure separately, affects the very essence of the right to access justice and violates Articles 20 and 116 of the Constitution.

The measure of *ope legis* suspension from office of the judge is disproportionate and, therefore, unconstitutional, as it does not provide the opportunity to benefit from the inherent guarantees of these articles.

Although it declared unconstitutional the measure of *ope legis* suspension imposed by Article 24 paragraph (11) letter b) of the Law on the Status of Judges, the Court did not exclude the possibility of ordering the suspension from office of the judge by the disciplinary panel in the situation where the disciplinary panel has proposed their removal from office, if this measure is proportional to the underlying circumstances.

Until the relevant legislation is amended in line with the considerations of the Court's judgment, judges for whom the measure of suspension from office has been ordered will be able to challenge it separately, according to the procedure established by Article 24 paragraph (6) of the Law on the Status of Judges.

The Court has sent an address to the Parliament to amend the relevant legislation in accordance with the considerations outlined in the judgment.

Based on the arguments presented, the Court:

Declared unconstitutional Article 24 paragraph (11) letter b) of Law No. 544 of 20 July 20 1995, regarding the status of the judge.

Until the relevant legislation is amended in line with the considerations of the judgment, the suspension from office of a judge in the situation where the disciplinary panel has proposed their removal from office may be ordered if this measure is proportional to the underlying circumstances. Judges for whom the measure of suspension from office has been ordered will be able to challenge it separately, according to the procedure established by Article 24 paragraph (6) of the Law on the Status of Judges.

3. THE JURISDICTION OF THE SUPREME COURT OF JUSTICE IN THE CASE OF EXAMINING APPEALS FILED AGAINST THE DECISION OF THE EVALUATION COMMISSION

On 14 February 2023, the Constitutional Court issued Judgment No. 5 on the plea of unconstitutionality of certain provisions of Law No. 26 of 10 March 2022, regarding certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors[3].

The applicant contested various provisions of Law No. 26 of 10 March 2022, regarding certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors. However, considering the Court referral document, it examined only the constitutionality of the text "if it finds the existence of circumstances that could lead to the promotion of the evaluation by the candidate" from Article 14 paragraph (8) letter b) of the mentioned law.

The authors of the pleas noted that the contested text significantly limits the scope of judicial review over the Evaluation Commission's decisions regarding the non-promotion of the evaluation, contrary to Articles 20, 23 paragraph (2) and 54 of the Constitution.

The Court emphasized that the right of access to a court must be practical and effective, not theoretical, and illusory. The effectiveness of the right in question requires

[3] Judgment No. 5 of 14 February 2023, on the plea unconstitutionality of certain provisions of Law No. 26 of 10 March 2022, concerning certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors.

individuals to have a clear and concrete opportunity to challenge an act that constitutes an interference with the exercise of their rights.

The Court noted that although the Evaluation Commission's decision regarding the non-promotion of the evaluation does not prevent the candidate from continuing their activity as a judge, prosecutor, or any other legal position held previously, it can affect the professional reputation of the candidate – protected by the right to privacy – as it contains findings regarding the lack of ethical and financial integrity of the candidate.

From the perspective of access to a court, the Court found that the legislator established a remedy against the decisions of the Evaluation Commission regarding the non-promotion of the evaluation.

However, in its case law, the European Court has noted that the right of access to a court includes not only the right to initiate legal proceedings but also the right to have the case determined by a competent court that can decide on all aspects in-fact and in-law.

Analyzing the provisions of the law, the Court found that, essentially, through the contested legal text, the legislator established that the decisions of the Evaluation Commission can be reviewed by the special panel only in terms of findings regarding the candidate's fulfillment of ethical and financial integrity criteria. Consequently, the judicial review by the special panel extends only to substantive issues, without covering procedural matters.

In its case law, the Court noted that the requirement of "full jurisdiction" of a court is met when it is found that the judicial body in question has exercised "sufficient jurisdiction" or ensured "sufficient examination" within the procedure. This condition will not be fulfilled if the court is prevented from examining or does not examine the central issues of the dispute.

In order to see whether the contested provisions comply with the requirements of Article 20 of the Constitution, the Court has checked whether the limitation of judicial control over the decisions of the Evaluation Commission pursued a legitimate purpose and whether this limitation allows the special panel of the Supreme Court of Justice to ensure a "sufficient examination" of the central issues of potential litigation.

Regarding the existence of a legitimate purpose, the Court noted that the explanatory memorandum to the draft Law does not contain any argument regarding the necessity of limiting judicial control over the decisions of the Evaluation Commission. However, based on the opinion presented by Parliament and the content of the contested text, the Court inferred that the legislator sought to avoid situations where decisions of the Evaluation Commission are annulled due to violations of insignificant procedural rules and, on the other hand, to ensure the expeditious resolution of appeals for the prompt functioning of the Superior Council of Magistracy. The Court noted that these legitimate purposes can be framed within the general objectives of public order and the guarantee of the authority and impartiality of justice, established by Article 54 paragraph (2) of the Constitution.

Regarding the sufficiency of judicial control exercised by the special panel of the Supreme Court of Justice, the Court noted that it can only manifest itself on substantive issues and does not cover procedural matters.

The Court found that Article 12 paragraph (4) of the Law establishes the rights of the candidate within the evaluation procedure. Thus, the candidate has the right: a) to attend the meetings of the Evaluation Commission and provide verbal explanations; b) to be assisted by a lawyer or trainee lawyer throughout the evaluation procedure; c) to be informed of the evaluation materials at least 3 days before the hearing; d) to submit, in writing, additional data and information that they consider necessary to dispel suspicions regarding their integrity if they were unable to present them earlier; e) to challenge the decision of the Evaluation Commission.

The Court noted that the law must provide a remedy in cases where the procedural rights of the candidate were not ensured during the evaluation procedure. Depending on any procedural deficiencies acknowledged during the evaluation stage, the nature of the affected procedural right, as well as the specific circumstances of the case, the failure to ensure a procedural right can be considered a central issue in the dispute. In this case, the Court observed that the contested provisions do not allow unsuccessful candidates to request a reassessment of the evaluation procedure in case the decision of the Evaluation Commission is affected by serious procedural flaws.

The Court observed that in limiting the judicial review of the decisions of the Evaluation Commission, the legislator did not consider the fact that, against these decisions, the law provides only one avenue of appeal. After exhausting the remedy before the special panel, the candidate will not be able to challenge the violation of procedural rights during the evaluation stage before another judicial body. This implies that the discussed flaws will not be examined by any judicial authority, regardless of the severity of the violations admitted during the candidate's evaluation.

The Court acknowledged that the contested provisions can achieve the objective pursued by the legislator, *i.e.*, to prevent the annulment of Evaluation Commission decisions due to violations of insignificant procedural rules. However, this objective could be accomplished through less intrusive means for the procedural rights of unsuccessful candidates in a court with full jurisdiction. Thus, the legislator's objective could be achieved by limiting judicial review to serious procedural errors of the Evaluation Commission during the evaluation procedure, which affect the fairness of the evaluation process. This solution, coupled with the special panel's competence to examine the "circumstances that could lead to the promotion of the evaluation" by the candidate, can ensure a "sufficient examination" of the central issues raised by unsuccessful candidates.

In the case of *Xhoxhaj v. Albania*, 9 February 2021, the European Court found that the Independent Qualification Commission, which assessed sitting judges and prosecutors regarding their assets, integrity, and professional skills, possessed all the characteristics of an independent judicial body. However, the European Court noted that the decision of the Commission in question could be challenged before the Court of Appeals, which had full competence to examine each ground of appeal submitted by the evaluated person, including addressing procedural errors.

These findings led the Court to conclude that the challenged provisions do not ensure that unsuccessful candidates will benefit from a 'sufficient examination' of the central issues raised before the special panel of the Supreme Court of Justice and, therefore, violate Articles 20, 23 paragraph (2) and 54 of the Constitution.

Based on the arguments presented, the Court declared *unconstitutional* the provision "if it finds the existence of circumstances that could lead to the promotion of the evaluation by the candidate" from Article 14 paragraph (8) letter b) of Law no. 26 of 10 March

2022, regarding certain measures related to the selection of candidates for the position of member in the self-administrative bodies of judges and prosecutors.

At the same time, the Court noted that until the law is amended by Parliament, the special panel of the Supreme Court, when examining appeals against decisions of the Evaluation Committee, will be able to order the re-evaluation of candidates who did not pass if it finds (a) that serious procedural errors were committed by the Evaluation Committee during the evaluation procedure, affecting the fairness of the evaluation process, and (b) that there are circumstances that could have led to the promotion of the evaluation by the candidate.

4. THE GOVERNMENT'S COMPETENCE TO ESTABLISH THE CONDITIONS APPLICABLE TO THE CALCULATION OF PENSIONS FOR MILITARY PERSONNEL AND DETACHED OFFICIALS

On 28 February 2023, the Constitutional Court issued Judgment No. 6 on the plea of unconstitutionality raised against certain provisions of point 2 letter b) of Government Decision No. 78 of 21 February 1994, regarding the calculation of work seniority, establishment and payment of pensions and allowances for military personnel, personnel in command positions and in the forces of internal affairs bodies, collaborators of the National Anticorruption Center, and public officials with special status within the penitentiary administration system[4].

The applicant mentioned that the Government established an additional condition applicable to the calculation of pensions for detached officials, which contravenes Article 47 of the Constitution. The applicant argued that the Government acted *ultra vires* in adopting the contested provisions.

The Court decided to examine the exception on the merits, in the light of Articles 47 and 102 paragraph (2) of the Constitution, which regulate the right to social assistan-

[4] Judgment No. 6 of 28 February 2023, on the plea of unconstitutionality raised against certain provisions of point 2 letter b) of Government Decision No. 78 of 21 February 1994, regarding the calculation of work seniority, establishment and payment of pensions and allowances for military personnel, personnel in command positions and in the forces of internal affairs bodies, collaborators of the National Anticorruption Center, and public officials with special status within the penitentiary administration system.

ce and protection and the Government's competence to adopt decisions for the organization of law enforcement.

The Court noted that, according to Article 102 paragraph (2) of the Constitution, the Government organizes the enforcement of laws, for which it issues decisions to specify, clarify, and ensure the most accurate application of them. The necessity and legitimacy of a Government decision arise only to the extent that the implementation of a legal provision requires the establishment of subsequent rules to ensure its correct application or the proper organization of activities.

The Court emphasized that the rules contained in government acts cannot have a primary character and that they develop and concretize the provisions of laws. The Government does not have primary normative competence, being authorized to act only in the execution of legislative acts.

The Court examined the following issues: a) whether the Government's decision was adopted for the purpose of implementing a law, and b) whether the Government, through its act, adopted rules with a primary normative character.

a) Whether the Government's decision was adopted for the purpose of implementing a law

The Court noted that in the preamble of Government Decision No. 78 of 21 February 1994, it is mentioned that it aims to implement Law No. 1544 of 23 June 1993, and Parliament Decision No. 1545 of 23 June 1993.

Law No. 1544 of 23 June 1993, establishes the retirement conditions for certain categories of officials who work, for example, in the Armed Forces, the State Protection and Guard Service, the Ministry of Internal Affairs, the National Anticorruption Center, etc.

Article 44 paragraph (2) of the discussed law regulates the method of establishing the salary from which the pension is calculated. Additionally, Article 48 of the discussed law stipulates that the pensions of the officials in question and those of their family members are determined by the National Social Insurance House, as established by the Government.

According to Article 2 of the Parliament Decision mentioned above, the Government is required to submit to the Parliament for examination proposals to bring legis-

lative acts in line with Law No. 1544 of 23 June 1993, and to adopt the normative acts necessary for its implementation.

Therefore, the Court noted that Government Decision No. 78 of 21 February 1994, was adopted for the purpose of implementing Law No. 1544 of 23 June 1993.

b) Whether the Government, through its act, adopted primary normative rules

The Court reiterated that subordinate normative acts cannot contain primary normative rules, and the content of the normative act must be in strict conformity with the norms and purpose of the law, without introducing new regulations other than those established by law.

The Court found that, in this case, the Government, along with the measures taken to organize the execution of Law No. 1544 of 23 June 1993, introduced a restrictive condition not contained in Article 44(2) of the Law. This condition represents a capping of the salary from which the pension for the persons mentioned in Article 44(2) of the Law is calculated. Therefore, the detached official cannot have a salary calculated higher than the monthly average of the official in the ministry from which he was detached, thus affecting his right to social protection.

The Court concluded that by introducing the text "but not exceeding the monthly average provided for military and command personnel in the ministries from which they were detached" from point 2 lit. b) of Decision No. 78, the Government acted ultra vires, establishing a condition that gives the norm a primary character. Therefore, the provisions of Articles 47 and 102(2) of the Constitution were violated.

Based on the arguments presented, the Court declared *unconstitutional* the text "but not exceeding the monthly average provided for military and command personnel in the ministries from which they were detached" from point 2 letter b) of Government Decision No. 78 of 21 February 1994, regarding the calculation of work experience, establishment, and payment of pensions and allowances for military personnel, command personnel, and internal affairs troops, collaborators of the National Anticorruption Center, and special status public servants within the penitentiary system.

5. EXCLUSION OF PERSONS WITH DISABILITIES AND INDIVIDUALS RESPONSIBLE FOR RAISING AND EDUCATING FOUR OR MORE CHILDREN HOLDING A LAWYER'S LICENSE FROM THE CATEGORY OF INDIVIDUALS INSURED BY THE GOVERNMENT

On 6 April 2023, the Constitutional Court pronounced Judgment No. 8 on the plea of unconstitutionality related to provisions in Article 4(4) of Law No. 1585 of 27 February 1998, Article 23(4) of Law No. 1593 of 26 December 2002, and Point 10 of the Regulation approved by Government Decision No. 1246 of 19 December 2018[5].

The Court observed that the contested provisions establish that the state acts as an insurer for individuals with severe, accentuated, or moderate disabilities and for parents, including adoptive parents, who effectively raise and educate four or more children, for the period during which at least one child is under the age of 18. However, if the individuals in question choose to work as lawyers, the law stipulates that they must insure themselves individually. Under these conditions, the authors of the applications argue that the contested provisions establish differential treatment between, on the one hand, individuals not employed with severe, accentuated, or moderate disabilities and individuals who have four or more children, and, on the other hand, the same individuals who hold a license allowing them to practice as lawyers. The differential treatment is based on the criteria of income and social origin.

In its jurisprudence, the Court has emphasized that adhering to the principle of equality requires granting the same advantages to all individuals in similar situations, except when it is demonstrated that differentiated treatment is objectively and reasonably justified. This condition demonstrates that the principle of equality does not seek to prohibit all differentiated treatment but only those that are unjustified.

The Court noted that although it is justified for the legislator to apply differentiated obligations to pay the mandatory health insurance premium based on individuals' incomes, it remains important (i) whether the authorities have chosen categories based

[5] Judgment No. 8 of 6 April 2023, on the plea of unconstitutionality related to provisions in Article 4(4) of Law No. 1585 of 27 February 1998, Article 23(4) of Law No. 1593 of 26 December 2002, and Point 10 of the Regulation approved by Government Decision No. 1246 of 19 December 2018.

on an objective criterion and (ii) whether, in making the decision, the authorities have struck a fair balance between competing principles.

The Court acknowledged that by excluding lawyers from the category of insured persons, the Government aimed to make a distinction between individuals engaged in a professional activity who, implicitly, obtain financial means to pay the mandatory health insurance premium and individuals who do not have such financial means.

The Court considered the Government's competence in managing the public budget and noted that directing financial resources towards vulnerable groups, to the detriment of financially independent categories, represents measures to ensure a decent life for every individual, including their health and well-being, encompassing food, clothing, housing, medical care, as well as necessary social services. Thus, the Court held that by excluding lawyers from the category of persons insured by the Government, the authorities pursued a legitimate purpose, namely to protect the rights, freedoms, and dignity of other individuals, within the meaning of Article 54 (2) of the Constitution.

The Court acknowledged that the profession of a lawyer can generate income. However, to establish that the profession of a lawyer constitutes an objective criterion justifying differential treatment, the Court examined whether the law provides guarantees for individuals practicing this profession that they will receive sufficient income, allowing the authorities to exclude them from the category of persons insured by the Government.

The Law on Legal Practice stipulates that the legal profession is a free and independent occupation, and it does not constitute entrepreneurial activity. Lawyers provide qualified legal assistance to clients, and their work is remunerated from the fees received from individuals and legal entities, with the amount of fees being determined by agreement between the contracting parties. Additionally, the Law on Legal Practice states that, depending on the client's financial situation, a lawyer may provide legal assistance free of charge.

Therefore, the Court concluded that holding a lawyer's license does not automatically imply the receipt of pecuniary income, as the receipt thereof depends, among other things, on the physical and intellectual effort (work capacity) exerted, the lawyer's ability

to have clients, and to provide them with qualified legal assistance. Thus, the possession of a lawyer's license by a person with disabilities does not imply the undisputed receipt of income. From this perspective, these individuals do not differ from a person with disabilities who does not hold a lawyer's license and, respectively, does not have an objective criterion at its core.

The Court noted that the exclusion of persons with disabilities from the category of "persons insured by the Government" and their inclusion in the category of "individually insured person" solely based on the possession of a lawyer's license leads to the conclusion that the legislator did not consider the situation of these individuals, including the work capacity of the license holder to practice law and generate income. The specific situation of persons with disabilities requires the legislator to consider the requirements of Article 51(1) of the Constitution, according to which these individuals must benefit from "special protection from the entire society" and the state must ensure "normal conditions for [...] rehabilitation [...] and social integration." Therefore, the Court found justified the argument of the authors of the exceptions that the automatic exclusion of persons with severe, moderate, or accentuated disabilities from the category of persons insured by the Government, when they decide to work as lawyers, is likely to discourage these individuals from participating in social life.

The Court applied the same reasoning in the case of individuals who provide care and education for four or more children and hold a lawyer's license. The Court noted that by excluding individuals who care for four or more children and hold a lawyer's license from the category of persons insured by the Government solely because these individuals hold a lawyer's license, without considering the income generated in this profession, the legislator did not consider the guarantees enshrined in Articles 48, 49, and 50 of the Constitution. According to these articles, the state facilitates, through economic measures and other means, the formation of families and the fulfillment of their obligations, protects maternity and children, stimulates the development of necessary institutions, and ensures that mothers and children have the right to special assistance and protection from the state.

The Court noted that this social policy choice by the legislator to exclude individuals with disabilities and individuals providing care and education for four or more chil-

dren, who hold a lawyer's license, from the category of persons insured by the Government creates discriminatory treatment, if the income earned by the license holder from the legal profession has not been considered.

In conclusion, the Court held that the challenged provisions are contrary to Articles 16, 47, 48, 49, 50, 51, and 54 of the Constitution.

However, the Court mentioned that it cannot substitute for the Parliament and the Government in regulating a mechanism for the payment of mandatory health insurance premiums for lawyers with disabilities and for lawyers who provide care for four or more children based on their incomes. Under these circumstances, the Court issued an Address to the Parliament and the Government, urging the regulation of the mechanism for calculating the mandatory health insurance premium for lawyers with disabilities and for lawyers providing care for four or more children, based on their incomes, in accordance with the reasoning of the adopted Decision.

Based on the aforementioned, the Court:

Recognized as constitutional the text "lawyers" from point 2 of Annex 2 to Law No. 1593 of 26 December 2002, regarding the amount, manner, and deadlines for the payment of mandatory health insurance premiums, to the extent that it does not apply to persons with severe, accentuated, or moderate disabilities holding a lawyer's license, as well as to persons providing care and education for four or more children who hold a lawyer's license.

a) the text "except for persons required by law to individually insure themselves" from Article 4 (4) of Law No. 1585 of 27 February 1998, on mandatory health insurance;
b) Article 23 paragraph (4) of Law No. 1593 of 26 December 2002, regarding the amount, method, and deadlines for payment of mandatory health insurance premiums; and
c) Item 10 of the Regulation on granting/suspending the status of insured person in the mandatory health insurance system, approved by Government Decision No. 1246 of 19 December 2018.

6. PROHIBITION OF GENERALLY KNOWN SYMBOLS USED IN THE CONTEXT OF ACTS OF MILITARY AGGRESSION, WAR CRIMES, OR CRIMES AGAINST HUMANITY

On 11 April 2023, the Constitutional Court pronounced Judgment No. 9 for the constitutional review of Article 365[5] of the Contravention Code and Article 1 of the Law on Countering Extremist Activities, as amended by Law No. 102 of 14 April 2022[6].

With reference to the circumstances of the case, on 20 April 2022, Law No. 102 amending certain normative acts came into effect. Article I of the mentioned Law modified Article 1 of the Law on Countering Extremist Activities, expanding the categories of symbols whose use is considered extremist activity. Article II, point 98 of Law No. 102 introduced two contraventions in the Contravention Code, namely Articles 365[4] and 365[5].

On 3 May 2022, Members of the Parliament of the Republic of Moldova filed an application to the Constitutional Court, registered under No. 54a/2022, requesting the constitutional review of Article I and Article II, point 98 of Law No. 102 of 14 April 2022, amending certain normative acts. On 25 May 2022, one of the authors of the referral filed another submission to the Constitutional Court, registered under No. 68a/2022, seeking the examination of the constitutionality of the text "shall be sanctioned with a fine from 90 to 180 conventional units applied to the natural person or with unpaid community service" from Article 365[5] of the Contravention Code.

Moreover, the provisions of Article 365[5] of the Contravention Code were challenged through an plea of unconstitutionality (application No. 111g/2022) in a case pending at the Chisinau Court, Buiucani headquarters.

In the process of examining the applications, the Constitutional Court requested an opinion from the Venice Commission regarding certain provisions of Law No. 102 of 14 April 2022, which amended the Law on Countering Extremist Activities and the Contravention Code.

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[6] Judgment No. 9 of 11 April 2023, for the constitutional review of Article 3655 of the Contravention Code and Article 1 of the Law on Countering Extremist Activities, in the wording of Law No. 102 of 14 April 2022.

At the stage of verifying the admissibility of the applications, the Court noted that Article 365[5] of the Contravention Code and the provisions of Law No. 102 of 14 April 2022, constitute a limitation on the exercise of the right to freedom of expression guaranteed by Article 32 of the Constitution. Due to the application of Article 32 of the Constitution, the Court decided to exercise the constitutional review of the provisions in question through the lens of Articles 23, 32, and 54 of the Constitution, examining, in the substance analysis of the case, the requirements regarding the legality of the interference and the justified nature of the limitation.

The Court's analysis focused on:

a) Regarding compliance with the quality of law standard (whether the interference is "provided by law")

The Court found that, in the drafting of Law No. 102 of 14 April 2022, Article 1 of the Law on Countering Extremist Activities establishes the concept of attributes and symbols generally known and used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions. These include flags, colored/awareness ribbons (black-orange bicolored ribbon), emblems (graphic elements, letters or numbers, and combinations thereof), insignias, uniforms, slogans, greetings, as well as any other similar signs used by participants in actions of military aggression, war crimes, or crimes against humanity, and by individuals who, without being participants in those actions, contribute to the media coverage and dissemination in society of ideas inciting, justifying, glorifying, or absolving responsibility for actions of military aggression, war crimes, or crimes against humanity. The generally known nature of such attributes and symbols is only recognized in cases where the respective attributes and symbols, as well as their specific connotations, are objectively known to the public internationally and locally. Attributes and symbols used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions, do not include the ribbons that are an integral part of the insignia, medals, and orders awarded to individuals for their participation in World War II.

