



**3<sup>rd</sup> Congress of the World Conference on Constitutional Justice  
'Constitutional Justice and Social Integration'  
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**Questionnaire**

**Reply by the Constitutional Court of Moldova**

**A. Court description**

All aspects regarding the activity of the Constitutional Court of the Republic of Moldova (composition, competences, structure, examination procedure, including the legal framework regulating its activity) are included in the database [www.CODICES.coe.int](http://www.CODICES.coe.int).

**B. Social integration**

**1. Challenges of social integration in a globalised world**

*1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?*

Social rights are equal to individual rights that benefit from appropriate instruments for providing legal protection, while the *expressis verbis* insertion of these rights in the Constitution allows the Constitutional Court to give interpretation and to develop them; therefore, certain final limits of the social rights are established in constitutional case-law. The Constitutional Court has exercised the constitutional review of a number of legal provisions regarding social integration issues.

*Below, the Court lays down, as an example, certain solved legal matters.*

**- The exclusive right of the President to decide on granting citizenship of the Republic of Moldova**

The Constitutional Court carried out the constitutional review of certain provisions of the Law on Citizenship, according to which the Ministry of Information and Communications Technology was entitled to establish whether a person complied with conditions for acquiring citizenship, provided for by the legislation. The Constitutional Court, examining the provisions of Article 88, lett. c) of the Constitution, whereby the President of the Republic of Moldova settles the issues on the citizenship of the Republic of Moldova, concluded that the prerogative of the President on settling citizenship issues presumes consideration of all matters related to citizenship, starting with the application and ending with issuing the final solution, which may be either positive or negative. The Court noted that the President of the Republic of Moldova is the sole authority that may issue final solutions for each stage of procedure on acquiring the citizenship.

The Court held that the issues concerned must be solved by a competent and specialized institution. Under current regulations, the sole specialized structure in this field is the Committee on Citizenship and Political Asylum of the President of the Republic of Moldova, it being the only one entitled to check the applicant's documents provided for by the law and to submit proposals to the President, who has the right to final decision. Any administrative mechanism, which in fact could hinder the President of the Republic of Moldova from solving the requests for citizenship, in the meaning of the Article 88, lett. c) of the Constitution, would actually mean an unacceptable limitation of his/her powers. (*Judgment No. 11 of 30 October 2012* <http://constcourt.md/libview.php?l=en&id=386&idc=7> ).

#### **- Sex based discrimination of the militaries**

As a subject matter of the constitutional review exercised by the Constitutional Court there served certain provisions of the Law on military status, which provided that only “women-soldiers” enjoyed the right to paternal leave, male soldiers being excluded from exercising this right.

The Court considered that, given the specific requirements imposed by military service, it may be justifiable to exclude from the entitlement to parental leave any military man or woman, who may not easily be replaced in their duties owing to such factors as, for instance, their hierarchical position, rare technical qualifications or involvement in active military actions. However, in the Republic of Moldova the entitlement to parental leave is exclusively based on the sex of the military personnel. By excluding military men from the entitlement to parental leave, the provision imposes a restriction which applies automatically to all the male military, irrespective of their position in the army, the availability of a replacement or their individual situation.

The Court considered that such a general and automatic restriction on the basis of sex imposed to a group of people exceeded the scope of an acceptable margin of appreciation of the state, however wide that margin might be.

The Court concluded that the exclusion of male militaries from exercising the right to parental leave, while female militaries enjoy this right, cannot be regarded as being based on objective and reasonable justification. Therefore, the Court concluded that this difference in treatment constitutes discrimination based on sex. (*Judgment No. 12 of 01 November 2012* <http://constcourt.md/ccdocview.php?tip=hotariri&docid=429&l=en> )

#### **- The right to social security and protection**

The Constitutional Court delivered its judgment on the constitutionality of certain legal provisions on diminishing the special retirement conditions established for the following categories of employees: the President of the Republic of Moldova, members of the Parliament and members of the Government, judges and prosecutors, local authorities and public servants, soldiers and persons of the military control unit and internal affairs troops. Examining the challenged provisions, the Court noted that even after diminishing the special conditions for retirement of the employees concerned, they were still benefiting from more advantageous conditions of retirement relative to other categories of employees. Therefore, increasing the retirement contributions does not diminish the minimum individual subsistence necessary for a dignified living. In this respect, the diminishment of special conditions of retirement does not represent the object of social guarantees protection provided by Article 47 of the Constitution.

Concurrently, the legal provisions that imposed new conditions for establishing the pensions of the judges were declared unconstitutional. The Court mentioned that incompatibilities and prohibitions laid down for judges by the Basic Law and developed by the special law, as well as the responsibilities and risks related to the profession, require a regulation of the right to a pension of judges corresponding to their status. Furthermore, when passing the challenged legal provisions, the current situation did not require the adoption of austere economic measures of a magnitude that would justify interference with the basic link to the rule of law

– independence of the judge, law court independence and the independence of the judicial power.

Also, the Court declared unconstitutional the legal norms providing for the gradual increase, in a 9 year term, of the general retirement contributions for acquiring the entitlement to a pension for all categories of employees, both men and women, from 30 to 35 years. The Court held that, matching the general retirement contributions for women and men complies with the legal trends on equal opportunities (gender), implemented in the Republic of Moldova. Concurrently, the provision in question is discrepant with the general retirement age differently applied for men and women – 62 years and 57 years.

Therefore, the Court noted that, regarding the increase from 30 to 35 years of the general retirement contributions for women, at the time of full accomplishment of this provision – by 2020, reaching the retirement age of 57 years, the women who started working after the age of 22 would not garner an overall retirement contribution of 35 years and thus will not receive the full right to pension. The Court considered that, taking in consideration the impossibility to gather the overall retirement contributions of 35 years at the age of 57 years for women with higher education, the legal norm does not provide for women the minimum social security guaranteed by Article 47 of the Constitution. (*Judgment No. 27 of 20 December 2011, CODICES MDA-2011-3-010*)

#### - ***The age limit for teaching staff***

The Constitutional Court declared constitutional the legal provisions whereby the individual labour contract signed with the teaching staff may be terminated when reaching the old-age pension.

The Court held that the freedom of labour cannot be absolute and unlimited. Labour legislation provides certain conditions for employment and determines the cases in which the employment can be terminated.

Limitation by the legislator of the right to exercise the teaching profession in connection with the retirement pension for reaching the age limit is justified by the specific nature of the field in which it applies, education being a public domain, regulated by norms that guarantee a good development of the educational process.

Simultaneously, the Court noted that, in order to ensure the right to work of the old age pensioners, the legislator has regulated in the Labour Code the condition of establishing a fixed-term contract to be signed for this category of persons.

The Court held that the differentiated treatment based on age is admissible when, given the nature of a professional activity or the conditions of performing it, that measure represents an essential and determining professional requirement. A differential treatment on grounds of age may be admitted and justified by a legitimate aim, in particular the employment policy, labour market or vocational training.

#### - ***Remuneration for the staff of the Courts***

Examining **the level of remuneration for the staff of the courts of law**, the Court noted that the judicial independence cannot be ensured without institutional and structural independence. The Court held that performance of justice is achieved with the involvement of several supporting components, subsequent to judges.

The Court emphasized that there cannot be denied the equality between the Parliament, the Government and the Supreme Court in the hierarchy of state power authorities, adding that the wage level of the heads of these authorities is the same. However, the discrepancy between the salary of the employees of the Supreme Court in relation to the employees of the Secretariat of the State Chancellery of the Parliament represents a discriminatory factor, and finally, an unbalanced factor between state powers.

Similarly, analysing the hierarchical position of the organs of state power, there was observed a discrepancy between the salary of the civil servants from the Courts of Appeal in relation to those from the ministries. Furthermore, despite that the largest volume of work is concentrated in the courts, where all litigations are examined in the first instance, civil servants of these courts are paid a lower salary level even compared with those of the second level local government officials.

Therefore, the Court reiterated that, in order to guarantee to the judiciary an equivalent power, by status, with the other two branches of the state power, it is necessary to maintain an equivalent treatment for the supporting components of this power, including creating conditions for providing skilled and competitive staff. (*Judgment No. 24 of 10 September 2013, CODICES MDA-2013-3-007*)

### *1.2. How were issues of social integration or conflict transformed into legal issues?*

Subsequent to the constitutional norms guaranteeing social rights, their detailed regulation, by establishing the principles, the manner of exercising them and the permissive limits, are the laws passed by Parliament and normative acts issued by Government for the enforcement of laws.