Although there is no specific list of symbols falling under the category of those "generally known and used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions," the law provides a description of them, mentioning an example - the "black-orange bicolored ribbon." Additionally, the law establishes that the generally known nature of such attributes and symbols is recognized only in cases where the respective attributes and symbols, as well as their specific connotations, are objectively known to the public internationally and locally. In *Amicus Curiae* Opinion No. 1097/2022, § 44, the Venice Commission mentioned that this thesis suggests the idea that only symbols associated, in general, with an entity engaged in aggression or the commission of war crimes or crimes against humanity are prohibited.

In the explanatory memorandum of the legislative amendments that introduced the analyzed prohibition, it was mentioned that this measure was necessary due to the increasing number of cases of the use in the Republic of Moldova of symbols associated with the support and justification of military aggression in Ukraine. The Venice Commission noted a broad consensus that these symbols include, apart from the "St. George's Ribbon," the letters "Z" and "V" (when used in a form reminiscent of their use by Russian armed forces in Ukraine). These symbols are targeted by recently adopted laws in Latvia, Lithuania, Estonia, and Ukraine, indicating that they are indeed widely recognized, both internationally and nationally, as symbols associated with the Russian Federation's aggression against Ukraine. Because the symbols in question are well-known in public debates, there is no doubt that the law of the Republic of Moldova also refers to them (Amicus Curiae Opinion No. 1097/2022, § 45).

The Court noted that the measure in question also pertains to "attributes or symbols created by stylizing attributes or symbols generally known and used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions, and which may be confused with them."

The Court acknowledged that "symbols generally known and used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions" could be rendered using visual arts, throu-

gh graphic drawings, or other similar methods. These methods of depicting a symbol can be classified as "stylization."

However, the Court found that the phrase "and which may be confused with them" in Article 1 of the Law on Countering Extremist Activities does not comply with the standard of predictability of the law. In its jurisprudence, the Court emphasized that identifying "attributes and symbols similar, to the point of confusion, with Nazi symbols" violates the principle of prohibiting the application of analogy or extensive interpretation in criminal matters if it is disadvantageous to the accused person, as the attributes or symbols in question could be determined in an arbitrary manner *ad casu* (Judgment No. 28 of 23 November 2015, § 70). The reasoning of Judgment No. 28 of 23 November 2015 is applicable, *mutatis mutandis*, concerning the phrase "and which may be confused with them" in Article 1 of the Law on Countering Extremist Activities. Therefore, the Court found that this text is contrary to Articles 23 and 32 of the Constitution.

b) Regarding the legitimacy of the pursued purposes and the rational connection between these and the contested normative provisions

Referring to the explanatory memorandum to the amendment introducing the discussed measure, the Court acknowledged that the prohibition of symbols associated with the war in Ukraine could ensure public order, national security, and respect for the dignity of Ukrainian refugees.

The Court could not ascertain the lack of a rational connection with the legitimate purposes pursued by the contested provisions.

c) Regarding compliance with the minimum interference condition and the existence of a fair balance between competing principles

Article 365^5 of the Contravention Code sanctions the manufacturing, sale, distribution, possession for distribution, and public use of attributes and symbols generally known and used in the context of actions of military aggression, war crimes, or crimes against humanity, as well as the propaganda or glorification of these actions. However, this provision does not specify whether the manufacturing, sale, distribution, possession for distribution, and use of the symbols in question must have a specific purpose to be

sanctioned. The obligation for the courts and law enforcement officers to analyze the context in which the acts sanctioned by this article were committed cannot be inferred.

Through Law No. 102 of 14 April 2022, which introduced Article 365[5] into the Contravention Code, the Law on Countering Extremist Activities was also amended. This amendment established, in Article 1, an exhaustive list of exceptions to the application of sanctions based on Article 365[5] and the classification as extremist activity when using the analyzed symbols. For instance, this list does not include situations where a person uses prohibited symbols to protest, rather than glorify, war and war crimes (e.g., by burning them, staining them with red paint symbolizing blood, creating a caricature, etc.). The Court noted that the law does not distinguish situations in which a person is unaware of the content of the symbol (e.g., wearing clothing with an inscription or drawing that is identical to the prohibited symbol). Additionally, the Court acknowledged that some of the analyzed symbols could have multiple connotations. In this regard, the Court noted that, although the legislator regulated an exhaustive list of exceptions to the application of sanctions, considering the multitude and complexity of situations that may arise in practice, the legislator granted quasi-absolute priority to legitimate purposes.

To establish the actual idea conveyed by a symbol, one must consider the time, place, person, accompanying messages, and other factual circumstances.

The Court noted that the correct balance could be ensured by weighing the competing principles by law enforcement officers and the courts. In this regard, the Court mentioned that public authorities and the courts must assess, in each specific case, whether the commission of any of the actions listed in Article 365[5] of the Contravention Code should be sanctioned, as it aims to achieve the legitimate purposes provided by Article 54 of the Constitution, and whether there is no disproportionate interference with the right to freedom of expression. Specifically, state agents must examine the context in which a symbol was used and determine the purpose pursued by the individual in question because, in all cases, the sanctioning for the use of a symbol does not necessarily aim at achieving a legitimate purpose provided by Article 54(2) of the Constitution. Once the pursuit of a legitimate purpose for the imposition of the sanction is established, the courts must impose a penalty proportional to the gravity of the offense.

Therefore, the Court concluded that Article 365[5] of the Contravention Code and the provisions of Article 1 of the Law on Countering Extremist Activities introduced by Law No. 102 of 14 April 2022, are constitutional, except for the text "and which may be confused with them" in the definition of "extremist activity" regulated by Article 1 of the Law on Countering Extremist Activities, to the extent that they are applicable only to acts committed for the purpose of justifying or glorifying actions of military aggression, war crimes, or crimes against humanity.

Based on the arguments presented, the Court *partially admitted* the applications.

The Court *declared unconstitutional* the text "and which may be confused with them" from the definition of "extremist activity" regulated by Article 1 of Law No. 54 of 21 February 2003, on countering extremist activities.

The Court *recognized as constitutional* Article 365[5] of the Contravention Code and the provisions of Article 1 of the Law on Countering Extremist Activities introduced by Law No. 102 of 14 April 2022, except for those mentioned in point 2 of the device, to the extent that they are applicable only to acts committed for the purpose of justifying or glorifying actions of military aggression, war crimes, or crimes against humanity.

7. CONSTITUTIONAL REVIEW OF THE "ȘOR" POLITICAL PARTY

On 19 June 2023, the Constitutional Court pronounced Judgment No. 10 regarding the constitutional review of the "Șor"[7] Political Party. For the first time, the Court examined whether the activities of a political party violate the values protected by the Constitution. In its analysis, the Court relied on the provisions of the Constitution, the jurisprudence of the European Court of Human Rights, and the recommendations of the Venice Commission.

Article 41(4) of the Constitution allows for the declaration of unconstitutionality of a political party if the authorities demonstrate that it militates, among other things, through its goals or activities, against political pluralism, the principles of the rule of law, the sovereignty and independence, and the territorial integrity of the Republic of Moldova.

[7] Judgment No. 10 of 19 June 2023, regarding the constitutional review of the "Șor" Political Party

Declaring the unconstitutionality of a political party is a competence granted to the Court by Article 135(1) letter h) of the Constitution.

The Court was notified in this regard by the Government in November 2022. The Government's reasons can be categorized into three groups.

Firstly, the Government referred to the criminal acts committed by the leader of the "Șor" Political Party, the deputies representing the "Șor" Party, and its members.

Secondly, the Government highlighted the repeated, ongoing, and substantial violations related to the non-transparent funding of the political party, analyzed by national authorities, and sanctioned by courts through irrevocable decisions, which had no effect and did not lead to the correction of the conduct of the "Șor" Political Party.

Thirdly, the Government referred to actions and statements of the "Șor" Party that suggest the use of violence for the purpose of overthrowing or changing, through violence, the constitutional order of the Republic of Moldova.

The Constitution protects the right of individuals to promote political ideas and programs and to participate in elections independently or by associating in political parties. Especially, Article 41 of the Constitution and Article 11 of the European Convention on Human Rights guarantee the individual's right to freely associate in parties and other socio-political organizations.

Analyzing the documents presented by the Government regarding the funding of the "Șor" Party, the Court noted that transparent funding of political parties and electoral campaigns is a principle that underlies democratic elections. To emphasize the exceptional nature of declaring a party unconstitutional, the Court noted that this principle may be compromised if the non-transparent funding of the party is systematic, continuous, and of significant proportions.

The Court found that in several elections in which the electoral competitors of the "Șor" Party participated, the principle of transparent funding of the political party was violated through:

– non-declaration in the party's financial reports of the financial resources used in the electoral campaign;
– non-declaration of donations in the party's financial reports;

– exceeding the maximum limit of financial resources that can be transferred to the electoral competitor's "Election Fund" account;
– reducing the actual price of donations and services provided for an electoral event;
– ignoring the sanctions imposed by the Central Electoral Commission.

Thus, although in 2016, in the *Popenco* case, authorities found that the candidate of the "Șor" Party affected the principle of transparent funding by allocating funds from undeclared sources, in the following years, candidates from the party committed similar violations.

For example, in 2018, in the *Apostolova* case, authorities found a violation of the prohibition on foreign funding of the political party; in 2019, the party received donations from economic agents engaged in activities funded from the state budget; in 2020, in the *Balinschi* case, authorities found that the candidate did not declare the financial resources used in electoral activities.

Furthermore, in 2021, electoral authorities imposed three sanctions for violating legislation regarding the party's funding and electoral campaign, breaking the rules for using funds from the electoral fund, failing to report received donations, and exceeding the maximum limit of financial means.

Additionally, in 2022, electoral authorities found twice that electoral competitors of the Political Party "Șor" significantly reduced the price of received donations.

The Court held that the decisions of the electoral authorities were upheld by final court rulings.

The Court noted that the analyzed cases are sufficient to establish a systemic violation of the principle of transparent financing of political parties. However, to assess the extent of this phenomenon, the Court also considered the facts identified by the investigating authorities presented by the Government, to see if the information provided indicates any threat to the values protected by the Constitution.

Moreover, in its jurisprudence, the European Court does not impose a standard requiring authorities to demonstrate that the dangers posed by the party to protected values be confirmed by final court decisions.

On the contrary, in the case of *Adana Tayad v. Turkey* of 21 July 2020, the European Court examined whether the evidence presented by the investigative authorities on which the national courts based their decision to dissolve an association was sufficient from the perspective of Article 11 of the Convention. In that case, the Court held that, to decide on the dissolution of an association, the courts should conduct an independent assessment that does not automatically rely on the findings made by criminal courts against individual members of the accused association, especially when the latter judgments are not final.

Therefore, the Court noted that the facts established by final court decisions must be analyzed in conjunction with the factual elements arising from other documents presented by the Government.

The Court found that after Mr. Ilan Șor left the territory of the Republic of Moldova in 2019 and was internationally and nationally wanted in connection with his 2017 conviction for causing substantial material damages through fraud or abuse of trust and money laundering on an especially large scale, the "Șor" Party began to receive financial resources in a significantly non-transparent manner.

Furthermore, the Court noted that the investigative authorities' actions revealed the following factual elements: that there is a non-transparent system for distributing financial resources to representatives of the "Șor" Party; that the operation of this system is ensured by individuals close to Mr. Ilan Șor; that the distribution of financial resources occurs through specific individuals responsible for certain localities, pre-allocated in advance; that there are individuals responsible for bringing money into the country, receiving funds from abroad, and forwarding them to other individuals for distribution in localities to representatives of the "Șor" Political Party; that there are temporarily rented residences where the allocation of received funds is organized.

Moreover, from the documents presented by the Government, the widespread nature of the distribution of financial resources in localities throughout the country is evident. Indeed, individuals acting on behalf of the party admitted that there was a person responsible for distributing money in each locality in the country; for example, some individuals were responsible for the southern region of the country, while others were responsible for the northern region, and so on. Additionally, through the actions of investi-

gative authorities, the Government further confirmed the widespread nature of the non-transparent financing of the party, where authorities seized packages of financial means labeled with the names of various localities in the country, indicating that these funds were to be delivered by couriers acting in the party's interest. In this regard, the Court also considered materials indicating that, from 7 November 2022, to 16 March 2023, investigative authorities recorded 21 cases of receiving and transmitting money to and from individuals who act as representatives of the "Șor" Party. This involved compensating individuals participating in protests organized by the party, covering transportation services for these individuals, paying salaries, and other expenses related to maintaining party offices.

The Court noted that the 21 cases of receiving and transmitting money pertain to the non-transparent financing of the party's activities only in the cities of Chișinău and Bălți. The Court considered the extent of this phenomenon when considering it from the perspective of documents attesting that the party has an illegal system for distributing money, ensuring that in every locality in the country, there is a person responsible for allocating funds to the party's territorial offices.

Thus, if the acts from October and November 2022 demonstrate that there are individuals receiving and distributing financial means to the party's offices in multiple localities throughout the country, through the materials dated 20 April 2023, the Government provided information from inside the party confirming the non-transparent nature of the financing of the "Șor" Party.

To capture the systematic nature of the financing, the Court considered the documents presented by the Government, according to which, between 7 November 2022, and 16 March 2023, individuals acting on behalf of the party received sums of money at least three times per month, and sometimes four or even six times per month.

Furthermore, in some cases, the receipt and transfer of money took place right in the premises of the party's territorial offices.

In conclusion, the Court noted that the actions analyzed above indicate that the non-transparent funding of the "Șor" Party is systematic in nature.

Regarding the continuous nature of the violation of the principle of transparent financing, the Court noted that, despite the severe measure taken by the authorities in

2016 in the *Popenco* case – canceling the registration of the candidate – for the violation of the principle of transparent financing of the electoral campaign, this sanction did not influence the conduct of the "Șor" Political Party in any way in the subsequent electoral campaigns.

On the contrary, in 2018, in the *Apostolova* case, the party risked receiving a donation from a company belonging to the Administration of the President of the Russian Federation, and in 2019, the party obtained a donation in the amount of 2,090,000 lei from economic agents engaged in activities funded from public funds.

Even though, in these two cases, the authorities canceled the candidate's registration and required the party to transfer the amount of received donations to the state budget, in 2020, in the *Balinschi* case, the authorities found that Mr. Ilan Șor promised voters that they would be remunerated with 3,000 lei if they voted for the candidate of the "Șor" Party in the elections, and the financial resources used for organizing the transportation of voters for electoral purposes were not declared in the party's financial reports.

In this case, the authorities canceled the candidate's registration and deprived the "Șor" Party of allocations from the state budget until the end of that year.

These sanctions did not prevent the "Șor" Party and its candidates from committing new violations of the principle of transparent financing. Thus, in 2021, authorities found that the party's electoral competitors violated provisions related to transparent financing of electoral campaigns in three different cases, and in 2022, another violation of these provisions was identified.

In these cases, authorities applied various sanctions, such as warnings, admonitions, cancellation of candidate registrations, deprivation of allocations from the state budget for periods of six months or one year.

From the materials presented by the Government and examined by the Court, it appears that these sanctions did not have a deterrent character, since after the party's last electoral sanction in September 2022, in October of the same year and in March 2023, investigative authorities discovered financial means intended for financing representatives of the "Șor" Political Party from individuals acting in the interest of this party.

Therefore, based on the aspects examined, the Court confirmed the ongoing nature of non-transparent financing actions of the "Șor" Political Party.

Regarding the significant proportions of funding, the Court noted that although in the year 2021 electoral authorities found that the "Șor" Political Party violated the principle of transparent campaign financing by amounts of 7,800 lei, 9,049 lei, or 9,514.80 lei, in cases from the years 2016, 2018, and 2019, the party's candidates did not report much larger sums, for example, ranging from 25,044 lei to over 2,090,000 lei.

Furthermore, from the investigation documents of October 2022, it appears that authorities seized sums of money exceeding 2,500,000 lei from individuals acting in the interest of the party.

Moreover, from documents dating from the same period, it is evident that various individuals acting in the interest of the "Șor" Political Party were distributing money to party representatives in amounts exceeding 10,000,000 lei.

From the analyzed documents, it appears that one person received, either personally or through intermediaries, for distribution to party representatives, sums of money ranging from 3,000,000 lei to 8,000,000 lei. Another person allocated sums of money ranging from 500,000 lei to 2,000,000 lei.

Therefore, the Court has found that the non-transparent financing of the "Șor" Political Party has a systemic, continuous, and significant character.

Regarding the impact on the sovereignty and independence of the Republic of Moldova, the Government presented documents regarding the economic sanctions imposed on the "Șor" Party and its leadership by the authorities of the United States of America, the Council of the European Union, and Norway.

Additionally, the Government referred to a decision of the Commission for Exceptional Situations and to a document from the Intelligence and Security Service, indicating that the financing of the "Șor" Party occurs with the involvement of a foreign state.

In this regard, the Court examined them considering the documents that demonstrated the systemic, continuous, and significant non-transparent financing of the party.

In this sense, the Court accepted the thesis expressed by the Venice Commission in its Opinion of 19 December 2022, for the Constitutional Court of the Republic of Moldova, where it was mentioned that the overall situation in the country represents an important factor in assessing a party's use of inappropriate or even illegal means to divert voters from other parties or to use resources to undermine the fairness or integrity of

political competition, leading to distortions of the electoral process through an unfairly obtained advantage supported by unauthorized foreign funding.

From this perspective, the Court could not overlook that the protest actions and party financing intensified in the fall of 2022, i.e., after the start of the military conflict between the Russian Federation and Ukraine, a conflict that has a negative impact on the security of the Republic of Moldova as a neighboring country.

At the same time, the Court observed that the members and collective bodies of the Party did not dissociate themselves from the behavior of Mr. Ilan Șor, manifested by causing particularly large-scale material damage through fraud or abuse of trust, and money laundering in particularly large proportions, as established by court decisions.

On the contrary, as mentioned by a deputy from the party during the court session, in 2019, he even encouraged Mr. Ilan Șor to leave the territory of the Republic of Moldova.

Practically, a vice-president of the party urged the party president to evade appearing before the courts.

Also, the Court noted that the party leadership did not express any opinion regarding the violations established by final court decisions in the ten cases from the years 2016, 2018, 2019, 2021, and 2022. The Court considers that the party had a means of influencing the behavior of its members and individuals in leadership positions.

However, considering that the party refused to apply the available mechanisms to dissociate itself from the behavior of its members, the party has assumed the behavior of its members, individuals acting on behalf of the party, and individuals in leadership positions.

Regarding the imminent danger of the party to the values protected by the Constitution, the Court noted that the party's objective to overturn the democratic order can be inferred from cases of non-transparent financing, protests organized and non-transparently funded by the party, and the claims of party representatives and even Mr. Ilan Șor himself expressed during these gatherings.

The persistent nature of the pursued objective can be observed from the unchanged behavior of the party after electoral sanctions were imposed and after cases of raising sums of money from couriers.

The Court notes that the non-transparent financing of the party, which has a systematic, continuous, and significant nature, violates the values protected by Articles 1(3) and 41(4) of the Constitution.

Furthermore, these actions indicate that the internal order of the party does not align with democratic principles. From this situation, it follows that once in power, this party will apply the principles it has applied within its structure to the state structure as well, causing the will of the state to no longer form because of the free play of political forces but because of the manifestation of an authoritarian system.

Analyzing cumulatively all the materials of the case in relation to their relevance and conclusiveness, and considering the history and consistency of the violations committed by the "Șor" Political Party, especially documented in final court decisions and other acts of authorities, the Court has concluded that the "Șor" Political Party militates against the principles of the rule of law, sovereignty, and independence of the Republic of Moldova. For these reasons, the Court has declared the "Șor" Political Party unconstitutional and has ordered the following:

From the date of pronouncement of this judgment, the "Șor" Political Party is considered dissolved. No act of the organs of this party adopted after the pronouncement of this judgment has legal validity.

The Ministry of Justice will immediately appoint a liquidation commission for the "Șor" Political Party, which will take all necessary measures for the liquidation and removal of this party from the State Register of Legal Entities.

Representatives and members of the "Șor" Political Party who, at the date of pronouncement of this judgment, hold parliamentary mandates in the Parliament of the Republic, will continue to exercise their mandates as independent deputies, without the right to affiliate with other parliamentary factions.

Representatives and members of the "Șor" Political Party who, at the date of pronouncement of this judgment, hold representative mandates in the administrative-territorial units at all levels, including in the bodies of the Gagauz Territorial Autonomy, will continue to exercise their mandates as independent representatives, without the right to affiliate with other factions.

The supplementary candidate lists from the "Șor" Political Party for Parliament and local councils in administrative-territorial units at all levels, previously validated, are declared null and void from the date of pronouncement of this judgment.

If, on the date of pronouncement of this judgment, a parliamentary seat assigned to the "Șor" Political Party is vacant or becomes vacant, it shall remain vacant for the entire duration of the 11th legislature, and the Constitutional Court will not validate any mandate in this regard.

If a representative mandate in the administrative-territorial units at all levels, including in the bodies of the Gagauz Territorial Autonomy, from the "Șor" Political Party is or becomes vacant, no mandate will be validated in this regard.

8. PROHIBITION OF EMPLOYMENT IN PRIVATE SECURITY ORGANIZATIONS FOR INDIVIDUALS CONVICTED OF INTENTIONALLY COMMITTING CRIMES

On 20 July 2023, the Constitutional Court issued Judgment No. 11 on the plea of unconstitutionality of certain provisions from the Law on Private Detective and Security Activities[8].

At the origin of the case was the plea of unconstitutionality related to the text "have not been convicted for intentionally committed crimes, according to a final court decision" from Article 22^1(1) letter c) and Article 27^3 letter d) of Law No. 283 of 4 July 2003, regarding Private Detective and Security Activities.

The contested provisions prohibited the employment in private security companies of individuals who had been convicted of intentionally committed crimes.

The Court decided to examine the referral on the merits, considering Article 43, which guarantees the right to work, in conjunction with Article 54 of the Constitution.

The Court noted that the main purpose pursued by the contested provisions is the recruitment into private security companies of individuals who can be entrusted with the protection of property and the safeguarding of persons. The means chosen to achie-

[8] Judgment No. 11 of 20 July 2023, on the plea of unconstitutionality of certain provisions from Article 22/1(1) letter c) and Article 27/3 letter d) of the Law on Private Detective and Security Activities.

ve this purpose is the exclusion of the right of individuals previously convicted of intentionally committed crimes from engaging in such organizations.

The Court observed that the prohibition had effects without considering the expiration of criminal records. Additionally, the Court found that, although the prohibition targeted only convictions for intentionally committed crimes, the law did not distinguish based on the gravity of the offense or the social value harmed by the criminal act. Furthermore, the law did not consider the individual's behavior after the commission of the crime, nor the circumstances in which the offense was committed or the motive behind it.

The Court envisioned the situation of individuals who had committed intentional offenses in the past but, considering all factual circumstances, the elapsed time, and the factors characterizing their personality, cannot be categorically deemed incompatible with the position of a security agent.

Analyzing the legal provisions regulating the status of professions whose scope of activity includes, among other things, the protection of individuals and property, the Court observed that the legislator has provided a more lenient regime for candidates seeking entry into the profession who have committed offenses in the past. For example, the Law on the Special Status Civil Servant within the Ministry of Internal Affairs stipulates that individuals with criminal records cannot be employed in special status public positions within the Ministry of Internal Affairs.

The Court could not identify any reasonable justification for the different legislative approach concerning individuals seeking employment in private security companies. In this regard, the Court found that the requirement of a clean criminal record for employment in private security organizations constitutes a less intrusive interference with the right to work for individuals seeking employment in such organizations.

However, the Court emphasized that the absence of a criminal record does not imply that a person is fully compatible with the position of a private security agent. Moreover, according to point 9 of the Standard Regulation on Private Security Activities, approved by the Law on Private Detective and Security Activities, the leader of the private security organization is obliged to select individuals with an appropriate moral profile and the necessary physical and professional aptitudes for the performance of security services.