The development of the constitutional case-law is determined by trends in legislation. Therefore, as a consequence of declaring unconstitutional a law or a legal provision, the legislator is to adjust the legislation in the context of the reasoning delivered by the Constitutional Court.

Furthermore, additionally to the adopted judgments, the Constitutional Court is entitled to issue *Addresses* to the Parliament, insisting, by reason of its role as “passive legislator”, on the existence of certain legislative omissions and deficiencies or on the need to amend the legal regulations that have been subject to constitutional review.

The acts adopted by the Court are underlying the consistent, objective and demanding nature of the constitutional case-law aimed at guaranteeing the supremacy of the Constitution, respect for human rights and fundamental freedoms, and emphasize the manner in which the idea of constitutionality is perceived, and the role of the Court as a stabilizing factor in society and a balanced element between branches of state power.

Therefore, by exercising the constitutional review and by issuing *Addresses* submitted to the public authorities, the Court acts as a passive legislator.

### *1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?*

As in previous years, to the Constitutional Court are addressed, by the subjects with the right to appeal, current issues on the right to health and social protection, labor rights, property rights, ensuring equality etc.

## **2. International standards for social integration**

### *2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?*

The creation and consolidation of the Republic of Moldova as an independent and democratic state and as a subject of international law (in 1991) has led to the internationalisation of domestic law. Throughout the years, the Republic of Moldova ratified a number of international treaties and conventions (concluded by the UN, Council of Europe, as well as other international entities). The general principles and norms of the international law recognised by the Republic of Moldova are an integrant part of the domestic law and the hierarchy of the provisions from the international treaties in the internal legal order is determined by the content of these treaties.

The impact of international law on domestic law was emphasized following the adoption of the Constitution of the Republic of Moldova on 29 July 1994. The analysis of constitutional provisions in respect of the relationship domestic law – international law highlights the particular importance of legal international instruments for the domestic legal relationships.

According to Article 4 (1) of the Constitution of the Republic of Moldova, the constitutional provisions on human rights and freedoms are interpreted and applied in line with the Universal Declaration of Human Rights, covenants and other treaties to which the Republic of Moldova is a party.

The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, solemnly lays down fundamental rights and freedoms to be guaranteed to every human being, conceived as “a common ideal to be achieved by all the people and nations.”

The Declaration was the foundation for the codification of a distinct branch of international law, expressed by the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*.

These acts were ratified by the Parliament Decision of 28 July 1990 and entered into effect in the Republic of Moldova on 24 April 1993, being regularly observed in the case-law of the Constitutional Court, in cases where the matter of constitutional review targeted: principle of equality and prohibition of discrimination; free access to justice; freedom of the person; presumption of innocence; intimate, family and private life; freedom of assembly and association; right to study.

Also, within the issue analysed in this report, there shall be mentioned that the Constitutional Court in its case-law also referred to other international acts concluded within the UN, as follows: *Convention on the Elimination of All Forms of Discrimination against Women*, *Convention concerning Discrimination in Respect of Employment and Occupation or Discrimination*, *Convention against Discrimination in Education*.

Additionally, Article 8 of the Convention provides that the Republic of Moldova commits itself to respect the unanimously recognised principles and norms of the international law.

## 2.2. *Does your Court apply specific provisions on social integration that have an international source or background?*

According to Article 4 (1) of the Constitution of the Republic of Moldova, the constitutional provisions on human rights and freedoms are interpreted and applied in line with the Universal Declaration of Human Rights, covenants and other treaties to which the Republic of Moldova is a party. Stemming from those laid down in the item 2.1, the constitutional provisions on human rights are interpreted in line with international instruments to which the Republic of Moldova is a party.

Due to constitutional regulations, international provisions of the ratified conventions *on human rights* have acquired a distinct status, being on an equal footing with the Basic Law, taking precedence over domestic provisions in case where is a collision between them.

In the spirit of the constitutional text, the Court also disposes of the necessary instruments with the view to enrich the set of guarantees and safeguards of fundamental human rights and freedoms through the examined constitutional litigations and the judgments delivered. As a consequence, the local constitutional case-law is “an efficient and stimulating agent” of assimilation and implementation procedures of international law.