Therefore, because it identified the existence of a less intrusive measure, the Court concluded that the legislator's choice, as manifested by the contested provisions, is not in accordance with Article 43 in conjunction with Article 54 of the Constitution. Based on the arguments presented, the Court upheld the referral and declared Article 273 letter d) and the text "have not been convicted for intentionally committed crimes, according to a final court decision" from Article 22[1](1) letter c) of Law No. 283 of 4 July 2003, regarding Private Detective and Security Activities, unconstitutional.

At the same time, to avoid legislative vacuum, the Court deemed it necessary to establish a provisional solution. Therefore, until the law is amended by Parliament, the requirement of no prior conviction for employment in private security organizations will only apply to individuals with criminal records. In this regard, the Court has sent an Address to Parliament to implement the reasoning of the decision.

9. PROSECUTORS' SALARY

On 8 August 2023, the Constitutional Court issued Judgment No. 12 regarding the constitutional review of certain provisions of Law No. 270 of 23 November 2018, on the unified salary system in the public sector, as well as Article XXVII points 2), 3), and 4) of Law No. 271 of 23 November 2018, amending certain legislative acts[9].

At the origin of the case was the application submitted to the Constitutional Court, based on Articles 135 paragraph (1) letter a) of the Constitution, 25 letter f) of the Law on the Constitutional Court, and 38 paragraph (1) letter f) of the Constitutional Jurisdiction Code, by the interim Prosecutor General at that time.

The applicant requested the Constitutional Court to exercise constitutional review of Article 30 paragraph (4) of the Law on the Unified Salary System in the Public Sector and Article XXVII points 2), 3), and 4) of Law No. 271 of 23 November 2018.

[9] Judgment No. 12 of 8 August 2023, regarding the constitutional review of articles 12 paragraph (15), 29 paragraph (2), 30 paragraph (4), and Annex No. 4 Table 1 of Law No. 270 of 23 November 2018, on the unified salary system in the public sector, as well as Article XXVII points 2), 3), and 4) of Law No. 271 of 23 November 2018, amending certain legislative acts.

The applicant claimed that the contested provisions violate Articles 1 paragraph (3), 6, 46, 54, 124 of the Constitution, and Article 1 of Protocol No. 1 to the European Convention.

At the stage of checking the admissibility of the referral, the Court established that the rules under scrutiny pertain only to Articles 12 paragraph (15), 29 paragraph (2), and Annex No. 4 Table 1 of the Law, which regulate the reference value and coefficients of remuneration applicable to prosecutors.

In its jurisprudence, the Court has emphasized that a series of international legal instruments have established and developed the principle of the independence of prosecutors. According to the UN Guidelines on the Role of Prosecutors, member states must ensure that prosecutors are able to carry out their professional duties without intimidation, impediments, harassment, undue interference, or unjustified exposure to civil, criminal, or other liability from other authorities. The Committee of Ministers of the Council of Europe mentioned in Recommendation (2000)19 on the role of prosecution in criminal justice that: 'States must take appropriate measures so that prosecutors can perform their duties without unjustified interference or exposure to unjustified criminal, civil, or other liability.' (Constitutional Court Decision No. 25 of 29 October 2020, § 41).

The Court noted that considering that the referral challenges the prosecutor's salary, the Court examined whether the contested provisions of the Law on the unified salary system in the public sector comply with the requirements arising from Articles 124 paragraph (1) and 125[1] paragraph (1) of the Constitution, i.e., whether they allow the prosecutor to fulfill the duties delegated to them by the Fundamental Law.

The Court observed that prosecutors are granted significant legal powers, including initiating criminal proceedings, collecting evidence regarding the existence of the offense and the guilt of the perpetrator, representing the accusation in court, etc.

The court noted that the prosecutor, like the judge, cannot act in a case where they have a personal interest or when there are reasons that reasonably call into question their impartiality. Furthermore, the court observed that the prosecutor not only performs the role of the state prosecutor but also has responsibilities related to the proper

conduct of criminal proceedings, such as implementing protective measures for victims or witnesses in the process. Additionally, in criminal proceedings, the prosecutor ensures compliance with legality and the correct application of the law by the courts, having the opportunity to appeal or challenge judicial acts that they deem unfounded or illegal.

The court found that Article 29 (2) of the Law on the unified salary system in the public sector provides competent authorities with broad discretionary power regarding the conditions for adjusting prosecutors' remuneration. Thus, although the legislature increased the reference value for some categories of public servants starting in 2020, prosecutors' salaries remained unchanged, despite inflation eroding the purchasing power of prosecutors' salaries (see, *mutatis mutandis*, CCJ No. 21 of 6 December 2022, § 60).

The court emphasized that adjusting prosecutors' salaries should not depend exclusively on the executive or legislative power as competent authorities in formulating and adopting the state budget (see, mutatis mutandis, CCJ No. 21 of 6 December 2022, § 70).

The court specified that the salary level influences prosecutors' decisions regarding the continuation of their careers. The court noted that most prosecutors enter the profession at a young age, envisioning a long-term career. Although, at the time of taking office, most prosecutors are aware of the need for financial sacrifices, the court emphasized that they should not be placed in a situation where they deplete their personal resources or incur debts.

Based on the arguments presented, the Court *recognized as constitutional* articles 12 paragraph (15), 29 paragraph (2), and Annex no. 4 Table 1, regarding prosecutors, of Law no. 270 of 23 November 2018, regarding the unitary salary system in the public sector, to the extent that the annual adjustment of the reference salary value for prosecutors is mandatory and is based, at least, on the average annual inflation rate at the time of adopting the State Budget Law for the following year.

10. GUARANTEES FOR REFUSING THE RIGHT OF ACCESS TO STATE SECRETS

On 8 August 2023, the Constitutional Court pronounced Judgment No. 14 on the plea of unconstitutionality of certain provisions from the Law on State Secrets and certain provisions from the Regulation on ensuring the classified regime within public authorities and other legal entities[10].

At the origin of the case is the application on the plea of unconstitutionality of Article 25 paragraph (1) letter i) of Law No. 245 of 27 November 2008, on state secrets, and point 109 of the Regulation on ensuring the classified regime within public authorities and other legal entities adopted by Government Decision No. 1176 of 22 December 2010.

Article 25 paragraph (1) letter i) of the Law on State Secrets provided that the communication of incomplete or unauthenticated data by a citizen constitutes a reason for refusing the right of access to state secrets. However, the Court did not find the relevance of any fundamental right invoked by the author in relation to this aspect of the application and declared it inadmissible.

At the same time, point 109 of the Regulation on Ensuring the Regime of Secrecy within Public Authorities and Other Legal Entities provided individuals requesting the right of access to state secrets with the opportunity to be informed only about the legal basis for the conclusion regarding the impossibility of granting access to state secrets.

The Court decided to examine this aspect of the referral on its merits, considering Articles 20, 26, 43, and 54 of the Constitution. As the legal reason for refusal in this referral was the communication of incomplete or unauthentic data by the citizen, the Court examined this aspect of the application in relation to Article 25(1)(i) of the Law on State Secrets.

The Court summarized the general principles derived from the jurisprudence of the European Court regarding the right to be informed of the essence of the reasons un-

[10] Judgment No. 14 of 8 August 2023, on the plea of unconstitutionality of Article 25, paragraph (1), letter i) of Law No. 245 of 27 November 2008, on state secrets, and point 109 of the Regulation on ensuring the classified regime within public authorities and other legal entities, adopted by Government Decision No. 1176 of 22 December 2010.

derlying a decision and examined whether the contested provision in the Regulation on Ensuring the Secret Regime within Public Authorities and Other Legal Entities complies with the standard of the quality of the law, pursues a legitimate purpose, and ensures a fair balance between competing principles.

The Court found that the non-disclosure of the factual reasons underlying the conclusion on the denial of the right to access state secrets pursues legitimate purposes related to national security protection and prevention of disclosure of confidential information, as provided for in Article 54 (2) of the Constitution.

The Court noted that the contested norm gives a relatively greater abstract weight to the legitimate interest of national security and prevention of disclosure of confidential information. However, because procedural rights of individuals are not absolute, and neither are interests based on national security or the confidential nature of information, the Court analyzed whether there are counterbalancing measures and if they can mitigate the limitations on procedural rights.

The Court noted that, for the purpose of perfecting the right of access to classified information, citizens of the Republic of Moldova complete a basic questionnaire and a supplementary questionnaire. The Court observed that both the basic and the supplementary questionnaire become classified after completion and include data and questions concerning the last five years, and in the case of the supplementary questionnaire, the last ten years, about the person applying for access to classified information and their relatives.

Considering the extensive nature of the information that needs to be provided in these questionnaires, the Court acknowledged that individuals might omit certain details. Moreover, there may be information that the person is unaware of or knows incorrectly.

Consequently, without being informed, even in a summary manner, about which information has been omitted or inaccurately provided in the request for access to classified information, the person cannot rectify the circumstances that render the granting of access to classified information impossible.

Therefore, the Court concluded that it cannot be argued that the person has the effective possibility to repeatedly request access to classified information.

The Court noted that the lawyer who becomes aware of the reasons for the decision to deny access to classified information may have a compelling need to communicate with the person regarding these reasons to effectively challenge the findings of the authorities that the person provided incomplete or inauthentic information when applying for access to classified information.

Therefore, without being able to seek explanations from his client regarding the factual circumstances and without being able to demonstrate whether the person violated the obligation to provide complete and authentic information when applying for access to classified information, the defense exercised by a lawyer who holds the right of access to classified information would be vague and, thus, ineffective.

Consequently, the Court found that representation by a lawyer who holds the right of access to classified information does not constitute a sufficient guarantee capable of compensating for the limitation of the rights to an adversarial procedure and equality of arms.

For the right to challenge the refusal decision in court to be considered an important criterion for balancing the limitation of procedural rights, the Court has analyzed the extent of the competence of the court, specifically whether the court can verify the necessary nature of maintaining the confidentiality of state secrets and whether it can communicate this information to the individual.

In this regard, the Court noted that Article 221 (1) of the Administrative Code grants the court the prerogative to request public authorities to additionally present any other documents they possess, including electronic documents, and to provide information. Based on this provision, the court must be presented with all relevant data/information or documents, including those classified as state secrets concerning national security. According to paragraph (3) of Article 222 of the Administrative Code, when the right of access to the file is under discussion and, by law, the confidentiality of state secrets must be maintained, it is the responsibility of the court to assess to what extent access to the file will be granted to the participants in the proceedings. Thus, the court is to balance national security interests with the interests of the participant in the proceedings to have access to the file and, as applicable, grant or deny access to the file.

However, the Court noted that the person's right to be informed, at least in a summary manner, about the factual reasons represents a minimum guarantee of an adversarial procedure and equality of arms. The Court has found in its case law that the right of the person to be informed, even in a limited manner, about the reasons underlying the contested decision does not become inapplicable if the information is classified as a state secret. On the other hand, access to the file implies access to the evidence on which the factual circumstances are based. From this perspective, considerations based on national security may prevail over the right to access evidence classified as a state secret. Thus, regardless of whether the court provides access to the file for the person or not, they have the right to be informed, at least in a summary manner, about the relevant factual elements on which the decision to refuse access to the state secret was based.

Furthermore, the Court noted that if a party to the proceedings has been denied access to the file due to the protection of state secrets, the limitations imposed on the rights to an adversarial procedure and equality of arms cannot be compensated by other guarantees, such as the right to a lawyer who holds the right of access to state secrets.

Thus, the Court observed that this mechanism does not meet the minimum standard set by the jurisprudence of the European Court and the case law of the Constitutional Court.

Therefore, the Court found that none of the factors analyzed provides the person with the minimum guarantees of an adversarial procedure and equality of arms. Thus, the interference with the rights guaranteed by Articles 20 and 26 of the Constitution did not ensure a fair balance between the protection of national security, the maintenance of the confidential nature of information, and the person's right to be informed, at least in a summary manner, of the factual reasons underlying the decision to refuse access to state secrets in the case of incomplete or inauthentic information.

In its analysis based on Article 43 of the Constitution, the Court noted that guarantees of the right to work also imply safeguards against arbitrary dismissal by the employer. The law should not leave it to the employer's or public authority's discretion to unilaterally suspend employment relationships without clear, precise, and well-defined conditions, methods, and criteria. The regulation of situations leading to the terminati-

on of employment relationships should not allow for arbitrary or unjustified decisions. Informing the individual about the reasons for their dismissal serves as both a guarantee and a remedy in this regard, as it eliminates potential arbitrariness on the part of the employer and provides the individual with the opportunity to refute or justify the allegations in favor of their dismissal.

In this regard, the Court noted that the right of access to state secrets is a necessary condition for performing functions that involve working with classified state information. Failure to grant or withdrawal of this right, according to Article 27(5) of the Law on State Secrets, results in the person being transferred to another position unrelated to classified state information or in their dismissal.

Furthermore, the Court observed that whenever there are indications that the holder of the security clearance no longer meets the compatibility criteria for accessing information classified as state secrets, verification measures are resumed at the request of the head of the public authority or another legal person. Thus, the circumstances specified in Article 25(1) of the Law on State Secrets can be discovered throughout the entire period of performing the function that involves working with classified state information.

Therefore, considering that the analyzed counterbalancing factors do not provide the person with the minimum guarantees of an adversarial procedure and equality of arms, the Court held that point 109 of the Regulation on ensuring the secret regime within public authorities and other legal entities may represent a sufficient procedural guarantee for the protection of the right to work, to the extent that the conclusion regarding the impossibility of granting access to classified information based on Article 25(1) letter i) of the Law on State Secrets will contain a summary of the factual reasons.

In conclusion, the Court *partially admitted* the referral and *recognized constitutional* point 109 of the Regulation on ensuring the secret regime within public authorities and other legal entities, adopted by Government Decision No. 1176 of 22 December 2010, to the extent that the conclusion regarding the impossibility of granting the citizen the right of access to classified information based on Article 25(1) letter i) of the Law on State Secrets will contain a summary of the factual reasons.

11. THE BAN ON RUNNING FOR ELECTIONS, APPLIED TO PERSONS ASSOCIATED WITH POLITICAL PARTIES DECLARED UNCONSTITUTIONAL

On 3 October 2023, the Constitutional Court pronounced Judgment No. 16 regarding the constitutional review of Article 16 paragraph (2) letter e) of the Electoral Code[11].

At the origin of the case is the application on the constitutional review regarding Article 16, paragraph (2), letter e) of the Electoral Code, submitted by Ms. Marina Tauber, Mr. Vadim Fotescu, Mr. Petru Jardan, Ms. Reghina Apostolova, and Mr. Denis Ulanov, Members of the Parliament of the Republic of Moldova.

The contested provisions prohibit individuals who, at the time of the Constitutional Court's judgment declaring a political party unconstitutional, held the position of a member of the executive body of the declared unconstitutional political party, as well as individuals holding elective positions on behalf of the declared unconstitutional political party, from running in elections for a period of 5 years from the date of the Constitutional Court's judgment.

The applicant mentioned that the contested provisions contravene Articles 1 paragraph (3) (*primacy of law*), 2 (*sovereignty and state power*), 5 (*democracy and political pluralism*), 16 (*equality*), 21 (*presumption of innocence*), 22 (*non-retroactivity of the law*), 32 (*freedom of opinion and expression*), 38 (*right to vote and the right to be elected*), 39 (*right to administration*), 41 (*freedom of parties and other socio-political organizations*), and 54 (*restriction of the exercise of certain rights or freedoms*) of the Constitution.

From the analysis of the admissibility conditions of a application, the Court noted the relevance of the right to stand for election, guaranteed by Article 38 of the Constitution, and decided to examine the proportionality of this measure from the perspective of Article 54.

The quality of the law. From the contested text, it follows that the prohibition to run for election applies to two categories of individuals: members of the executive body of

[11] Judgment No. 16 of 3 October 2023, regarding the constitutional review of Article 16 paragraph (2) letter e) of the Electoral Code.

the party and individuals who held elective positions on behalf of the declared unconstitutional party.

Regarding the first category, the Court found that national legislation provides that each political party is obligated to have governing bodies (the general assembly of members or delegates of the party) and executive bodies. These operate both at the central level of party leadership and at the level of its territorial organizations. Additionally, the statutes of political parties must necessarily stipulate the executive bodies of the party, the procedure for their election, their mode of activity, and their powers (see Articles 13(1)(h) and 14(2) of Law No. 294 on Political Parties from December 21st, 2007). Considering these regulations, the Court did not believe that difficulties could arise in understanding the notion of "members of the executive body of the party." Based on the general nature of the text in question and the interpretive rule that where the law does not distinguish, the interpreter should not distinguish, the Court concluded that the legislator had in mind both members of the central executive body of the party and members of local executive bodies.

Regarding the second category, the Court considers that the phrase "person who held elective offices on behalf of the party" can be understood in its ordinary sense, taking into account offices that can be filled through elections: Members of Parliament, the President of the Republic of Moldova, mayors, and councilors in local public authorities (see Constitutional Court Decision No. 2 of 27 July 2023, § 20).

Moreover, the duration of the prohibition is clear. Thus, a member of the party's executive body or a person who held an elective office on behalf of the party cannot run for elections for five years from the date of the Constitutional Court judgment declaring the party in question unconstitutional. Therefore, the Court concluded that the challenged provisions meet the requirements of the quality of the law.

The existence of a legitimate purpose and a rational connection between it and the challenged provision. Although nothing in Constitutional Court Judgment No. 10 of 19 June 2023, suggests that Parliament has an obligation to impose restrictive measures on the electoral rights of members of the party declared unconstitutional, the Court acknowledges that the contested provisions can achieve several legitimate purposes mentioned in Article 54 (2) of the Constitution (e.g., protection of national security, ter-

ritorial integrity, public order, rights, freedoms, and dignity of other persons) and that there is a rational connection between these purposes and the challenged provision.

The existence of a fair balance between competing principles. The Court noted that in the Advisory Opinion of 8 April 2022, for the Supreme Administrative Court of Lithuania, the European Court of Human Rights observed that when assessing the proportionality of a general measure restricting the exercise of the right to stand for election to an elective office, the following issues should be analyzed: whether the duration of the restriction is limited or if there is a possibility to request its reconsideration; whether the restriction is based on objective criteria; whether the procedure for applying the restriction is accompanied by sufficient safeguards to ensure protection against arbitrariness.

(a) *If the duration of the restriction is limited or if there is a possibility to request its reconsideration*. The Court observed that the prohibition on candidacy is time-limited. Individuals falling under its scope are not allowed to run for elective offices for a period of five years from the pronouncement of the Constitutional Court's judgment declaring the unconstitutionality of the party to which they belonged.

Regarding the argument that the legislature did not provide reasons for extending the duration of the prohibition from three years to five years, the Court noted that the Parliament's competence to establish the duration of a prohibition is not unlimited. Because this measure involves substantial limitations on the constitutional right to run for elections, the Court held that Parliament must provide compelling reasons when determining the duration of a ban, including when deciding to extend it. Parliament must justify to what extent the established duration of the ban is suitable for achieving its legitimate purposes.

This obligation of Parliament arises from the general constitutional duty of authorities to justify their own decisions, which can be inferred from Article 54 of the Constitution and the standards of European constitutionalism, dictated by the culture of justification, in which every exercise of power must be justified (see, mutatis mutandis, CCJ No. 15 of 28 April 2021, § 42).

In this case, the Court noted that in the initial version of the bill from 10 July 2023, introducing the contested provision, the drafters set the ban to apply for a period of three years from the date of the Constitutional Court's judgment. This duration of the

ban was voted on in the first reading on 14 July 2023. However, on 31 July 2023, two members of Parliament registered amendments proposing to increase the duration of the ban from three to five years. The amendments were not accompanied by any justification. On the same day, the Legal, Appointments, and Immunities Committee accepted the proposed amendment and prepared a report on the bill, which was presented to the Parliament's plenary. On the same day, the bill, which already included the increased duration of the ban, was voted on in the second reading. Thus, the Court found that the legislator increased the duration of the contested ban without any objective justification.

(b) *Whether the restriction was applied based on objective criteria*. In its jurisprudence, the European Court noted that Article 3 of Protocol No. 1 to the Convention does not exclude situations where the scope and conditions of a restrictive measure can be detailed by the legislature, leaving it to the ordinary courts to verify whether a particular person belongs to the category or group regulated by the law in question (*Ždanoka v. Latvia*, § 125).

In this context, the Court noted that a clear distinction must be made between the political party that was declared unconstitutional and the rights of its members. The prohibition of the party is not directly detrimental to the fundamental rights of all its citizens. Thus, restrictions must be based on objective criteria that considers the role played by the candidate in the actions for which the political party to which they belonged was declared unconstitutional.

For example, in the case of *Ždanoka v. Latvia* [GC], the Latvian Communist Party, in which the applicant held a leadership position, was declared unconstitutional because it participated in organizing a coup d'état after Latvia declared independence. Four years after the party was banned, a law was enacted prohibiting individuals from running for elections if the authorities had determined, through a final court decision, that they actively participated in organizing the coup. The applicant sought to be registered as a candidate in parliamentary elections, but her request was rejected because authorities had previously found, in a separate completed judicial procedure, that she actively participated in the coup organized by the Latvian Communist Party. In that case, the European Court did not find a violation of the right to run for elections, as the restriction applied only to those who "actively participated" in the party's activities at the time of the

events. The Court noted that this confirmed that the legislator made a clear distinction between different forms of involvement in the party's activities by its former members. Moreover, the law allowed affected individuals to challenge, before a court, their classification within the categories defined by the legislator. The European Court considered that the law was clear and precise in defining the category of persons falling under its scope and was also flexible enough to allow ordinary courts to examine whether a particular person belonged to that category. In conclusion, the Court held that the law in question had a sufficient degree of individualization, as required by Article 3 of Protocol No. 1 (see §§ 126-128).

Also, in the case *Etxeberria and others v. Spain* of 30 June 2009, the applicants' requests to participate in elections were annulled by final court decisions because the authorities found that the applicants continued activities of political parties declared illegal. The European Court did not find a violation of the right to stand for election, as the law allowing the annulment of registration could only be applied to candidates with strong and proven ties to political parties declared illegal. The Court observed that the authorities made exclusion decisions on an individual basis, and domestic courts unequivocally established a connection to political parties declared illegal after a hearing during which the groups could make observations (see §§ 52-56).

On the other hand, in the case of *Sadak and others v. Turkey* (No. 2), 11 June 2002, the European Court found a violation of the right to exercise the mandate of a deputy, as the national legislation provided for an automatic annulment system of parliamentary mandates in the event of the party's unconstitutional declaration, and this mechanism did not take into account the personal political activities of the applicants. The Court noted that the severity of this measure was extreme, as it prevented the applicants from engaging in their political activities and continuing their mandate. In conclusion, the European Court held that the interruption of the applicants' mandate was not proportional to the legitimate purpose invoked by the authorities and that this measure was incompatible with the substance of the right to be elected and to exercise the mandate under Article 3 of Protocol No. 1, violating the sovereign power of the electorate that elected them as members of parliament (see §§ 36-40). The European Court reached similar conclusions in the cases of *Silay v. Turkey*, 5 April 2007, §§ 30-34; *Ilicak v. Turkey*,

5 April 2007, §§ 33-37; *Kavakçi v. Turkey*, 5 April 2007, §§ 44-47; *Sobaci v. Turkey*, 29 November 2007, §§ 29-33; *Party for a Democratic Society (DTP) and others v. Turkey*, 12 January 2016, §§ 122-127.

In this case, the prohibition on candidacy is applied based on the exercise of a function by candidates within the party declared unconstitutional, i.e., as a member of the party's executive body or as a person who held an elective office on behalf of the party at the time of the party's unconstitutional declaration. The Court did not consider this criterion used by the legislator to prevent individuals from running as an objective one.

The Court acknowledged that in the case of a party being declared unconstitutional, presumptions regarding the responsibility of individuals holding positions within the party, especially those in leadership roles, may arise. However, the issue raised in this application was whether such general presumptions were sufficient to prohibit individuals falling under their scope from running for elections, considering their political careers. The Court observed that the legislator restricted the application of this presumption only to candidates who held certain positions at the time of the party's unconstitutional declaration. This implies the legislator's intent to automatically associate individuals with the actions for which the party was declared unconstitutional.

The Court held that such general presumptions, based solely on the position held within the party, do not take into account the individual contribution of the candidate to the actions for which the party was declared unconstitutional. For instance, in the case of members of the central executive body of the party declared unconstitutional, the Court recognized that this category of individuals is involved in the decision-making process within the party, and in the event of the party's unconstitutional declaration, the legislator may have a legitimate interest in establishing certain prohibitions, such as the prohibition from running for elections. However, the legislator must consider that there may be situations where some minority members of the central executive body of the party could dissociate themselves from the party's actions until the declaration of unconstitutionality, or that some members of the executive body did not participate in the decisions subsequently attributed to the party's unconstitutional declaration. In these situations, the contested norm makes no distinction between members of the central executive body of the party who actively participated in the actions for which the party

was declared unconstitutional, those who had a neutral, insignificant, or no role, and those who dissociated themselves from the party's actions. This situation also applies to individuals who held elective positions on behalf of the party. Thus, the contested norm does not allow for individualized decisions and considers that an entire group is collectively responsible for the violations that led to the party's declaration of unconstitutionality.

In its jurisprudence, the European Court has criticized prohibitions formulated in absolute and general terms, without providing exceptions, being applied automatically. The European Court has emphasized the need to "individualize" the restriction on the exercise of electoral rights and to take into account the actual behavior of individuals rather than a perceived threat posed by a group of persons (see *Kara-Murza v. Russia*, 4 October 2022, §§ 48-50).

Furthermore, the Court observed that the duration of the ban is fixed for both categories of individuals concerned and does not take into account the degree of each person's contribution to the actions for which the party was declared unconstitutional. Thus, individuals who contributed insignificantly to the actions for which the party was declared unconstitutional would face a prohibition of the same duration as those who actively contributed or played a decisive role in the attributed actions of the party. The Court noted that this approach could lead to a disproportionately applied prohibition based on the candidate's behavior. Therefore, the Court found that the contested prohibition lacks objective criteria, is general in nature, and is insensitive to specific circumstances.

(c) *If the procedure for applying the restriction is accompanied by sufficient guarantees to ensure protection against arbitrariness*. The procedure leading to the imposition of such a prohibition in an individual case must be accompanied by sufficient guarantees to ensure the rule of law and protection against arbitrariness. This procedure must take place before an independent authority that hears the concerned person and makes a reasoned decision (see § 96 of the Advisory Opinion of the European Court of Human Rights of 8 April 2022).

In this case, the disqualification from being elected operates automatically, without the need for a court decision to that effect. Conversely, in the case of *Ždanoka v. Lat-*

via [GC], §§ 37-49 and 127, a law was enacted prohibiting individuals from running for elections if authorities had determined, through a final court decision, that they had actively participated in the organization of a coup d'état. The applicant sought registration as a candidate in parliamentary elections, but her request was denied because authorities had previously found, in a separate concluded judicial procedure, that she had actively participated in the coup organized by the Communist Party of Latvia. Similarly, in the case of *Miniscalco v. Italy*, 17 June 2021, § 97, the European Court found that the prohibition imposed on the applicant to run in regional elections is accompanied by safeguards. Above all, this prohibition was contingent upon the existence of a final criminal conviction for a certain number of serious offenses strictly defined by law. The contested measure did not apply to all individuals convicted solely due to a conviction but to a predefined category of persons based on the nature of the committed offenses.

Moreover, the Court noted that the procedure for the registration of electoral competitors is based on the documents submitted by the candidates. Depending on compliance with the legal requirements, the electoral authority either registers or refuses the registration of candidates. This procedure is not adversarial, wherein a state authority requests the electoral body to refuse the registration of the candidate in connection with their role in the acts for which the party to which they belong was declared unconstitutional, and the candidate requests the rejection of this initiative. This deficiency allows electoral bodies to automatically refuse the registration of candidates falling under the scope of the contested prohibition without individually assessing the candidate's role in the commission of the acts for which the party they belong to was declared unconstitutional. Additionally, until the electoral body issues a decision, the law does not guarantee the candidate the right to be heard, to present evidence, and to be represented by a lawyer.

According to the jurisprudence of the European Court, it does not constitute a violation of the European Convention if the structural or procedural deficiencies identified during the proceedings before an administrative authority are rectified in the subsequent review carried out by a judicial authority with full competence (see, *mutatis mutandis, Čivinskaitė v. Lithuania*, 15 September 2020, § 114).

However, the Court observed that in the case of challenging the refusal of the electoral body to register the candidate before the court, the contested provisions compel judges to apply a formalistic analysis. They are required to verify only the individual's affiliation with the two categories of positions mentioned by law, lacking the opportunity to analyze the candidates' roles and contributions to the actions for which the party was declared unconstitutional. Thus, even if the candidates were to present evidence demonstrating that they did not contribute in any way to the actions in question or even dissociated themselves from the party's actions, judges would not be able to consider such evidence if they find that the person falls within the scope of the categories specified by law.

Therefore, the Court found that the identified provisions do not provide an effective remedy against potential decisions of electoral bodies based on this ground for rejecting the registration of election candidates. They are not accompanied by sufficient guarantees to ensure protection against arbitrariness and declared Article 16(2) letter e) of the Electoral Code unconstitutional.

12. REMUNERATION OF PUBLIC OFFICIALS WITHIN THE JUDICIAL SYSTEM

On 10 October 2023, the Constitutional Court issued Judgment No. 17 regarding the constitutionality review of certain provisions in Table 2 of Annex 3 to Law No. 270 of 23 November 2018, concerning the unified salary system in the public sector[12].

At the origin of the case is the application submitted to the Constitutional Court by the Superior Council of Magistracy. The author of the referral asked the Court to assess the constitutionality of salary classes and coefficients assigned to public functions within the judicial system. It was noted that the legislator established a lower level of remuneration for public officials within the judiciary compared to the remuneration level for similar functions in the executive and legislative branches, contrary to the principle of separation of powers in the state.

[12] Judgment No. 17 of 10 October 2023, regarding the constitutionality review of certain provisions in Table 2 of Annex 3 to Law No. 270 of 23 November 2018, concerning the unified salary system in the public sector (remuneration of public officials within the judicial system).

In its analysis, the Court noted that it had previously examined the issue of differential remuneration of public officials working within the legislative and executive branches compared to officials within the judicial branch of state power.

Thus, in 2013, the Constitutional Court was referred by the Supreme Court of Justice to assess the constitutionality of certain provisions in the Law on the Salary System of Public Officials, Law No. 48 of 22 March 2012, which at that time established more favorable remuneration conditions for public officials in the legislative and executive branches compared to public officials within the judiciary.

After comparing the salary grades of these officials, the positions of the authorities in the hierarchy of state organs, and the criteria for appointment to office, the Court concluded that officials within the judiciary are disadvantaged in terms of remuneration compared to officials in the legislative and executive branches. This creates an imbalance among the three branches of power.

To reach this conclusion, the Court held that the independence of the judiciary cannot be ensured without institutional and structural independence. The administration of justice involves the contribution of various supportive components, subsequent judges who directly represent this power. The Court noted that maintaining a balance between the powers of the state is also reflected in the degree of proportionality in providing material support to administrative personnel (see CCJ No. 24 of 10 September 2013, §§ 50-52).

Furthermore, the Court noted that the quality and purpose of the judicial act are directly proportional not only to the professional competence of the judge but also to the skills of the personnel assisting in their activities. For these reasons, a proportional investment and incentive are necessary for the work carried out by the personnel of the judicial system, considering the responsibilities assigned to them by law. Public officials within the legislative, executive, and judicial branches contribute to the exercise of their respective state powers, representing a force that cannot be overlooked when assessing the balance of powers in the state. The Court mentioned that providing material benefits to public officials within the authorities of one power at the expense of another can undermine the respective power, making it less attractive to qualified personnel.

Subsequently, Parliament amended the provisions regarding the remuneration of public officials within the judicial system, but these amendments were declared unconstitutional by Judgment No. 25 of 6 November 2014, as some modifications-maintained salary differences. The Court noted that Parliament had institutionalized solutions like those regulated by the previous law, which was declared unconstitutional, preserving discrepancies in the salary levels of some officials within the judicial system compared to officials in the legislative and executive branches. This action disregarded the considerations and provisions of Judgment No. 24 of 10 September 2013. The Court emphasized that until a new law is enacted by Parliament, public officials within the judicial system will be remunerated equivalently to positions within the legislative and executive branches (see CCJ No. 25 of 6 November 2014, § 51 and point 6 of the operational provision).

On 23 November 2018, the Parliament adopted Law No. 270 regarding the unified salary system in the public sector. In this case, the author of the referral noted that the new law on the remuneration of public officials does not consider the reasoning of Constitutional Court Decisions No. 24 of 10 September 2013, and No. 25 of 6 November 2014.

Comparing the salary grades of public officials within the legislative and executive branches with those in the judiciary, the Court found that the latter are disadvantaged in terms of remuneration.

The same situation applied to the salary level of public officials within the Secretariat of the Constitutional Court, compared to public officials in the legislative or executive branches.

Furthermore, the Court recalled that in its 2013 Judgment, it emphasized the necessity of appropriate remuneration for the position of court clerk, considering the role of this function in the efficient organization and conduct of judicial proceedings.

The Court noted that by reintroducing into the new law on the remuneration of public officials a salary model that disadvantages the personnel of the judiciary and the Secretariat of the Constitutional Court in comparison to the personnel of the legislative and executive branches, the legislator did not consider the reasoning of the

Court in Judgment No. 24 of 10 September 2013, and No. 25 of 6 November 2014. The Court observed that the contested provisions created an imbalance among the mentioned powers.

The Court recalled that, according to Article 140 of the Constitution, laws and other normative acts or parts thereof become void from the moment the Constitutional Court decision targeting them is adopted. The decisions of the Constitutional Court are final and cannot be challenged. Furthermore, complying with the decisions of the Constitutional Court is a necessary and essential condition for the proper functioning of the state's public authorities and for the affirmation of the rule of law. The decision declaring unconstitutionality becomes part of the normative legal order, and its effect leads to the cessation of the unconstitutional provision for the future. The Parliament or the Government, as the case may be, have the obligation to repeal or modify the respective normative acts, thereby aligning them with the Constitution. The intervention of the Parliament or the Government, within the term provided by Article 281 of the Law on the Constitutional Court, in accordance with the determinations made by the Constitutional Court's decision, is an expression of the definitive and generally binding nature of the decisions of the constitutional court (see Decision No. 25 of 6 November 2014, § 63).

Therefore, the Court held that the salary grades and coefficients assigned to the public positions analyzed within the judiciary and the Secretariat of the Constitutional Court are contrary to Articles 6 and 140 of the Constitution.

At the same time, to avoid a legislative vacuum, the Court deemed it necessary to establish a provisional solution. Therefore, until the Parliament amends the Law, the salary grades and coefficients from Annex 3, Table 2 of Law no. 270/2018, equivalent to positions within the legislative and executive branches as mentioned in § 31 of the Decision, will apply to public positions within the judiciary. Additionally, for public positions within the Secretariat of the Constitutional Court, the salary grades and coefficients from Annex 3, Table 2 of Law no. 270/2018, equivalent to positions within the legislative and executive branches as mentioned in § 32 of the Judgment, will apply.

13. ANNUAL LEASE PAYMENT FOR PUBLICLY-OWNED LANDS ASSOCIATED WITH PRIVATIZED/PRIVATE ASSETS

On 31 October 2023, the Constitutional Court pronounced Judgment No. 19 on the plea of unconstitutionality of Article 4 paragraph (9), Article 10 paragraphs (8) and (11) and points 3) and 31) from the Annex to Law No. 1308 of 25 July 1997, regarding the normative price and the manner of buying and selling land[13].

The authors claimed that the contested norms have a negative impact on the local public authorities' revenues, as the land lease tax is calculated based on the normative price of the land by applying specific percentage rates set by law, which do not correspond to the market value of the land, thereby limiting the financial autonomy of local authorities.

In this case, the Court noted that the contested provisions of Article 10 paragraphs (8) and (11) of the Law on the normative price and the manner of sale-purchase of land establish that, when determining the lease payment for land related to privately owned/privatized assets, local authorities must consider only the normative price provided by law.

The Court held that the principle of financial autonomy of local authorities is not an absolute one but can be subject to limitations. In the case of leasing public property by local authorities, the legislator may intervene with regulations to prevent the establishment of derisory prices. This legislative interest falls within its competence established by Article 130 (1) of the Constitution to regulate by law the manner of formation, administration, use, and control of the financial resources of local administrative units. In these situations, it is important that legislative measures do not disproportionately affect the financial autonomy of local authorities.

The Court observed that, in the case of leasing public property lands related to privatized assets, local public authorities do not have discretionary power in determining the lease payment amount. Thus, the annual lease payment for public property

[13] Judgment No. 19 of 31 October 2023, on the plea of unconstitutionality of certain provisions of Law No. 1308 of 25 July 1997, regarding the normative price and the manner of buying and selling land.

lands related to privatized assets in villages and communes is fixed at 0.2% of the normative price (Article 10, paragraph (11) of Law No. 1308/1997). Therefore, the local authority is restricted in the ability to lease land at a price higher than that set by the legislator.

Thus, the Court found that the challenged provisions compel local authorities to lease public property lands related to privatized assets at strictly determined prices, which could be to the detriment of the budget of the administrative-territorial unit.

The Court noted that the contested provisions place local public administration in a situation where it lacks maneuverability in setting market prices for the lands it can lease. The Court emphasized that, based on the constitutional principle of local autonomy, the local public authority must have the ability to determine lease prices for public property lands, taking into account the specific characteristics of each administrative-territorial unit, economic potential, geographical location, access to infrastructure, and other important utilities, etc. The freedom to determine the amount of lease payment is an important indicator/factor of the degree of achievement of local autonomy. Local public administration must have a margin of discretion in this field.

The Court noted that the legislator's objective of preventing the leasing of public lands at inappropriate prices could have been achieved equally without excessively limiting the financial autonomy of local authorities. For example, the lease price of public lands can be controlled by the legislator by establishing a minimum percentage, while simultaneously granting local authorities the possibility to increase it based on market price developments, as well as supply and demand.

The Court did not accept the argument that local authorities could apply excessively high rates for leasing lands, as these measures would be detrimental to the objective of accumulating funds in the local budget. However, even if it were to allow such situations, these decisions can be contested in common law courts both by interested parties and by the State Chancellery, according to the procedures prescribed by the Administrative Code.

In conclusion, the Court noted that the provisions of Article 10 paragraph (11) of the Law on the normative price and the manner of buying and selling land do not en-

sure a fair balance between the legislator's interest in regulating by law the way in which the financial resources of the administrative-territorial units are formed, administered, and controlled (Article 130 of the Constitution), including the setting of lease prices for publicly-owned land of the administrative-territorial unit, and the principle of financial autonomy of local authorities, which provides the prerogative of the representative bodies of the administrative-territorial units to establish taxes, fees, and other revenues of the budgets of the administrative-territorial units.

In the case of Article 10 paragraph (8) of the Law, although it grants the local authority discretionary power in setting the price for leasing publicly-owned land related to privately-owned property, i.e., no less than 2% and no more than 10% of the normative price of the land, the Court found that the pricing formula does not allow the local authority to consider the market price, which affects the local budget.

For these reasons, the provisions of Article 10 paragraphs (8) and (11) of Law no. 1308/1997 contradict the combined reasoning of Articles 109 and 132 of the Constitution, and the Court has declared them unconstitutional.

To avoid a legislative gap, the Court deemed it necessary to establish a provisional solution. Therefore, until the law is amended by Parliament, local authorities may impose an annual lease payment for lands related to privately owned/privatized properties, which shall be no less than 2% of the market value of the land, determined by an appraiser in accordance with the Law on Appraisal Activity, but not less than the normative price calculated according to the Law on Normative Price and the Sale-Purchase Method of Land.

14. THE PERFORMANCE EVALUATION PROCEDURE OF THE PROSECUTOR GENERAL

On 9 November 2023, the Constitutional Court pronounced Judgment No. 20 on the plea of unconstitutionality of certain provisions from the Law on the Prosecutor's Office[14].

[14] Judgment No. 20 of 9 November 2023, on the plea of unconstitutionality of certain provisions from the Law on the Prosecutor's Office.

At the origin of the case was the plea of unconstitutionality of Article 31/1, paragraphs (1) and (5) of the Law on the Prosecutor's Office, in the wording up to the entry into force of Law No. 280 of 6 October 2022, and the omission to regulate in the Law on the Prosecutor's Office the right to challenge the report of the Evaluation Commission of the Prosecutor General's performance.

In its jurisprudence, the Court has held that the plea of unconstitutionality can be raised both regarding current norms and those that have been repealed or modified but are decisive for the resolution of the case in which the plea was raised.

The provisions of Article 31/1, paragraphs (1) and (5) of the Law on the Prosecutor's Office stipulated that, for the purpose of assessing the activity and compliance with the held position, the performance of the Prosecutor General is evaluated by a performance evaluation commission, ad-hoc constituted by the Superior Council of Prosecutors. The evaluation procedure is carried out based on regulations approved by the Superior Council of Prosecutors.

Because in the main dispute, the Regulation on the procedure for evaluating the performance of the Prosecutor General, approved by the Superior Council of Prosecutors, was contested, the Court acknowledged that the court could apply the provisions of Article 31/1, paragraphs (1) and (5) of the Law on the Prosecutor's Office, as wording up to the entry into force of Law No. 280 of 6 October 2022. Additionally, given that the court is requested to resolve an action in normative control, the Court could not identify to what extent the alleged omission to regulate the right to challenge the report of the Evaluation Commission of the Prosecutor General's performance could influence the pending process before the court.

Also, during the admissibility examination stage, the Court observed that the contested legal provisions had previously been the subject of notifications (see DCC No. 149 of 30 September 2021). Regarding Article 31/1, paragraph (1) of the Law on the Prosecutor's Office, the Court noted that, like previous notifications, the applicant formulated abstract criticisms regarding the lack of clarity and predictability, without demonstrating the existence of an interference with any fundamental right.

Regarding Article 31/1, paragraph (5) of the same law, the Court emphasized that, unlike the claimants that formed the basis of Decision No. 149 of 30 September 2021, in the present case, the Court was seized through a plea of unconstitutionality raised in litigation, the outcome of which could influence the career (constitutional mandate) of the Prosecutor General. Additionally, the Court considered the recommendations of the Venice Commission, which mentioned that granting the Superior Council of Prosecutors practically unlimited power to establish the substantive requirements for the dismissal of the Prosecutor General represents an extremely questionable approach from the perspective of the rule of law. While it is acceptable for the Superior Council of Prosecutors to develop the substantive rules and procedures provided by law, it seems excessive for the Superior Council of Prosecutors to have the freedom to formulate such rules.

For these reasons, the Court has decided to examine on the merits whether Article 31/1, paragraph (5) of the Law on the Prosecutor's Office, as formulated until the entry into force of Law No. 280 of 6 October 2022, complies with Article 125 paragraph (2) of the Constitution.

In its analysis, the Court noted that, according to Article 125, paragraph (1) of the Constitution, the Prosecutor General is appointed by the President of the Republic of Moldova, upon the proposal of the Superior Council of Prosecutors, for a term of 7 years, which cannot be renewed. By Law No. 256 of 25 November 2016, which established the new wording of Article 125 of the Constitution, the legislator aimed to ensure the independence of the Prosecutor General and protect the prosecutor's office from inappropriate interference or influence, including from the legislative and executive branches (see CC Opinion No. 5 of 19 April 2016, §§ 25, 28).

In the opinion of the Venice Commission, it is a matter of principle that the fixed term of office for members of constitutional authorities serves the purpose of ensuring their independence from external pressures. Therefore, measures that could jeopardize the continuity of the mandate and interfere with the security of the mandate of members of these authorities raise suspicion that the intention behind such measures is to influence their decisions (Joint Urgent Opinion No. 1003/2020 of 11 December 2020, of

the Venice Commission and the Directorate General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the three legal questions regarding the mandate of members of constitutional authorities (CDL-AD(2020)033), § 19).

In its jurisprudence, the European Court has held that when it comes to the need for protection against arbitrary interference in their functions by public authorities, a clear line cannot be drawn between judges and prosecutors. Thus, all members of the judicial system, whether judges or prosecutors, should benefit from protection against arbitrary practices of legislative or executive power. In the legislation of the Republic of Moldova, although it is true that prosecutors exercise their functions autonomously, and judges independently, the national judicial system does not make a fundamental distinction between their statuses. The Court also noted the increasing importance of procedural fairness in cases involving the dismissal of prosecutors, including the intervention of an independent authority separate from the executive and legislative branches regarding decisions affecting the appointment and dismissal of prosecutors (see *Stoianoglo v. Moldova*, 24 October 2023, §§ 37-39, 54).

Regarding the legal provisions that grant the Superior Council of Prosecutors the competence to establish criteria for evaluating the performance of the Prosecutor General, the Venice Commission noted that the procedure for evaluating the Prosecutor General's performance should be significantly revised. In particular, the law should clearly describe the nature and key indicators of performance evaluation and distinguish it from disciplinary responsibility. The Superior Council of Prosecutors may establish specific regulations but always within the framework provided by law. From the perspective of the rule of law, providing the Superior Council of Prosecutors with practically unlimited power to establish the substantive requirements for the dismissal of the Prosecutor General represents an extremely questionable approach. Such rules must have the highest possible level of legitimacy (Opinion No. 1058/2021 of 13 December 2021, regarding the amendments of 24 August 2021, to the Law on the Prosecutor's Office, CDL-AD(2021)047, §§ 66, 105).

In another opinion, the Venice Commission noted that providing the Superior Council of Prosecutors with *carte blanche* in the process of defining methods of perfor-

mance evaluation and the relative weight of performance indicators is unacceptable. The fundamental principles governing the evaluation process should be described in the law (see Opinion No. 1086/2022 of 20 June 2022, regarding amendments to the Law on the Prosecutor's Office, CDL-AD(2022)018, §§ 18-23, 42).

The Court observed that, through Law No. 280 of 6 October 2022, for the purpose of implementing the recommendations of the Venice Commission in Opinion No. 1058/2021, the legislator amended the relevant legal provisions. It regulated, in Article 31/1, paragraph (5) of the Law on the Prosecutor's Office, the criteria for evaluating the Prosecutor General in a more detailed manner.

The Court noted that it does not contest the legislature's competence to delegate to other authorities the power to regulate, through subordinate acts, details, or aspects regarding the implementation of the law. However, when the careers of individuals holding constitutional mandates are at stake, regulating by law or even by the Constitution the reasons for the termination of these mandates, especially those concerning the conditions under which these individuals can be dismissed, represents an essential guarantee of the stability of constitutional mandates.

Considering that the Prosecutor General holds a constitutional mandate, granting the Superior Council of Prosecutors the authority to regulate the substantive criteria for evaluating the performance of the Prosecutor General, an evaluation that may lead to their dismissal, significantly diminishes the stability of the constitutional mandate of the Prosecutor General. Therefore, the Court emphasized that, for the protection of the constitutional mandate, the criteria for evaluating the performance of the Prosecutor General must be established by Parliament in law, in a clear manner.

Therefore, the Court concluded that Article 31/1, paragraph (5) of the Law on the Prosecutor's Office, as formulated until the entry into force of Law No. 280 of 6 October 2022, which delegates to the Superior Council of Prosecutors the competence to establish criteria for evaluating the performance of the Prosecutor General, does not comply with the requirement provided by Article 125, paragraph (2) of the Constitution, according to which the Prosecutor General can be dismissed "under the conditions established by law, for objective reasons," and declared it unconstitutional.

15. LEGAL FRAMEWORK OF INCOMPATIBILITIES DURING THE SUSPENSION PERIOD FROM THE PROSECUTOR'S OFFICE IN CONNECTION WITH THE INITIATION OF CRIMINAL PROCEEDINGS AGAINST THE PERSON HOLDING THIS POSITION

On 28 November 2023, the Constitutional Court pronounced Judgment No. 21 on the plea of unconstitutionality of Article 14, paragraph (1), Articles 55, paragraphs (1), (4), and (6), and Article 62 paragraph (1) of Law on the Prosecutor's Office No. 3 of 25 February 2016[15].

At the origin of the case were applications on the plea of unconstitutionality of Articles 14, 55, and 62 of Law No. 3 of 25 February 2016, regarding the Prosecutor's Office. The applicant argued that the contested provisions infringe upon the articles 23, 26, 43, 47, 49, paragraph (2), 50 paragraph (1, and 54 of the Constitution.

During the admissibility verification stage of the application, the Court decided to examine the applications in substance, specifically regarding the constitutional review of Article 14 paragraph (1) of the Law on the Prosecutor's Office, considering Article 43 in conjunction with Article 54 of the Constitution.

In its analysis, the Court noted that the prohibition from working in another position applied to the applicant during the suspension period from the prosecutor's office represents an interference with her right to work and labor protection, guaranteed by Article 43 of the Constitution.

The Court emphasized that the right to work is not an absolute right, and its exercise may be subject to restrictions, under the conditions of Article 54, paragraph (2) of the Constitution. In this regard, the Court verified whether the interference is provided by law, whether it pursues one or more of the legitimate purposes set out in the Constitution, whether, once implemented, it achieves one of these purposes, whether it is necessary and proportionate to the situation that triggered it, and cannot jeopardize the existence of the right or freedom (Judgment No. 35 of 9 November 2021, § 158).

[15] Judgment No. 21 of 28 November 2023, on the plea of unconstitutionality of Article 14, paragraph (1), Articles 55 paragraphs (1) (4) and (6) and Article 62 paragraph (1) of Law on the Prosecutor's Office No. 3 of 25 February 2016.

1) Regarding the compliance with the standard of the quality of law

Article 14, paragraph (1) "Incompatibilities" of the Law on the Prosecutor's Office provides that the prosecutor's position is incompatible with any other public or private position, as well as with other remunerated or non-remunerated activities.

According to the legal meaning from the Explanatory Dictionary of the Romanian Language (2nd edition, 2009), incompatibility refers to the mismatch between two functions, professions, or tasks, which prevents a person from exercising or occupying them simultaneously. The Court noted that the range of activities falling under the contested prohibition and thus prohibited is very broad. At the same time, the Court observed that paragraph (2) of Article 14 of the Law establishes an exception to this restriction, allowing prosecutors to engage in teaching, scientific activities, and participate in collegial bodies within public authorities or institutions. The rules regarding the cumulation of the position with these activities are established by the Superior Council of Prosecutors.

2) Regarding the legitimacy of the pursued goals

In its Report on European Standards on the Independence of the Judicial System: Part II, the Prosecutor's Office, the Venice Commission emphasized that a prosecutor should not hold or exercise other functions in the state, especially functions that would be inappropriate for a judge. Prosecutors must avoid public activities that conflict with the principle of impartiality (CDL-AD (2010)040, § 62). Therefore, the Court notes that the prohibition on holding other positions applicable to prosecutors aims to guarantee their independence and impartiality.

In addition to this purpose, the Court found that incompatibility promotes a strict ethical standard among prosecutors. Considering that prosecutors hold a crucial position in the state, the Court deemed it reasonable to apply rigorous ethical standards to them, compelling them to behave reasonably both during and outside of service. Furthermore, prosecutors act on behalf of the state and in the public interest, justifying rules of conduct that promote impartiality and objectivity. This fact can enhance trust in the justice system and the Prosecutor's Office (see, *mutatis mutandis*, Decision No. 52 of 4 May 2023, § 34).

The Court noted that the incompatibilities of the prosecutor's position protect the impartial exercise of their duties and promote a rigorous ethical standard. These specific purposes can be framed within at least two general legitimate purposes established by Article 54, paragraph (2) of the Constitution: ensuring the authority and impartiality of justice and protecting the rights, freedoms, and dignity of individuals.

3) Regarding the rational connection between the measure provided by the contested provisions and the legitimate purposes pursued

The Court acknowledged that Article 14 paragraph (1) of the Law on the Prosecutor's Office and the prohibition it contains contribute to the exercise of the prosecutor's function at the highest standards of integrity.

4) Regarding the existence of less intrusive alternative measures related to the legitimate purposes pursued

The Court found that the range of measures capable of ensuring the achievement of the purposes pursued by the contested norm includes means that range from the development of a code of ethics, outlining desirable behaviors in the work of prosecutors, to establishing a list of activities incompatible with the prosecutor's position.

The Court emphasized that the choice of any of the means mentioned above falls within the competence of the legislator, considering its better knowledge of the field. Moreover, the prosecutor's activity is varied and complex, and there is a risk that over time, codes of ethics or lists of incompatible activities may become outdated. For this reason, the Court specified that it would proceed to analyze the existence of a reasonable proportionality relationship between the means used and the pursued purpose, i.e., narrow-sense proportionality.

5) Narrow-Sense Proportionality

The Court has specified that any other paid activity entails incompatibility with the prosecutor's function. Although the restriction seems reasonable for certain positions, it does not appear to be the case for other roles. Nevertheless, the prohibition treats all functions in the same manner.

Furthermore, the ban does not consider the circumstances of each case. Firstly, the Court has specified that the status of a prosecutor does not, *per se*, constitute a circumstance that makes the exercise of another function incompatible. This fact is implicitly recognized by the legislator based on the exception in paragraph (2) of Article 14, which acknowledges the prosecutor's ability to engage in a limited range of activities. Secondly, in principle, the exercise of activities that pose risks to impartiality and the proper performance of the prosecutor's function should be prohibited, not all activities.

The Court clarified that it is not convinced that these risks exist in the specific case of the applicant, who was suspended from office in connection with the initiation of a criminal prosecution against her on March 10th, 2022, and no longer holds the position of prosecutor as of that date. On the contrary, even if there were risks, the Court emphasized that over time, these risks may diminish in intensity. On the other hand, the longer the time elapsed since the suspension from the prosecutor's position, the greater the interference with the right to work (see *Gashi and Gina v. Albania*, 4 April 2023, §§ 50, 58, 69). For example, in the case of *Pengezov v. Bulgaria*, 10 October 2023, § 87, the European Court found a violation of Article 8 of the Convention because the measure of suspending the applicant from office, which lasted for two and a half years, had serious repercussions on the private and professional life of the applicant. During this time, the applicant was deprived of salary and could not engage in other professional activities due to the incompatibilities associated with the position of a judge. The European Court established that the interference with the private life of the applicant was significant and could only worsen over time.

In this case, the Court noted that, from the date of her suspension from office until the present, the applicant has been deprived of the opportunity to take up another position. This deprives her of the ability to earn the means necessary for her and her family's maintenance. In such a scenario, there is a risk that, under the guise of protecting the impartiality of the prosecutor's function, the contested measure may become abusive, turning into a means of compelling suspended prosecutors to resign from their positions to take up another role that would ensure their livelihood.

While it is possible that the measure of suspension from office may cease relatively quickly, and thus there may be no issue, the Court considered that the opposite is also valid, given the fact that the suspension measure is applied for an indefinite period, pending a final decision in the criminal case.

Based on the arguments presented, the Court recognized as constitutional Article 14 paragraph (1) of the Law on the Prosecutor's Office No. 3 of 25 February 2016, to the extent that incompatibilities do not apply to prosecutors suspended from office due to the initiation of criminal proceedings against them.

16. THE GUARANTEES OF LIFTING INFORMATION REGARDING TELEPHONE CONVERSATIONS

On 19 December 2023, the Constitutional Court issued Judgment No. 22 on the plea of unconstitutionality of certain provisions from Article 126 paragraph (2) of the Criminal Procedure Code[16].

The application on the plea of unconstitutionality of the text "as well as the lifting of information regarding telephone conversations" from Article 126 paragraph (2) of the Criminal Procedure Code was raised in a case involving an alleged less serious offense. The prosecution requested authorization for the lifting of information concerning telephone conversations.

The applicant stated that the contested provision is unclear because it does not establish the conditions under which the collection of information can be ordered, nor the categories of information that can be lifted. It represents an unforeseen interference with the right to privacy in the exercise of the right to correspondence, within the meaning of Article 8 of the Convention and Articles 23 and 30 of the Constitution.

The Court noted that information related to telephone conversations constitutes "an integral part of telephone communications," and the disclosure of such information without the consent of the person whose data is requested represents an infringement on the individual's right to the confidentiality of correspondence, guaranteed by Article 30 of the Constitution.

[16] Judgment no. 22 of 19 December 2023 on the plea of unconstitutionality of certain provisions of article 126 para. (2) of the Criminal Procedure Code

The Court noted that the Electronic Communications Law obliges providers of electronic communications networks and/or services to retain, for a period of one year, information related to fixed or mobile telephony services, and for a period of 6 months, information pertaining to the Internet network. Providers are required to present this information to authorized bodies in accordance with the law. These pieces of information, classified under Article 2 of the same Law as transfer data and location data, may be subject to collection under Article 126 paragraph (2) of the Criminal Procedure Code or special investigative measures as outlined in Article 134[4] of the Criminal Procedure Code. In this regard, the Court observed that, even though it concerns the same information, the Criminal Procedure Code regulates two different procedures through which law enforcement agencies can access them.

Thus, the Court examined whether the text "as well as the lifting of information regarding telephone conversations" from Article 126 paragraph (2) of the Criminal Procedure Code complies with the requirements of the quality of law.

The standard of the quality of law in the context of communications interception, consolidated through the jurisprudence of the European Court in the cases of *Roman Zakharov v. Russia*, 4 December 2015, and *Liblik and Others v. Estonia*, 28 May 2019, has been considered applicable, *mutatis mutandis*, to the authorities' access to communication data that does not concern their content, such as transfer data and location data. Furthermore, in the decision of *Ekimdzhiev and Others v. Bulgaria*, 11 January 2022, the European Court mentioned that the general retention of data by providers of electronic communications services and their access by authorities in specific cases must be accompanied, *mutatis mutandis*, by guarantees applicable to secret surveillance measures.

The Court observed that the access of the law enforcement body to information regarding telephone conversations based on the contested provision can be requested **in the context of any criminal case**. Therefore, this provision does not establish the reasons for which authorities may have access to information regarding telephone conversations. Furthermore, the provision in question mentioned the competent authority to request access to this information but did not specify the categories of persons whose data can be accessed.

The Court noted that, although a reasoned order from the law enforcement body indicating that the lifting of information regarding telephone conversations is important for the criminal case is required, this condition is not sufficient to ensure the "necessary in a democratic society" and proportional nature of the interference. Regarding the precondition of prior authorization by the examining magistrate, the Court held that the provision did not require the judge to justify the necessity and proportionality of lifting information regarding telephone conversations, but only to verify the fulfillment of the conditions mentioned in Article 126 of the Criminal Procedure Code.

Another aspect that Article 126 paragraph (2) failed to regulate was the period for which the obtaining of information regarding telephone conversations could be ordered. In the absence of such a period, the lifting of information regarding telephone conversations is only restricted by the maximum duration for which the provider of electronic communications networks and/or services is obliged to retain them, i.e., one year for information related to fixed or mobile telephony services.

Furthermore, the Court noted that the procedure for notifying the individual regarding the lifted information on their telephone conversations is not regulated. The rules applicable to the storage, preservation, and access to documents containing the relevant information are those applicable to documents serving as evidence, in accordance with the general requirements outlined in Article 157 of the Criminal Procedure Code.

In light of these considerations, the Court found that the procedure for the lifting of information regarding telephone conversations under Article 126 paragraph (2) of the Criminal Procedure Code does not fully meet the minimum conditions imposed by the jurisprudence of the European Court and the guarantees provided by Articles 23 and 30 of the Constitution.

On the other hand, the Court noted that, in the case of special investigative measures, Articles 132^{1} and 134^{4} of the Criminal Procedure Code provide conditions and guarantees in this regard. This measure is authorized by the examining magistrate and must cumulatively meet the conditions of Article 132^{1}, paragraph (2) of the Criminal Procedure Code, which regulates general provisions regarding special investigative activities. Thus, the measure from Article 134^{4} of the Criminal Procedure Code (collecting information from providers of electronic communications services) must be a measure

of last resort, targeting a reasonable suspicion regarding the preparation or commission of a serious, particularly serious, or exceptionally serious offense, with exceptions established by law. It must be necessary and proportionate to the restriction of the individual's rights. According to Article 132^4, paragraph (6) of the Criminal Procedure Code, this measure can be ordered for a period of 30 days, with the possibility of extension based on valid reasons up to 6 months. Additionally, Article 132^5 of the Criminal Procedure Code regulates the procedure for recording special investigative measures, informing individuals subject to these measures, as well as the storage and destruction of information obtained through these special investigative measures.

Therefore, the Court could not identify any reasonable grounds justifying a legislative approach different from the conditions and guarantees for the lifting of information regarding telephone conversations under Article 126, paragraph (2), and the collection of similar information in accordance with Articles 132^1, 132^4, 132^5, and 134^4 of the Criminal Procedure Code.

While obtaining the history of information regarding previous telephone conversations by the law enforcement body may constitute a useful means of investigating and uncovering crimes, the Court has considered that access to the mentioned information must be accompanied, *mutatis mutandis*, by the conditions and guarantees applicable to special investigative measures provided for in Articles 132^1, 132^4, 132^5, and 134^4 of the Criminal Procedure Code. These conditions and guarantees must be adapted to the specific characteristics of obtaining the history of information regarding telephone conversations. Additionally, the period for which the measure in question can be requested must be related to the necessity and proportionality condition of obtaining information about telephone conversations and cannot exceed the term for which the network and/or telecommunications service provider is obliged to retain them according to Article 20 para. (3) letter c) of the Electronic Communications Law.

Based on the arguments presented, the Court *recognized as constitutional* the provision "as well as the lifting of information regarding telephone conversations" from Article 126 paragraph (2) of the Criminal Procedure Code, to the extent that the conditions and guarantees of special investigative measures are applicable to this procedure, *mutatis mutandis*.

B | THE COURT'S ASSESMENT DERIVED FROM THE OPINIONS RENDERED

Throughout the 2023 year, the Court issued 2 Opinions, contributing to the consolidation of constitutional jurisprudence.

1. CONSTITUTIONAL REVIEW OF THE DRAFT LAW AMENDING ARTICLE 70 OF THE CONSTITUTION REGARDING PARLIAMENTARY IMMUNITY

On 14 February 2023, the Constitutional Court issued the Opinion No. 1 on the draft law amending Article 70 of the Constitution[17].

At the origin of the case is the application filed on 9 December 2022, by 34 members of the Parliament of the Republic of Moldova.

The constitutional bill submitted by the deputies aimed to regulate the possibility for a deputy to waive their immunity.

Therefore, for Article 70 paragraph (3) of the Constitution, the following version was proposed: "A deputy cannot be detained, arrested, searched, except in cases of flagrant crime, or brought to trial without the approval of Parliament, after being heard. Detention, arrest, search, or prosecution may take place without Parliament's approval if the deputy expresses in writing their agreement to the respective legal actions. Parliament's approval for detention, arrest, search, or prosecution is not required in the case of offenses of active or passive corruption, trafficking of influence, excess or abuse of power, illicit enrichment, and money laundering."

In its analysis, the Court highlighted:

a) Regarding the initiative to amend the Constitution

The Court noted that the last sentence of the draft amendment to Article 70 of the Constitution had been submitted for the Court's approval, and the Court, through its Opinion No. 2 of 26 October 2021, held that it complies with the temporal and material

[17] Opinion No. 1 of 14 February 2023, on the draft law amending Article 70 of the Constitution (*parliamentary immunity*).

limits for amending the Constitution, as established by Articles 63, paragraph (3), and 142 of the Fundamental Law, and could be submitted for parliamentary examination. Therefore, the Court only pronounced on the text "detention, arrest, search, or prosecution may take place without the approval of Parliament if the deputy expresses in writing their agreement to the respective legal actions" from the draft amendment to Article 70 paragraph (3) of the Constitution.

According to the explanatory note of the constitutional bill, when law enforcement authorities request the lifting of parliamentary immunity for opposition deputies, it would create the impression in society that actions related to lifting immunity have more of a political purpose than clarifying the alleged facts. [...] Through this agreement, the deputy would express their willingness to collaborate with investigative authorities without going through bureaucratic stages. Furthermore, the request for their agreement does not imply an urgent necessity for the law enforcement body to perform the four actions: detention, arrest, search, or prosecution.

b) Regarding the compliance with the procedure for initiating the revision of the Constitution

The Court noted that the legislative proposal for amending the Constitution was submitted by a group of 34 deputies, i.e., one-third of the total number of deputies in Parliament, as provided by Article 141 paragraph (1) letter b) of the Constitution.

c) Regarding compliance with the temporal conditions of the Constitution's revision

The Court noted that the constitutional revision initiated by the deputies does not, at this stage, fall under the temporal prohibitions provided by Articles 63 paragraph (3) and 142 paragraph (3) of the Constitution.

d) Regarding compliance with the material conditions of the Constitution's revision

The Court found that the initiative to revise the Constitution does not affect the sovereign, independent, and unitary character of the Republic of Moldova, as mandated

by Article 1 paragraph (1) of the Constitution, nor the status of permanent neutrality outlined in Article 11 of the Constitution. From the content of the second thesis of the constitutional revision initiative, the Court noted that it has the *prima facie* effect of reducing guarantees for certain fundamental rights and freedoms.

The Court examined whether the proposed constitutional amendments do not contravene other constitutional provisions and whether their coherent applicability will be ensured without mutually excluding each other.

e) Regarding the written agreement of the deputy to waive immunity

The Court noted that, at that time, Article 70 paragraph (3) of the Constitution stated that "a deputy cannot be detained, arrested, searched, except in cases of flagrant crime, or brought to trial without the approval of Parliament, after being heard." This text guarantees personal immunity (also called inviolability) to the deputy, ensuring independence and protection against abuses or pressures in the form of threats, deprivation of liberty, or judicial procedures. Immunity does not apply in the case of deputies caught in the act.

Through the constitutional revision initiative, the authors of the application proposed the possibility for a deputy to waive, through a written agreement, their hearing by Parliament and the parliamentary approval procedure for lifting their immunity to enable detention, arrest, search, or prosecution.

The deputy's written agreement for detention, arrest, search, or prosecution represents a means of their express waiver of the guarantees provided by Article 70 paragraph (3) of the Constitution – their hearing by Parliament and parliamentary approval.

The detention, arrest, search, or prosecution of a deputy constitutes interferences with several of their fundamental rights, such as the right to personal freedom and safety, guaranteed by Article 25 of the Constitution, the right to defense, guaranteed by Article 26 of the Constitution, the right to private, family, and personal life, guaranteed by Article 28 of the Constitution, or the right to the inviolability of the domicile, guaranteed by Article 29 of the Constitution.

Article 25 of the Constitution protects the physical freedom of the person and aims to ensure that no person is deprived of liberty in an arbitrary manner. According to Article 6, point 4) of the Criminal Procedure Code, detention is the measure taken by the competent authority to deprive a person of liberty for a period of up to 72 hours. According to Articles 6 point 4) and 175 paragraph (3) point 11) of the Criminal Procedure Code, pretrial detention is a preventive measure involving the deprivation of liberty based on a court decision. Applied to a deputy, these measures would limit their right to personal freedom.

From the perspective of the European Convention on Human Rights, the waiver of certain rights is not always permitted. In its jurisprudence, the European Court has held that the right to liberty is too crucial in a "democratic society," within the meaning of the Convention, for a person to lose the benefit of Convention protection merely by surrendering to be placed in detention. Detention can violate Article 5, even if the individual in question has consented to it (*Storck v. Germany,* 16 June 2005, § 75).

In a Grand Chamber case on 5 July 2016, *Buzadji v. Moldova*, the European Court reminded national authorities that when the right to liberty is at issue, they must demonstrate the necessity of detention. Although the Government argued that the claimant himself requested house arrest, the European Court was not prepared to accept that the claimant's attitude toward his detention and his failure to contest house arrest amounted to a waiver of his right to liberty.

Considering the strict nature of the European Court's reasoning, according to which it is contrary to the Convention for a person to waive its protection merely by accepting or offering to be placed in detention, the Court concluded that the proposed bill amending Article 70 (3) of the Constitution, submitted for its review, results in the removal of guarantees for the right to individual freedom. Therefore, this initiative did not comply with Article 142 (2) of the Constitution.

Based on the arguments presented, the Court held that the proposed amendment to Article 70 paragraph (3) of the Constitution of the Republic of Moldova violates the substantive limits for amending the Constitution set forth in Article 142 paragraph (2) of the Constitution and cannot be submitted to Parliament for consideration.

2. CONSTITUTIONAL REVIEW OF THE BILL AMENDING ARTICLE 70 PARAGRAPH (1) OF THE CONSTITUTION REGARDING THE INCOMPATIBILITIES OF THE DEPUTY

On 27 July 2023, the Constitutional Court issued the Opinion No. 2 on the draft law amending Article 70 paragraph (1) of the Constitution[18].

At the origin of the case is the application filed on 2 December 2022, by 46 deputies from the Parliament of the Republic of Moldova.

The constitutional bill submitted by the deputies aimed to regulate the possibility for a deputy to hold other paid positions, except for public offices and public dignities.

Thus, for Article 70 paragraph (1) of the Constitution, the following version was proposed: "The status of a deputy is incompatible with holding any other public office or public dignity."

In its analysis, the Court highlighted:

a) Regarding the initiative to amend the Constitution

According to the explanatory note of the draft constitutional law, by narrowing down the category of incompatibilities currently stipulated in the Constitution and establishing the incompatibility of a parliamentary mandate with any public office or public dignity, the creation of a "career politician" class will be avoided. Additionally, this amendment is considered necessary to the provisions of Law no. 39 of 7April 1994, regarding the status of a deputy in Parliament, arguing that deputies must represent the people, including professional groups, and the role of a deputy cannot be viewed as a profession. Furthermore, the proposed modification would ensure significant benefits to the legislative process, as it is in the state's interest for individuals with high professional qualifications and experience in the private sector to assume the role of a deputy. Granting the opportunity to continue previously held activities after obtaining a parliamentary mandate would serve as an incentive for the efficient exercise of the deputy's function.

[18] Opinion No. 2 of 27 July 2023 (application No. 204c/2022) on the draft law amending Article 70 paragraph (1) of the Constitution (*deputy's incompatibility*).

b) Regarding compliance with the procedure for initiating the revision of the Constitution

The court held that the legislative proposal for amending the Constitution was submitted by a group of 46 deputies, thus complying with the requirement of one-third of the total number of deputies in Parliament, as stipulated by Article 141(1)(b) of the Constitution.

c) Regarding compliance with the temporal conditions of the constitutional revision

The court noted that the constitutional revision initiated by the deputies does not, at this stage, fall under the temporal prohibitions provided by Articles 63(3) and 142(3) of the Constitution.

d) Regarding compliance with the substantive conditions of constitutional revision

The court found that the initiative for amending the Constitution did not affect the sovereign, independent, and unitary nature of the Republic of Moldova, as mandated by Article 1(1) of the Constitution, nor did it impact the status of permanent neutrality as provided by Article 11 of the Constitution.

The court examined whether the proposed constitutional amendments do not contravene other constitutional provisions and whether their consistent applicability will be ensured without mutually excluding each other.

e) Regarding the incompatibilities of the deputies

The court noted that, according to Article 39 (1) of the Constitution, the citizens of the Republic of Moldova have the right to participate directly in the administration of public affairs, as well as through their representatives. The right to participate in the administration of public affairs through representatives entails the election of representatives to public offices, such as members of Parliament (Articles 60 (1), 61(1), and 68 of the Constitution), the President of the Republic of Moldova (Article 78 (1) of the Constituti-

on), mayors, and councilors in local public authorities (Articles 109 (1), 112 (1), and 113 (2)). Thus, citizens, through universal, equal, direct, secret, and freely expressed voting, choose individuals who will represent their interests in the administration of matters of public interest. In this way, the constitutional principles of representative democracy are realized, whereby national sovereignty belongs to the people of the Republic of Moldova, exercised directly and through their representative bodies (Article 2(1)), and the will of the people constitutes the basis of state power (Article 38(1)).

The court reiterated that the significance of the notion of incompatibility lies in the constitutional prohibition of cumulating multiple functions, aiming to ensure the independence of action of individuals holding public office, avoiding the concentration of excessive prerogatives by the same person, and safeguarding their professional and moral integrity (see Constitutional Court Decision no. 21 of 24 June 2015, § 34). The court noted that the constitutional legislator adopted a systematic approach in establishing incompatibilities for individuals entrusted with the exercise of legislative, executive, and judicial functions, especially for members of Parliament (Article 70(1)), the President of the Republic of Moldova (Article 81(1)), members of the Government (Article 99(1)), and judges (Article 116(7)).

The court noted that, at that time, Article 70(1) of the Constitution provided: "The quality of a deputy is incompatible with the exercise of any other paid function, except for teaching and scientific activities." The court observed that, in its original wording, Article 70 (1) of the Constitution stated that the quality of a deputy is incompatible with the exercise of any other paid function. Subsequently, in 2002, the constitutional legislator amended the Constitution and decided that the incompatibilities applicable to deputies should not extend to teaching and scientific activities.

Through the initiative to revise the Constitution, the authors of the application proposed narrowing down the scope of incompatibilities for deputies, so that the position of a deputy would only be incompatible with public and public dignity functions.

The court noted the findings of the Venice Commission, which state that the main purpose of incompatibilities is to ensure that the public or private functions of deputies do not influence their role as representatives of the nation. Typically, the principle of

separation of powers is the source of "traditional" incompatibilities in most countries, between parliamentary mandates and ministerial or judicial functions, and certain public offices (see the Report on Democracy, Term Limits, and Incompatibility of Political Functions, adopted by the Council for Democratic Elections at its 32nd meeting (Venice, 11 October 2012), and by the Venice Commission at its 93rd plenary session (Venice, 14-15 December 2012), CDL-AD (2012) 027rev, §§ 76-77). At the same time, the Venice Commission emphasized that activities in the private sector are, in principle, compatible with parliamentary mandates. However, the principle of separation of powers can be undermined in certain cases, and therefore, some states facing these issues have declared certain private activities incompatible with political office (§ 81 of the Report).

The court observed that the practices of other states do not follow a uniform approach regarding the regime of incompatibilities between the parliamentary function and other public and/or private functions. However, the same reasons underlie the establishment of incompatibility regimes: the principle of separation and collaboration of powers, the independence of the parliamentary mandate, avoidance of conflicts of interest, and the requirements related to the exercise of the deputy's mandate (see Constitutional Court Judgment no. 21 of 24 June 2015, § 46).

The court noted that, according to the jurisprudence of the European Court, establishing incompatibilities for members of Parliament does not contravene the provisions of the European Convention on Human Rights. The rights guaranteed by Article 3 of Protocol No. 1 to the Convention are not absolute, as states have a wide margin of appreciation in establishing constitutional rules regarding the status of Parliament members, depending on historical evolution, cultural diversity, political thought, and views on democracy (see *Podkolzina v. Latvia*, 9 April 2002, § 33).

In its jurisprudence, the Court has emphasized that the constitutional principle of the separation and collaboration of powers in the state, as well as ensuring independence in the exercise of the parliamentary mandate, have mandated the regulation of incompatibilities as a legal instrument to protect the deputy's mandate. The Court also noted that the explicit establishment of incompatibilities for the position of deputy is based on the reasoning that a deputy must not only be independent of any influences but must

also refrain from holding functions or engaging in activities that, by their nature, would contradict his representative mandate or hinder its exercise. The Court underscored that in addition to protecting parliamentary independence, incompatibilities are of interest from the perspective of avoiding conflicts of interest. By combining the parliamentary mandate with another remunerated function, the deputy enters conflict with the prerogatives and obligations established by his status, which could create a material dependency on the combined function and could lead to possible attempts to resolve issues of particular interest through the influence of the mandate. The Court concluded that the role of a parliamentarian requires heightened concentration of efforts, making it incompatible with any other public or private function. Moreover, the institution of incompatibilities represents a guarantee of objectivity and credibility, which must characterize the exercise of a public function in a democratic society, within a rule of law (see §§ 37-39, 43-44).

Considering the above-mentioned reasoning and analyzing the arguments presented by the authors of the initiative to revise the Constitution, the Court has not identified at this stage any compelling reason to deviate from its findings in its previous jurisprudence.

Therefore, the Court found that the proposed amendment through the constitutional bill undermined the principle of the independence of the deputy's mandate and could impact its exercise by allowing the engagement in activities that, by their nature, would contradict it and/or hinder the deputy from properly carrying out their fundamental duties in the service of the people.

Considering that the constitutional bill did not ensure a correct abstract balance between the principle of the representative mandate of the deputy and that of the incompatibility of the deputy's function, the Court concluded that the proposed bill to amend Article 70(1) of the Constitution, subject to its review, resulted in the removal of inherent guarantees for the exercise of the deputy's mandate.

Based on the arguments presented, the Court noted that the constitutional bill to amend Article 70(1) of the Constitution did not meet the substantive limits of revision set by Article 142(2) of the Constitution and could not be submitted to Parliament for examination.

C | VALIDATION OF DEPUTY MANDATES

In the plenary sessions of the Court, no circumstances were identified that would hinder the validation of parliamentary mandates assigned to the following substitute candidates:

- Mr. Mihail Leahu and Mrs. Alina Dandara, on the list of the political party "Action and Solidarity Party" (CCJ 2/2023);
- Mr. Gheorghe Cojoc, on the list of the political party "Action and Solidarity Party" (CCJ 7/2023);
- Mrs. Mariana Lucrețeanu, on the list of the political party "Action and Solidarity Party" (CCJ 13/2023);
- Mrs. Valentina Ghețu, on the list of the political party "Action and Solidarity Party" (CCJ 18/2023).

D | ADDRESSES

Throughout the year 2023, the Court issued the following addresses to the Parliament and the Government:

• **Address No. PCC-01/129g/29 of 24 January 2023**

By Judgment No. 3 of 24 January 2023, the Constitutional Court declared unconstitutional the wording "examining cases related to the commission of minor offenses" in Article 321(2)(3) of the Criminal Procedure Code, because it denied certain categories of accused individuals the guarantees of the right to a fair trial. Specifically, these provisions did not allow the individuals in question to waive the right to be present during the trial of their cases.

The Court noted that, in such cases, the courts must verify: (I) whether there are exceptional circumstances and objective reasons justifying the absence of the defendants at the hearing (e.g., health condition or advanced age); (II) whether their waiver is voluntary, unequivocal (e.g., solemnly declared in a previous hearing or presented in

a document co-signed by the defense indicating their desire) and based on an informed choice (the person anticipates the consequences of their conduct); (III) whether the waiver does not contravene a more important public interest. In this context, the Court requests the Parliament to amend the provisions of the Criminal Procedure Code in accordance with the considerations of the Constitutional Court's judgment.

• **Address No. PCC-01/72g-169 of 6 April 2023**

By Judgment No. 8 of6 April 2023, the Constitutional Court recognized as constitutional the text "lawyers" in point 2 of Annex No. 2 to Law No. 1593 of 26 December 2002, regarding the size, manner, and deadlines for payment of compulsory health insurance premiums, to the extent that it does not apply to individuals with severe, accentuated, or moderate disabilities holding a lawyer's license and to individuals providing care and upbringing for four or more children holding a lawyer's license.

In this context, to regulate the mechanism for calculating the compulsory health insurance premium for lawyers with disabilities and for lawyers providing care for four or more children based on their income, the Court requests the Parliament to amend the legislation in accordance with the reasoning of the Constitutional Court's judgment.

• **Address No. PCC-01/39g/295 of 20 July 2023**

By Judgment No. 11 of 20 July 2023, the Constitutional Court declared unconstitutional Article 273 letter d) and the text "have not been convicted of intentional crimes, according to a final court decision" from Article 221(1) letter c) of Law No. 283 of 4 July 2003, regarding private detective and security activity.

At the same time, to avoid a legislative vacuum, the Court deemed it necessary to establish a provisional solution. Therefore, until the law is amended by Parliament, the requirement of no previous convictions for engagement in private security organizations will only apply to individuals with criminal records.

In this context, the Court requests the Parliament to amend Law No. 283 of 4 July 2003, regarding private detective and security activity in accordance with the considerations of the Constitutional Court's judgment.

• **Address No. PCC-01/231g-510 of 31 October 2023**

By Judgment No. 19 of 31 October 2023, the Constitutional Court declared unconstitutional Article 10 paragraphs (8) and (11) of Law No. 1308 of 25 July 1997, regarding the normative price and the method of buying and selling land.

In this context, the Court requests the Parliament to amend the relevant legislation in accordance with the reasoning of the Constitutional Court's judgment.

• **Address No. PCC-01/186g/566 of 28 November 2023**

By Judgment No. 21 of 28 November 2023, the Constitutional Court recognized as constitutional Article 14(1) of Law No. 3 of 25 February 2016, regarding the Prosecutor's Office, to the extent that incompatibilities do not apply to prosecutors suspended from office due to the initiation of criminal proceedings against them.

In this context, the Court requests the Parliament to amend Article 14(1) of Law No. 3 of 25 February 2016, regarding the Prosecutor's Office in accordance with the reasoning of the Constitutional Court's judgment.

• **Address No. PCC-01/49g-632 of 19 December 2023**

By Judgment No. 22 of 19 December 2023, the Constitutional Court recognized as constitutional the text "as well as the lifting of information regarding telephone conversations" from Article 126(2) of the Criminal Procedure Code, to the extent that the conditions and guarantees of special investigative measures apply to this procedure.

In this context, to regulate the access of law enforcement authorities to the history of information regarding telephone conversations in a manner consistent with the minimum guarantees established in its decision and the jurisprudence of the European Court, the Court requests the Parliament to amend the legislation, including Article 427 of the Contravention Code, in accordance with Constitutional Court Judgment No. 22 of 19 December 2023.

E | SEPARATE OPINIONS

In 2023, certain judgments delivered by the Court were complemented with separate opinions. Constitutional judges intervened on the raised subjects, presenting their arguments as follows:

Domnica Manole expressed her position in a separate opinion on the following judgment rendered by the Constitutional Court:

- Decision No. 50 of 2 May 2023, on the inadmissibility of application No. 94g/2022 on the plea of unconstitutionality of Article 2609(4) of the Civil Code.

Liuba Șova expressed her position in 10 separate opinions on the following judgments rendered by the Constitutional Court:

- Judgment No. 4 of 9 February 2023, on the plea of unconstitutionality of Article 24(11) letter b) of Law No. 544 of 20 July 1995, on the status of judges;
- Judgment No. 5 of 14 February 2023, on the plea of unconstitutionality of certain provisions of Law No. 26 of 10 March 2022, on certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors;
- Decision No. 92 of 25 July 2023, on the inadmissibility of application No. 103g/2023 regarding the plea of unconstitutionality of the text "which would be inexplicable" from Article 8(2) letter a) Article 8(6) and the text "serious doubts" from Article 13(5) of Law No. 26 of 10 March 2022, on certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors;
- Judgment No. 12 of 8 August 2023, on the constitutional review of Articles 12(15), 29(2), 30(4), and Annex No. 4 Table 1 of Law No. 270 of 23 November 2018, on the unified salary system in the public sector, as well as Article XXVII points 2), 3), and 4) of Law No. 271 of 23 November 2018, amending certain legislative acts (prosecutors' salaries);
- Decision No. 110 of 12 September 2023, on the non-confirmation of Constitutional Court Decision No. 109 of 8 September 2023, regarding the suspension request of Article 48(4) of the Education Code and Article II paragraphs (2) – (9) of Law No. 257 of 17 August 2023, amending the Education Code of the Republic of Moldova No. 152/2014 and repealing Law No. 1070/2000 approving the Nomenclature of specialties for training personnel in higher and secondary specialized education institutions;

- Judgment No. 16 of 3 October 2023, for the constitutional review of Article 16(2) letter e) of the Electoral Code;
- Judgment No. 20 of 9 November 2023, on the plea of unconstitutionality of certain provisions of Law No. 3 of 25 February 2016, on the Prosecutor's Office;
- Judgment No. 21 of 28 November 2023, regarding the plea of unconstitutionality of Articles 14(1), 55 paragraphs (1), (4), and (6), and 62(1) of Law No. 3 of 25 February 2016, on the Prosecutor's Office;
- Decision No. 175 of 12 December 2023, on inadmissibility of application No. 197g/2022 on the plea of unconstitutionality of Articles 25(1) letter f) and 55 of the Law on Advocacy No. 1260 of 19 July 2002;
- Judgment No. 22 of 19 December 2023, on the plea of unconstitutionality of certain provisions of Article 126(2) of the Criminal Procedure Code (guarantees for lifting information on telephone conversations).

Nicolae Roșca expressed his position in 6 separate opinions on the following acts pronounced by the Constitutional Court:

- Judgment No. 4 of 9 February 2023, on the plea of unconstitutionality of Article 24(11) letter b) of Law No. 544 of 20 July 1995, on the status of judges;
- Judgment No. 5 of 14 February 2023, on the plea of unconstitutionality of certain provisions of Law No. 26 of 10 March 2022, regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors;
- Decision No. 92 of 25 July 2023, of inadmissibility of application No. 103g/2023 on the plea of unconstitutionality the text "which would be inexplicable" from Article 8(2) letter a) Article 8(6), and the text "serious doubts" from Article 13(5) of Law No. 26 of 10 March 2022, on some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors;
- Judgment No. 16 of 3 October 2023, on the constitutionality review of Article 16(2) letter e) of the Electoral Code;
- Judgment No. 20 of 9 November 2023, on the plea of unconstitutionality of certain provisions of Law No. 3 of 25 February 2016, on the Prosecutor's Office;

- Judgment No. 21 of 28 November 2023, on the plea of unconstitutionality of Articles 14(1), 55(1), (4), and (6), and 62(1) of Law No. 3 of February 25, 2016, on the Prosecutor's Office.

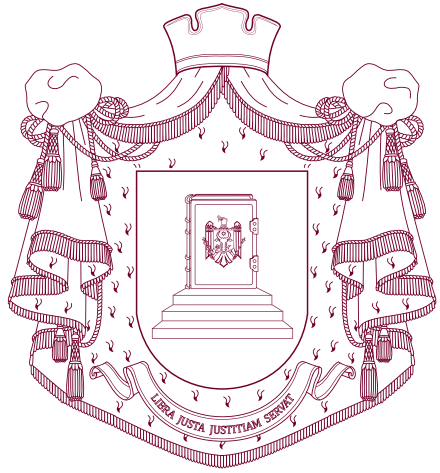
Serghei Țurcan presented his position in 14 separate opinions on the following acts pronounced by the Constitutional Court:

- Decision No. 41 of 4 April 2023, on inadmissibility of application No. 132g/2022 on the plea of unconstitutionality of Article 3302(1) of the Criminal Code, certain provisions of Articles 100(4) and 296(2) of the Criminal Procedure Code, and Article 34(2) of the Law on the National Integrity Authority.
- Decision No. 49 of 28 April 2023, on the suspension request for the action of Article 21(8) paragraph I of Law No. 65 of 30 March 2023, on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.
- Judgment No. 10 of 19 June 2023, on constitutionality review of the Political Party "Șor."
- Decision No. 51 of 2 May 2023, on inadmissibility of application No. 104a/2023 concerning the constitutionality review of certain provisions of Article 15(2) of the Law on the Superior Council of Magistracy.
- Decision No. 59 of 29 June 2023, confirming the decision of the Constitutional Court No. 58 of 8 June 2023, regarding the suspension request for the action of certain provisions of Article 21(8) of Law No. 65 of 30 March 2023, on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.
- Decision No. 60 of 29 June 2023, on the inadmissibility of application No. 140e/2023 concerning the validation of a deputy mandate in the Parliament of the Republic of Moldova.
- Decision No. 100 of 10 August 2023, on the inadmissibility of applications No. 123a/2023, No. 159g/2023, and No. 169g/2023 for the constitutionality review of Article 21(8) of Law No. 65 of 30 March 2023, on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

- Decision No. 102 of 29 August 2023, on the inadmissibility of application No. 34a/2023 for the constitutionality review of Article 105(5) and (6) of the Parliament's Regulation, adopted by Law No. 797 of 2 April 1996.
- Decision No. 103 of 29 August 2023, on the inadmissibility of application No. 35a/2023 for the constitutionality review of the President of the Republic of Moldova's Decree No. 824 of 10 February 2023, on the appointment of the candidate for the position of Prime Minister and Parliament's Resolution No. 28 of 16 February 2023, approving the Activity Program and granting a vote of confidence to the Government.
- Decision No. 111 of 12 September 2023, on the inadmissibility of application No. 204a/2023 for the constitutionality check of Article 160(2) of the Electoral Code.
- Decision No. 140 of 26 October 2023, on the inadmissibility of applications No. 13a/2023 and 15a/2023 for the constitutionality check of Article 13 of the State Social Insurance Budget Law for 2023 No. 357 of 22 December 2022, and Article 13 of the Law on the Public Pension System No. 156 of 14 October 1998 (reduction of the pension indexation rate).
- Decision No. 160 of 21 November 2023, confirming the decision of the Constitutional Court No. 159 of 16 November 2023, regarding the suspension request for the action of the President's Decree No. 1122 of 26 September.
- Decision No. 165 of 30 November 2023, on the inadmissibility of application No. 222a/2023 for the constitutionality review of Parliament's Resolution No. 274 of 21 September 2023, on the extension of the state of emergency, and the Order of the Commission for Exceptional Situations No. 86 of 4 October 2023.
- Decision No. 178 of 12 December 2023, on the inadmissibility of applications No. 205a/2023, No. 206a/2023, and No. 208a/2023 on the constitutionality review of Article 48(4) of the Education Code and Article II paragraphs (2) – (9) of Law No. 257 of 17 August 2023, amending the Education Code of the Republic of Moldova No. 152/2014 and repealing Law No. 1070/2000 approving the Nomenclature of Specialties for the training of personnel in higher and medium specialized education institutions.

Vladimir Țurcan expressed his position in 7 separate opinions on the following acts pronounced by the Constitutional Court:

- Decision No. 41 of 4 April 2023, on the inadmissibility of application No. 132g/2022 on the plea of unconstitutionality of Article 3302(1) of the Criminal Code, certain provisions of Articles 100(4) and 296(2) of the Criminal Procedure Code, and Article 34(2) of the Law on the National Integrity Authority.
- Decision No. 100 of 10 August 2023, on the inadmissibility of applications No. 123a/2023, No. 159g/2023, and No. 169g/2023 for the constitutionality review of Article 21(8) of Law No. 65 of 30 March 2023, on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.
- Judgment No. 10 of 19 June 2023, on the constitutional review of the "Șor" Political Party.
- Decision No. 111 of 12 September 2023, on the inadmissibility of application No. 204a/2023 on the constitutionality review of Article 160 (2) of the Electoral Code.
- Decision No. 160 of 21 November 2023, confirming the decision of the Constitutional Court No. 159 of 16 November 2023, on the suspension request for the action of the President's Decree No. 1122 of 26 September.
- Decision No. 165 of 30 November 2023, on the inadmissibility of application No. 222a/2023 on the constitutionality review of Parliament's Resolution No. 274 of 21 September 2023, on the extension of the state of emergency, and the Order of the Commission for Exceptional Situations No. 86 of 4 October 2023.
- Decision No. 178 of 12 December 2023, on the inadmissibility of applications No. 205a/2023, No. 206a/2023, and No. 208a/2023 on the constitutionality review of Article 48(4) of the Education Code and Article II paragraphs (2) – (9) of Law No. 257 of 17 August 2023, amending the Education Code of the Republic of Moldova No. 152/2014 and repealing Law No. 1070/2000 approving the Nomenclature of Specialties for the training of personnel in higher and medium specialized education institutions.



TITLE

III

ENFORCEMENT OF CONSTITUTIONAL COURT ACTS

TITLE III

ENFORCEMENT OF CONSTITUTIONAL COURT ACTS

According to Article 28 of Law No. 317 of 13 December 1994, regarding the Constitutional Court, the acts of the Court are official and enforceable throughout the entire territory of the country, for all public authorities and for all legal entities and individuals. The legal consequences of a legislative act or its unconstitutional parts are to be removed in accordance with the current legislation.

The acts of the Constitutional Court have *erga omnes* effects, being mandatory and opposable to all subjects, regardless of the level of authority.

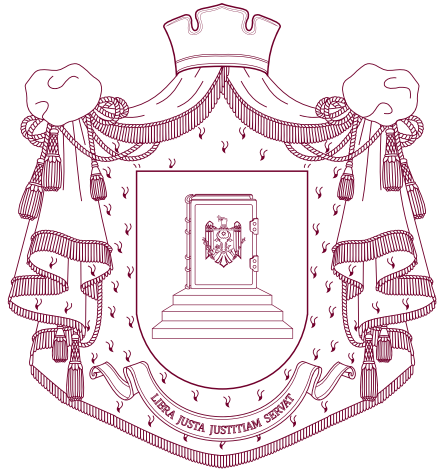
The finding of legislative inaction, meaning the gap in the law or another normative act contrary to the Constitution, inevitably generates legal consequences. The Constitutional Court's decision implies the obligation of the legislature to address the issue of legal gaps through appropriate regulation and the elimination of defective provisions.

The lack of legislative intervention by the Parliament to enforce the decisions of the constitutional jurisdiction is equivalent to the non-exercise of its fundamental competence, namely, the legislative authority bestowed upon it by the Constitution. This situation occurs when some decisions of the Constitutional Court, declaring a legal provision or act unconstitutional, may lead to a legislative vacuum, deficiencies, and uncertainties in the application of the law.

In order to avoid these negative repercussions, Article 281 of the Law on the Constitutional Court provides that, within a maximum of 3 months from the date of the

Constitutional Court's decision, the Government shall submit to Parliament a draft law regarding the amendment, supplementation, or repeal of the legal act or its unconstitutional parts. The respective draft law is to be examined by Parliament as a matter of priority.

At the time of the approval of this Report, the following acts remain unexecuted by the legislator: from 2017 – one judgment and two addresses; from 2018 – one address; from 2019 – three judgments; from 2020 – two judgments and one address; from 2021 – three decisions and two addresses; from 2022 – two decisions and four addresses; from 2023 – three judgments and one address.



TITLE

IV

EXTERNAL COOPERATION

TITLE

IV

EXTERNAL COOPERATION

• *Study visits to the Constitutional Court*

On 23 February 2023, the Constitutional Court marked its 28th anniversary since its establishment. On the anniversary, the Constitutional Court hosted students from the State University of Moldova, organizing an event under the theme "The Constitutional Court – Reflections on its Role in the 28 Years Since its Foundation." The President of the Constitutional Court had a welcome message emphasizing the im-

portance and role of the Court and its significant achievements over the entire period of activity. Additionally, a celebratory message was provided by Ms. Diana Sârcu, a judge at the European Court of Human Rights, followed by the Vice-Rector of the State University of Moldova, Mrs. Otilia Dandara, and the Dean of the Faculty of Law, Mr. Sergiu Brînza.

On 28 April 2023, the Constitutional Court welcomed a group of students from the Free International University of Moldova, members of the European Law Students' Association (ELSA ULIM). The event was moderated by Mr. Serghei Țurcan, a judge of the Constitutional Court, with the participation of Mr. Dumitru Avornic, interim head of the legal assistance department, and Mrs. Maria Strulea, head of the research and analysis department within the Court. Discussions focused on the activity of the Constitutional Court, its competencies and duties, categories of decisions issued by the Constitutional Court, the role of this institution in a rule of law, and references to relevant constitutional jurisprudence.

On 25 September 2023, at the headquarters of the Constitutional Court of the Republic of Moldova, the official signing of the Trilateral Cooperation Agreement took place between the Constitutional Court, the Ministry of Education and Research, and the

Office of the Council of Europe in Chisinau. The agreement aims to strengthen constitutional education in the Republic of Moldova by organizing study visits to the Constitutional Court for students in grades IX-XII from general education institutions across the country. The signing of this agreement is intended to launch instructional sessions

on the principles of state functioning. The project will be implemented with the involvement of the Ministry of Education and Research and with the support of the Council of Europe. This project was inspired by the experience of the Constitutional Court of Austria. On this occasion, Mr. Christoph Grabenwarter, the President of the Constitutional Court of Austria, conveyed congratulations to the Constitutional Court and its partners for the initiative launched and for their openness in implementing such a project through a video message.

Thus, during the first semester of the 2023-2024 academic year, since the project's launch, the Constitutional Court has conducted five study visits, with over 100 students participating. At the end of the visit, students had the opportunity to tour the public hearing room of the Court and received certificates of participation in the training.

• *Memorandums of collaboration*

On 27 March 2023, the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania signed a Memorandum of Cooperation regarding the reciprocal exchange of information and experience in the field of constitutional justice.

The Memorandum was signed by the President of the Constitutional Court of the Republic of Moldova, Mrs. Domnica Manole, and the President of the Constitutional Court of Romania, Mr. Marian Enache. The signing of the Memorandum took place during an official bilateral meeting between the judges of both states, held on a day that carries a dual significance: the celebration of the Centenary of the Whole Romanian Constitution 1923-2023 and the Day of the Union of Bessarabia with Romania.

Additionally, the President of the Constitutional Court, Mrs. Domnica Manole, participated in the Scientific Conference dedicated to the 100 years since the adoption of the Romanian Constitution of 1923. The conference was organized by the State University of Moldova (USM) and the University of Bucharest (UNIBUC) in partnership with the Romanian Cultural Institute and took place on 24 March 2023. The event brought together academic figures, both from across the Prut River, university faculty, students, and development partners at USM.

Simultaneously, on the occasion of the 28th anniversary of the establishment of the Constitutional Court on 23 February 2023, a Collaboration Agreement was signed between the Constitutional Court and the State University of Moldova. The agreement aims to support the legal education of future professionals in the field of law and the development of cooperation methods between the two parties that will be mutually beneficial for legal research.

• *Visits of foreign delegations to the Constitutional Court*

On 16 June 2023, the Constitutional Court of the Republic of Moldova hosted a delegation from the Constitutional Court of the Republic of Latvia, led by the President of the Constitutional Court of the Republic of Latvia, Mr. Aldis Laviņš.

The bilateral meeting between the judges of both courts was based on sharing best practices and the experience of their jurisdictions. The Latvian constitutional judges, Mr. Artūrs Kučs and Mrs. Jautrīte Briede, delivered presentations on the relationship between European Union law and the law of the Republic of Latvia from the perspective of the jurisprudence of the Constitutional Court.

The President of the Constitutional Court, Mr. Nicolae Roșca, thanked the delegation from the Constitutional Court of the Republic of Latvia for their visit and collaboration, expressing the commitment of the Moldovan side to strengthen interinstitutional bilateral dialogue. Similarly, the idea of continuing collaboration, both bilaterally and within international platforms, was agreed upon.

On 28 July 2023, the Constitutional Court of the Republic of Moldova received an official visit from the delegation of the Constitutional Court of Romania, led by the President of the Constitutional Court, Mr. Marian Enache, on the occasion of celebrating the Constitution Day of the Republic of Moldova, annually observed on 29 July.

The bilateral meeting between the judges of both courts was based on sharing best practices and the experience of the two courts, as well as discussions regarding the relationship between European Union law and Romanian law through the lens of the Constitutional Court's jurisprudence. All judges of the Constitutional Court of the Republic of Moldova attended the meeting, during which President Nicolae Roșca delivered a welcome message. The President of the Constitutional Court of Romania, Mr. Marian Enache, was accompanied by judges Mr. Cristian Deliorga, Mrs. Mihaela

Ciochină, Mrs. Laura-Iuliana Scântei, Mr. Gheorghe Stan, and the first assistant magistrate, Mr. Benke Károly.

The judges of the Constitutional Court expressed gratitude to the delegation from the Constitutional Court of Romania for the visit, for the fruitful collaboration over the years, and for the ongoing dialogue between the two constitutional courts. They reiterated the commitment of the Moldovan side to strengthen interinstitutional bilateral relations.

On 11 September 2023, the Constitutional Court hosted a visit by the President of the Constitutional Court of Austria, Mr. Christoph Grabenwarter, at its invitation. During the bilateral meeting with the judges of the Constitutional Court, best practices, and experiences of the two courts were shared.

Additionally, at the initiative of the Constitutional Court, Mr. Christoph Grabenwarter delivered a public lecture at the State University of Moldova on the topic of "Rule of Law." The event was attended by students and master's students from the Faculty of Law, audiences from the National Institute of Justice, as well as faculty members of the University.

The event was opened by the President of the Constitutional Court, Mr. Nicolae Roșca, alongside the Vice-Rector of the State University, Mrs. Aurelia Hanganu, the Dean of the Faculty of Law, Mr. Serghei Brînza, and Mrs. Domnica Manole, constitutional judge.

In his speech, Mr. Christoph Grabenwarter spoke about the principles of the rule of law in Europe, highlighting the role of constitutional courts in this process and emphasizing the importance of a continuous exchange of experience among European constitutional courts. The President of the Constitutional Court of Austria underscored the role of the Constitutional Court of the Republic of Moldova within the family of European constitutional courts, given our court's presidency of the Conference of European Constitutional Courts. This presidency will culminate in the hosting of the 19th Congress of European Constitutional Courts, an event scheduled to take place in Chisinau in May 2024.

• *Trainings within projects of notable visibility:*

Within the joint project of the European Union and the Council of Europe "Support for Justice Reform in the Republic of Moldova" - Between 23 and 24 November 2023, judges and staff of the Constitutional Court benefited from a thematic trai-

ning session titled "Sources, Institutions, and Mechanisms of the European Union." This represents the first working session in a series of trainings conducted under the project "Support for Justice Reform in the Republic of Moldova," co-funded by the European Union and the Council of Europe, and implemented by the Council of Europe. The training was conducted by the expert Mr. Răzvan Horațiu Radu, selected through the project.

Fulbright Program - Between 21 and 31 April 2023, judges and legal assistants of the Constitutional Court of the Republic of Moldova received thematic training on the constitutional system of the United States of America. The training took place under the auspices of the Fulbright Program, coordinated by the Embassy of the United States of America in the Republic of Moldova, and was delivered by the American expert Stephen Cobb, selected through this program.

Throughout the sessions, an introduction to the American constitutional system, the Constitution, and the Bill of Rights was presented, along with the role of the judicial system in everyday life by safeguarding individual rights and liberties, with references to key decisions in American jurisprudence. Topics related to equal protection under the law, fair trial, freedom of expression, electoral rights, appointment, and selection of judges in the United States, among others, were also covered.

• *Meetings with foreign representatives, experts from international institutions, and Ambassadors of foreign official missions in the Republic of Moldova*

On 10 February 2023, the President of the Constitutional Court, Mrs. Domnica Manole, had a working meeting with the Head of the Council of Europe Office in the Republic of Moldova, Mr. William Massolin, in the context of harnessing cooperation with the Council of Europe through the implementation of future joint projects. During the meeting, the support that the Council of Europe provides to the Republic of Moldova for the promotion of democracy, good governance, respect for human rights, and the rule of law was reaffirmed. Topics addressed included the role of the Constitutional Court in ensuring compliance with the Constitution, the independence of constitutional judges, and priorities identified for streamlining institutional activities.

On the same day, 10 February 2023, the President of the Constitutional Court received a visit from His Excellency Mr. Uldis Mikuts, the Ambassador of the Republic

of Latvia to the Republic of Moldova. The discussions focused on topics related to the institutional activities of the Court and the strengthening of collaboration between the Constitutional Court of the Republic of Moldova and the Constitutional Court of the Republic of Latvia.

On 5 April 2023, the President of the Constitutional Court, Mrs. Domnica Manole, received a visit from Mr. Floris van Eijk, the Deputy Head of the Embassy of the Kingdom of the Netherlands in the Republic of Moldova. The discussions during the meeting focused on topics related to the institutional activities of the Court, priorities, and the role of the Constitutional Court in safeguarding the principles of the rule of law.

On 12 April 2023, the President of the Constitutional Court, Mrs. Domnica Manole, received a visit from His Excellency Mr. Jānis Mažeiks, Ambassador and Head of the Delegation of the European Union to the Republic of Moldova. The discussions during the meeting were attended by three other representatives of the European Union Delegation, Mrs. Maria Orlova, Political Officer, Mr. Eduard Pesendorfer, Program Manager, and Mrs. Corina Mocanu, Project Officer for Justice and Human Rights.

The topics discussed focused on the role of the Constitutional Court in ensuring compliance with the Constitution, as well as collaborative projects aimed at streamlining institutional activities. The President of the Constitutional Court reiterated the Court's priorities, emphasizing the importance of upholding the supremacy of the Constitution and the Court's role in safeguarding the values of the rule of law.

On 21 July 2023, the President of the Constitutional Court, Mr. Nicolae Roșca, received a visit from Mr. Cristian-Leon Țurcanu, the Extraordinary and Plenipotentiary Ambassador of Romania to the Republic of Moldova. During the meeting, topics related to the role of the Constitutional Court in ensuring the supremacy of the Constitution, protecting the principles of the rule of law, as well as the institutional activities of the Court and the cooperation between the Constitutional Courts of the Republic of Moldova and Romania were discussed.

On 25 July 2023, at the Constitutional Court of the Republic of Moldova, there was a meeting of constitutional judges with His Excellency, the Extraordinary and Plenipotentiary Ambassador of the United States of America to the Republic of Moldova, H.E. Kent D. Logsdon, accompanied by Mr. Ehsan Aleaziz, a political officer at the Embassy.

The discussions focused on the activities of the Constitutional Court, interinstitutional cooperation, and constitutional jurisprudence related to judicial reform.

On 22 September 2023, the Constitutional Court of the Republic of Moldova welcomed Dr. Judithanne S. McLauchlan, an American expert who was in Moldova as part of the Fulbright Specialist Program. During the meeting with the judges and legal assistants of the Constitutional Court, information was shared regarding the legislation and jurisprudence of the United States of America in electoral matters, including the specifics of exercising the right to vote.

On 25 September 2023, the President of the Constitutional Court, Mr. Nicolae Roșca, received a visit from Mr. Falk Lange, the Head of the Council of Europe Office in Chișinău.

The topics discussed focused on the role of the Constitutional Court in ensuring respect for the Constitution, the independence of constitutional judges, the institutional activities of the Court, as well as the tools for leveraging cooperation with the Council of Europe through the implementation of joint projects. In this regard, the issue of interinstitutional cooperation was addressed, especially in the context of the signing, on the same day, of the Trilateral Cooperation Agreement aimed at strengthening constitutional education in the Republic of Moldova between the Constitutional Court, the Ministry of Education and Research, and the Council of Europe Office in Chișinău.

On 26 September 2023, the Ombudsman of the Republic of Azerbaijan, Ms. Sabina Aliyeva, accompanied by the Extraordinary and Plenipotentiary Ambassador of the Republic of Azerbaijan to the Republic of Moldova, H.E. Mr. Gudsi Osmanov, paid a visit to the Constitutional Court. The discussions were led by the President of the Constitutional Court, Mr. Nicolae Roșca, along with constitutional judge Mr. Serghei Țurcan, covering topics related to the role of the Constitutional Court in ensuring the supremacy of the Constitution, protecting human rights and fundamental freedoms, as well as the institutional activities of the Court.

On 9 October 2023, the President of the Constitutional Court, Mr. Nicolae Roșca, received the visit of His Excellency Mr. Almat Aidarbekov, the Extraordinary and Plenipotentiary Ambassador of the Republic of Kazakhstan to the Republic of Moldova, accompanied by Mr. Zhenis Umbetov and Mr. Mirkhat Zhunusbekov, First Secretaries at the Embassy. The discussions focused on topics related to the institutional activiti-

es of the Constitutional Court, the role of the Court in ensuring the supremacy of the Constitution and protecting the values of the rule of law, as well as the fundamental rights and freedoms of individuals.

On 18 October 2023, a meeting took place at the Constitutional Court of the Republic of Moldova with the delegation of the OSCE/ODIHR Election Observation Mission for the local elections on 5 November 2023, in the Republic of Moldova. The delegation was led by the Head of the Mission, Ms. Corien Jonker. The meeting was attended by Mr. Nicolae Roșca, President of the Constitutional Court, and Ms. Domnica Manole, constitutional judge.

The visit to the Constitutional Court is one of the scheduled official meetings in the Mission's activities during its mandate, carried out to assess pre-election activities in the country. Discussions during the meeting focused on the role and competence of the Constitutional Court in the electoral process, as well as the recent jurisprudence of the Court in electoral matters.

On 14 November 2023, the President of the Constitutional Court, Ms. Domnica Manole, along with the constitutional judges, received a visit from the international delegation of the ENEMO Election Observation Mission for the 2023 local elections in the Republic of Moldova, led by Mr. Dritan Taulla. The topics discussed during the meeting focused on the role and competence of the Constitutional Court in the electoral process, the current electoral legislation in the Republic of Moldova, as well as the recent jurisprudence of the Court in electoral matters. Similarly, the head of the ENEMO Mission, Mr. Dritan Taulla, spoke about the mandate and activities of the Mission in the Republic of Moldova.

On 4 December 2023, the President of the Constitutional Court, Ms. Domnica Manole, received a visit from the Extraordinary and Plenipotentiary Ambassador of the Republic of Latvia to the Republic of Moldova, His Excellency Mr. Edgars Bondars. The discussions focused on topics related to the institutional activities of the Court and the strengthening of collaboration between the Constitutional Court of the Republic of Moldova and the Constitutional Court of the Republic of Latvia.

On 11 December 2023, the President of the Constitutional Court, Ms. Domnica Manole, received the official visit of the Ambassador of the Kingdom of Sweden to the

Republic of Moldova, Her Excellency Ms. Katarina Fried, accompanied by the second secretary of the mission, Ms. Pernilla Nordvall. The discussions focused on the institutional activities of the Court, its priorities, and the role it plays in safeguarding the values of a democratic society. The President of the Constitutional Court reiterated the importance of developing bilateral relations with the Kingdom of Sweden, expressing openness to the implementation of joint projects in this regard.

On the same day, the President of the Constitutional Court, Ms. Domnica Manole, had a meeting with Her Excellency Ms. Stella Avallone, the Ambassador of Austria to the Republic of Moldova. During the meeting, topics related to the priorities and role of the Constitutional Court in safeguarding the rule of law were addressed. Collaborations between the Constitutional Court and the Constitutional Court of Austria were reviewed, and discussions took place regarding the prospects of implementing new projects.

- *Visits to the Constitutional Courts of other states:*

– *At the Constitutional Court of Romania* – On 27 March 2023, the judges of the Constitutional Court of the Republic of Moldova participated in the solemn assembly dedicated to the celebration of the 100th anniversary of the adoption of the Unified Constitution of Romania from 1923.

The President of the Constitutional Court, Mrs. Domnica Manole, delivered an anniversary message during the event, alongside high-ranking Romanian, and foreign officials.

The festive assembly marked the beginning of a series of events and activities organized by the Constitutional Court throughout the year 2023, which was declared by the Plenum of the Constitutional Court in its session on 18 January of the current year as the 'Centenary Year of the Unified Constitution of Romania.

– *At the Constitutional Court of the Kyrgyz Republic* - From 21 to 22 June 2023, Mrs. Domnica Manole, a judge of the Constitutional Court, participated in the international conference 'Constitution as the Foundation for Establishing a Democratic State According to the Rule of Law,' organized on the occasion of the 30th anniversary of the Constitution of the Kyrgyz Republic.

The event was organized by the Venice Commission in collaboration with the Constitutional Court of the Kyrgyz Republic.

During this event, Mrs. Domnica Manole delivered a presentation on the Constitutional Court of the Republic of Moldova and the mechanism for selecting members of the Superior Council of Magistracy.

– *At the Constitutional Court of the Republic of Kazakhstan* - During 7-8 September 2023, the delegation of the Constitutional Court led by Mr. Nicolae Roșca, President of the Constitutional Court, along with Mrs. Domnica Manole, constitutional judge, and Mr. Dumitru Avornic, interim head of the Legal Aid Department, participated in the international conference 'Constitutional Justice: Dignity, Freedom, and Justice for All.' The event was dedicated to the Constitution Day of the Republic of Kazakhstan and the 75th anniversary of the Universal Declaration of Human Rights, held in Astana, Republic of Kazakhstan.

At the conference, the President of the Constitutional Court, Mr. Nicolae Roșca, delivered a speech entitled "Constitutional Review: From the Original Text to an Interpretation Considering the Trends in the Development of Fundamental Rights and Freedoms."

Judge Domnica Manole attended the event in her capacity as a member of the Venice Commission and delivered a presentation on the topic "The Benefits of the Plea of Unconstitutionality in the Republic of Moldova."

The International Conference brought together constitutional judges from over 30 countries worldwide, as well as representatives of international organizations such as the Council of Europe, the European Commission for Democracy through Law (the Venice Commission), the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), the European Court of Human Rights, and others.

– *At the Constitutional Court of Turkey* - From 18 to 21 September 2023, representatives of the Constitutional Court of the Republic of Moldova participated in the working sessions of the 11th edition of the Summer School, held under the auspices of the Association of Asian Constitutional Courts and Equivalent Institutions, hosted by the Constitutional Court of Turkey in Ankara.

The program unfolded under the theme "Judicial Independence as a Guarantee of the Right to a Fair Trial," targeting judges and legal professionals, judicial assistants, and legal advisors with experience, working within constitutional courts. The objective was to facilitate a meaningful exchange of international experience and best practices. Representatives from the Constitutional Court of the Republic of Moldova presented an analysis of the national constitutional legislation and jurisprudence related to the discussed topic.

– *At the Constitutional Court of the Republic of Latvia* - From 20 to 23 September 2023, President Nicolae Roșca of the Constitutional Court participated in the international conference "The Role of the Judiciary in Implementing the Judgments of the European Court of Human Rights," organized by the Constitutional Court of the Republic of Latvia in collaboration with the Supreme Court of the Republic of Latvia.

The event was organized in the context of exercising the presidency within the Committee of Ministers of the Council of Europe and addressed the role of national courts in implementing judgments of the European Court of Human Rights. The conference focused on two plenary sessions, namely, monitoring national measures for implementing Strasbourg Court judgments and the separation of powers, as well as res judicata and reopening procedures based on the decisions of the European Court of Human Rights.

This event was attended by presidents and judges of constitutional and supreme courts from across Europe, judges of the European Court of Human Rights and the Court of Justice of the European Union, as well as distinguished professors from globally renowned universities.

– *At the Court of Justice of the European Union* – From 9 to 10 October 2023, two legal assistants from the Constitutional Court of the Republic of Moldova, together with a delegation of magistrate assistants from the Constitutional Court of Romania, conducted a study visit to the Court of Justice of the European Union (CJEU) in Luxembourg. On this occasion, there was a meeting with the President of the Court of Justice of the European Union, Mr. Koen Lenaerts, and Ms. Octavia Spineanu-Matei, a judge of the CJEU representing Romania. The discussions covered the recent jurisprudence of the European court, the importance of judicial dialogue between constitutional courts and the CJEU, in the form of preliminary rulings.

The visit took place in the context of the Memorandum of Cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania, signed on 27 March 2023.

– *At the Constitutional Court of the Republic of Serbia* - On 16 November 2023, the President of the Constitutional Court, Ms. Domnica Manole, participated in the official ceremony and international conference dedicated to the 60th anniversary of the Constitutional Court of the Republic of Serbia, with the theme "The Role of Constitutional Courts in Implementing the European Convention on Human Rights and the Jurisprudence of the European Court of Human Rights at the National Level," held in Belgrade. Ms. Domnica Manole attended the event as a member and representative of the Venice Commission and delivered a speech at the opening ceremony.

– *At the Constitutional Tribunal of the Republic of Poland* - From 16 to 17 November 2023, Mr. Vladimir Țurcan and Mr. Serghei Țurcan, constitutional judges, accompanied by Mr. Teodor Papuc, Deputy Head of the Secretariat of the Constitutional Court, attended the international conference "Human Rights: A European Perspective," at the invitation of the President of the Constitutional Tri-

bunal of the Republic of Poland, Ms. Julia Przyłębska, held in Warsaw. During the event, Judge Serghei Țurcan delivered a presentation titled "The Guarantee of Human Dignity in the Jurisprudence of the Constitutional Court of the Republic of Moldova."

• *Participation in international events:*

– *Opening of the judicial year of the European Court of Human Rights*. - On 27 January 2023, Ms. Domnica Manole, President of the Constitutional Court, participated in the international conference dedicated to the Opening of the Judicial Year of the European Court of Human Rights, titled "Judges Safeguarding Democracy through the Protection of Human Rights," at the invitation of the President of the European Court of Human Rights, Ms. Siofra O'Leary, held in Strasbourg.

– *The 20th meeting of the Bureau of the World Conference on Constitutional Justice* - On 11 March 2023, Mrs. Domnica Manole, President of the Constitutional Court, participated in the proceedings of the 20th meeting of the Bureau of the World Conference on Constitutional Justice. The Constitutional Court of the Republic of Moldova holds the status of a member of the Bureau of the World Conference on Constitutional Justice by virtue of its position as an institution presiding over the Conference of European Constitutional Courts.

One of the agenda items for the meeting was the proposal to amend the Statute of the World Conference. During the 3rd General Assembly of the Conference held on 6 October 2022, discussions were initiated regarding the modification of the Statute to allow for the exclusion of a member court, not just the suspension of its status, in case of violations of the fundamental values promoted by the Statute. Various possible amendments addressing this proposal had been discussed earlier. The proposed amendments aim to ensure an adversarial procedure, clarifying that the termination of membership could be decided only after the initial consideration of its suspension, as well as including a clause regarding the possibility of repeated application for obtaining membership.

At the same time, during the meeting, the decision to unanimously support the candidacy of the Constitutional Court of Spain to host the next World Congress of the

World Conference on Constitutional Justice was discussed and adopted. Thus, the 6th World Congress will take place in 2025 in Madrid.

At the same meeting, the proposal of the Constitutional Court of Latvia regarding the identification of a possible legal solution emanating from the World Conference on Constitutional Justice, in the context of responsibility for the aggression against Ukraine, was communicated. Consequently, a draft resolution in this regard is set to be examined later.

Similarly, the Secretariat informed the Conference Bureau about the support provided to Member Courts through the so-called Santo Domingo procedure, where the President or Special Representative of the Venice Commission issues a statement to support a court under pressure.

The member regional and linguistic groups, with which the Venice Commission has established close and longstanding relations of cooperation, presented their report on the activities carried out and the planned agenda.

– *The European Congress of Constitutional Courts in Berlin* - From 4 to 5 May 2023, Judge Domnica Manole of the Constitutional Court is on a working visit to Berlin, Germany, at the invitation of the President of the Federal Constitutional Court of Germany, Mr. Stephan Harbarth, to participate in the Congress dedicated to the presidents and judges of constitutional courts in Europe, titled "Climate Change as a Challenge for Constitutional Law and Constitutional Courts."

The event was opened by the President of the Federal Constitutional Court of Germany, Mr. Stephan Harbarth, and the Federal Minister of Justice, Mr. Marco Buschmann.

– *At the World Law Congress* held in New York, USA, on20 July 2023, Judge Domnica Manole of the Constitutional Court participated in the 28th edition of the World Law Congress at the invitation of Mr. Javier Cremades, President of the World Law Foundation, and the World Jurist Association.

The World Law Congress in New York - 2023 marked the 60th anniversary of the World Jurist Association. The event featured a series of simultaneous roundtable discussions that brought together over 200 speakers from around the world, including world

leaders, representatives of authorities, judges from supranational and national courts, political decision-makers, academics, lawyers, activists, students, and other professionals. The discussions focused on the primacy of law and its impact on nations, as well as current topics centered around "Peace through Law."

Significant portion of the applications filed with the Court in 2023 challenged legal provisions in the field of criminal law, followed by administrative law, the field of social, economic, and cultural rights, civil law, and political rights (see Diagram No. 10 in Annex No. 1). Additionally, the number of applications filed with the Court in 2023 was higher than the previous year. Thus, while 234 applications were recorded in 2022, there were 282 applications registered in 2023.

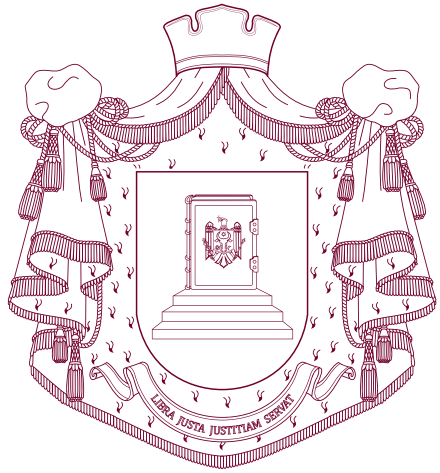
The areas of discussion sessions covered topics such as human rights, new technologies, gender equality, the refugee crisis, judicial independence, democracy, freedom of expression, armed conflicts, energy, climate, development, the right to health, the fight against corruption, and more. During this event, Judge Domnica Manole delivered a presentation titled "The Constitutional Court, Political Parties, and the Militant Democracy and Rule of Law Principle."

– *The Annual Seminar of the European Court of Human Rights* - On 13 October 2023, the European Court of Human Rights held a seminar with the theme "Judicial Dialogue through the Advisory Opinion Mechanism under Protocol No. 16th" attended by Mr. Serghei Țurcan, a judge of the Constitutional Court.

The seminar was dedicated to the fifth anniversary of the entry into force of Protocol No. 16th of the Convention for the Protection of Human Rights and Fundamental Freedoms. Its aim was to examine the functionality of the advisory opinion mechanism after five years of operation, with the elaboration of guidelines for requesting courts.

– *At the plenary sessions of the European Commission for Democracy through Law (Venice Commission),* Mrs. Domnica Manole participated in all four plenary meetings held throughout 2023, in her capacity as a member representing the Republic of Moldova. These sessions took place on 9-11 March, on 9-10 June, on 5-7 October and on 15-16 December 2023, in Venice, Italy.

• The Constitutional Court of the Republic of Moldova, in its capacity as the court presiding over the **Conference of European Constitutional Courts** (**CECC**), requested the completion of the questionnaire for the XIXth Congress of the CECC. On 10 March 2023, the Constitutional Court sent the final version of the questionnaire to all members for completion, which had been previously coordinated and adjusted based on received suggestions. The mutually agreed-upon deadline for submitting all completed reports was 11 August 2023. In total, the Constitutional Court received 34 completed questionnaires.



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THE ACTIVITY OF THE CONSTITUTIONAL COURT IN NUMBERS

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THE ACTIVITY OF THE CONSTITUTIONAL COURT IN NUMBERS

During 2023, to the Constitutional Court were submitted 282 applications. Additionally, 78 applications were carried over from 2022, and 77 applications were transferred to 2024 (see Diagram No. 1 in Annex No. 1). In 2023 (see Diagram No. 4), most applications were filed by the courts (235 claimants), followed by members of Parliament and parliamentary factions (34 applications). In 2023, the Court issued 22 judgments, including 10 judgments related to the plea of unconstitutionality and 6 judgments for the constitutional review of legislative acts, 1 judgment regarding the constitutionality of a political party, 4 judgments for validating deputy mandates, and 1 judgment for approving the Annual Report (see Diagram No. 3 in Annex No. 1). In 2023, most of the Court's judgments declared the contested legal provisions unconstitutional (see Diagram No. 5 in Annex No. 1).

Performing a dynamic comparative analysis of the Court's activities, it was observed that, as in previous years, pleas of unconstitutionality prevail in the number of applications filed, constituting 83% of the total amount submitted in 2023. Concerning the subject matter, a

APPENDIX 1:

Diagram no. 1

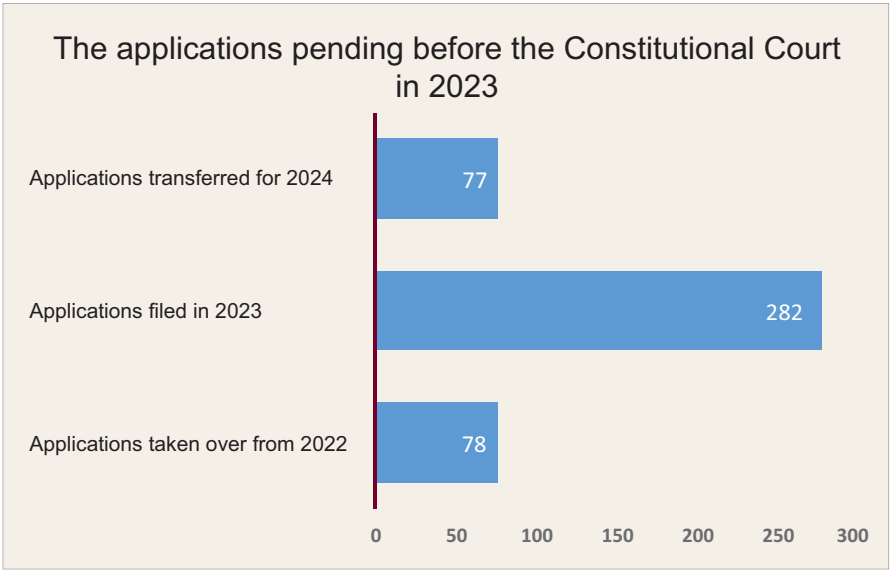
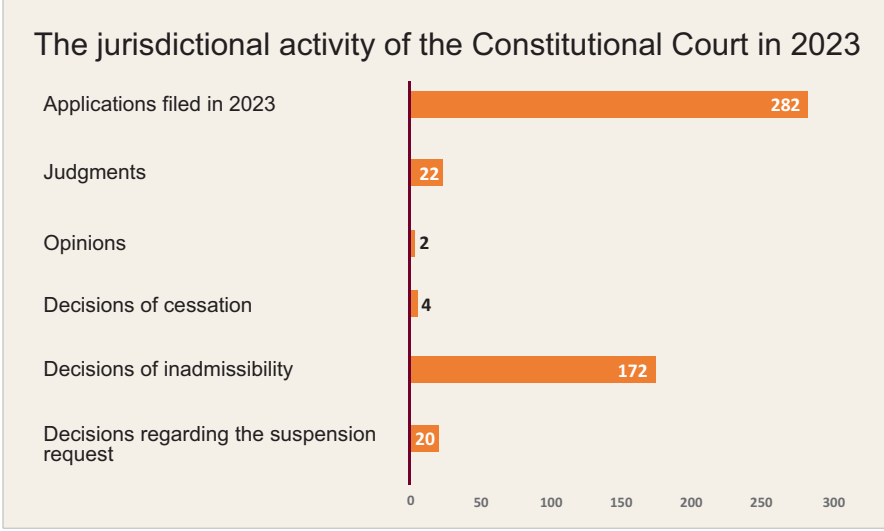


Diagram no. 2



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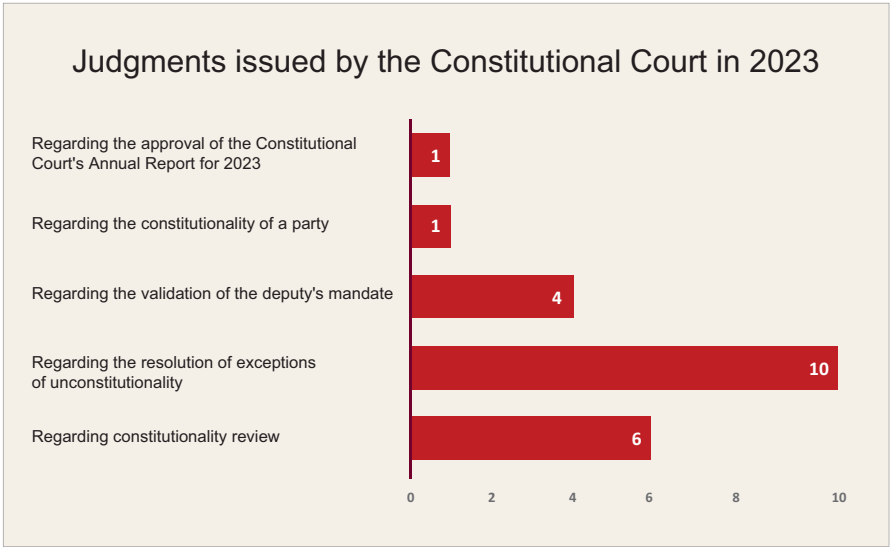
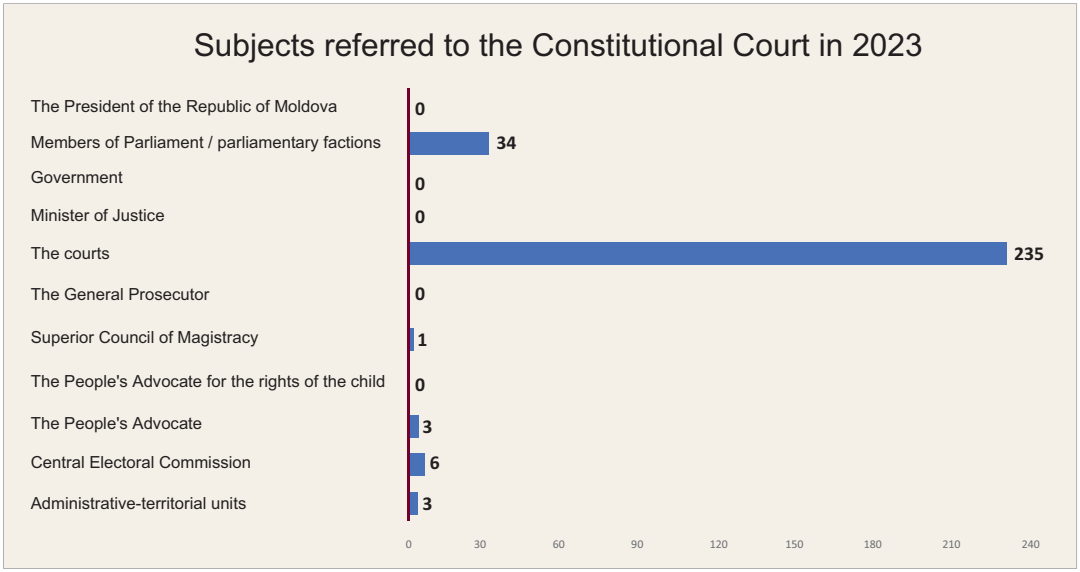


Diagram no. 4



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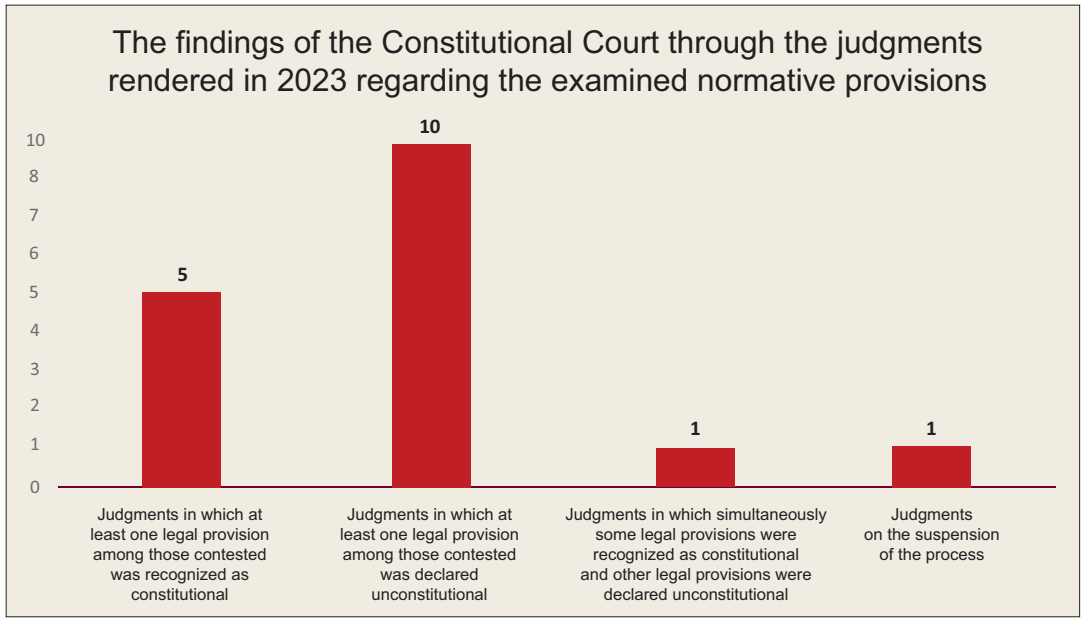

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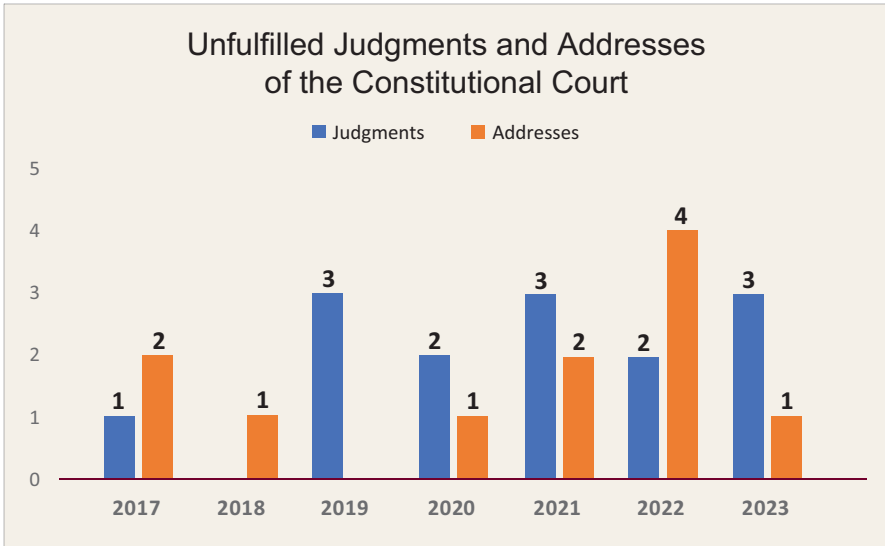

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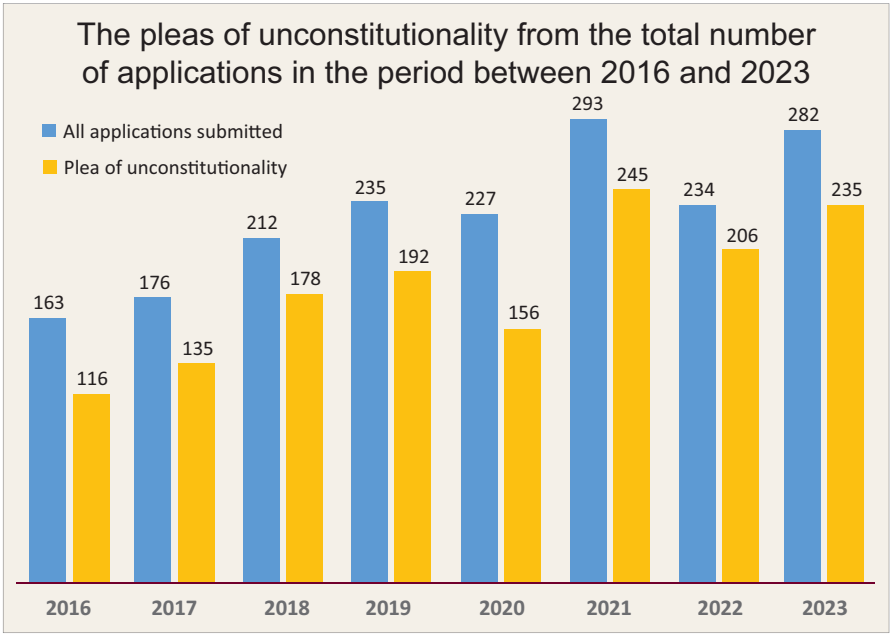

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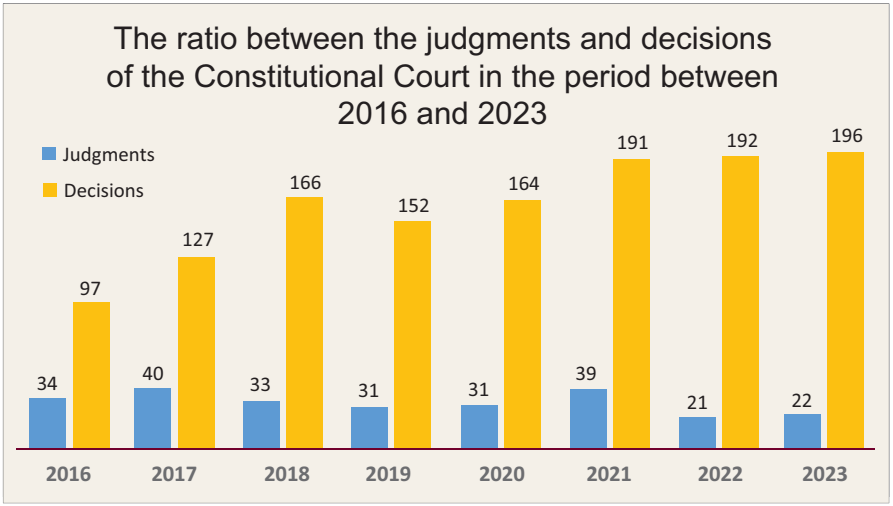

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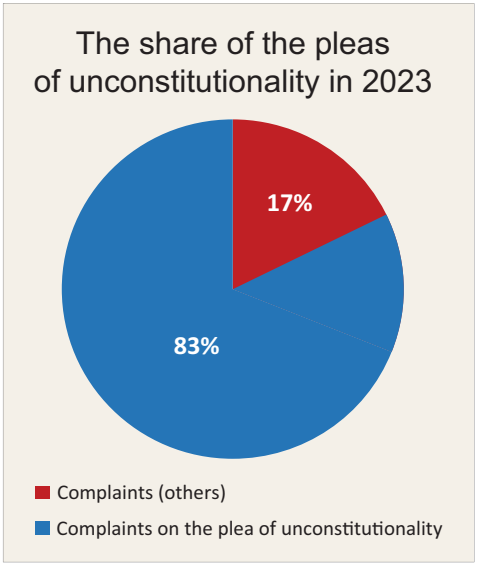


Diagram no. 10

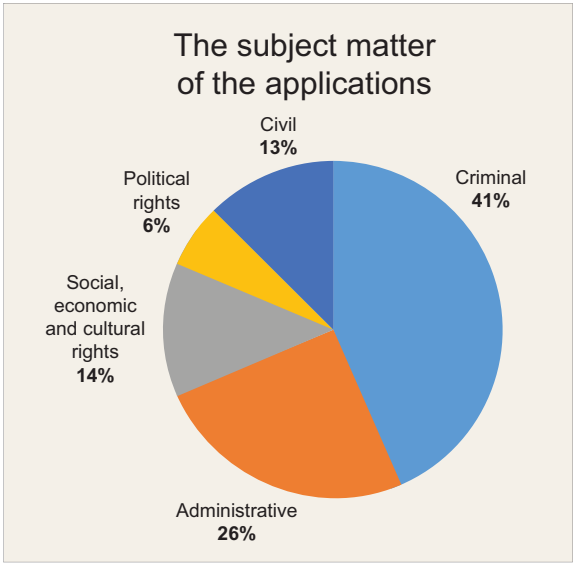
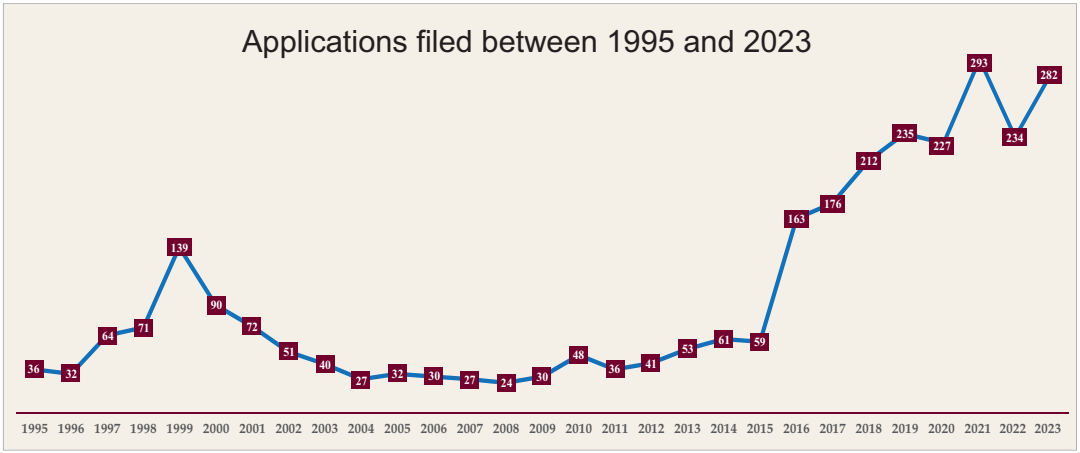


Diagram no. 11



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