## 2.3. *Does your Court directly apply international instruments in the field of social integration?*

The Article 4 (2) of the Constitution provides: “*Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a*

party and its domestic laws, **priority shall be given to international regulations.**" The constitutional provisions from above imply the correlation of the international provisions with domestic legal order on fundamental human rights, granting in case of a divergence precedence to international provisions. Thus, our constitutional framework provides for the priority of international regulations to which the Republic of Moldova is a party, in case there is a disparity between covenants and treaties on human rights and domestic laws. This constitutional provision expresses the attachment towards international regulations and, at the same time, proves the receptivity towards their prospective and predictive dynamic.

It is worth mentioning that the Republic of Moldova cannot refer to its domestic law in order to justify the non-implementation of a treaty to which it is a party. International treaties are implemented with good-faith, in line with the principle *pacta sunt servanda*.

The provisions of international treaties which in their manner of creation, are susceptible of being applied in legal relationships without passing special normative acts, possess an enforceable nature in the legal and judicial systems of the Republic of Moldova.

In its Judgment no. 55 of 14 October 1999 on the interpretation of certain provisions of the Article 4 of the Constitution, the Constitutional Court held that *"this provision carries legal consequences, implying firstly that legal bodies, including the Constitutional Court and law courts, within their competences, when examining certain concrete cases are entitled to apply the provisions of international law in cases established by the legislation."*

At the same time, there shall be mentioned that referring to international acts which establish a minimal level of protection, it does not exclude instituting a higher level of protection of fundamental rights and freedoms by the Constitutional Court through its rulings.

#### 2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

The manner of applying international provisions has been referred to in item 2.3.

At the same time, the Court reiterates that when undertaking constitutional review, international provisions on human rights and respectively on social integration are applied.

We also draw attention to the fact that the Constitutional Court of Moldova along with applying international provisions, makes use of the reasoning of international courts, such as the European Court for Human Rights. The domestic constitutional law does not contain regulations imposing the express application of ECtHR's case-law. Concurrently, the content of the rights guaranteed by the European Convention of Human Rights and by its Protocols is defined in the case-law of the ECtHR, which by way of interpretation has enlarged their scope of application. Or, the ECtHR functions on the basis of legal precedent and the interpretation of the Constitution is evolitional, and thus susceptible to change.

Therefore, considering that the case-law of the ECtHR forms a body with the provisions of the Convention, the necessity of taking them into account, as mentioned *supra*, derives from provisions of the Article 4 (2) of the Constitution which says that "wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations."

In the same vein of ideas, in its Judgment no. 42 of 14 December 2000, the Constitutional Court provided the following reasoning: "[...] following the ratification by the Republic of Moldova of the European Convention on Human Rights, *the case-law of the ECtHR has become mandatory for our country.*" Later on, the Judgment no. 10 of 16 April 2010 (<http://constcourt.md/ccdocview.php?tip=hotariri&docid=55&l=en>) on reviewing the Judgment no. 16 of 28 May 1998 "On the interpretation of Article 20 of the Constitution of the Republic of Moldova, the Constitutional Court reiterated that **"the international jurisdictional practice [...] is mandatory for the Republic of Moldova, as a state party to the European Convention on the protection of human rights and fundamental freedoms."** Assessing the degree of reference in the latest period of the Constitutional Court to the case-

law of the ECtHR, the latter is a genuine legal source, applied with a high priority, irrespective of the state against whom was delivered the judgment of the ECtHR.

2.5. *Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?*

2.6.

It is worthwhile to mention that the international instruments to which the Republic of Moldova is a party not only have a relevant nature and guide the solutions delivered by the Constitutional Court, but in certain circumstances play an essential role and provide guidelines in examining constitutional litigations. This becomes particularly true when the constitutional litigation approaches the substance of the issue of guaranteeing or respecting a constitutional right provided for by the Constitution and international treaties.

The constitutional justice of the Republic of Moldova tends to align itself to international principles and case-law of the ECtHR. However, there were cases when the domestic practice was determined to uniform as a result of there being delivered judgments by the ECtHR. Thereby, the case *Tănase v. Moldova (application no. 7/08)* is an eloquent illustration, where the divergences created at domestic level by the case-law of the Constitutional Court were solved by the case-law of the ECtHR. Thus, on 26 May 2009 the Constitutional Court delivered the Judgment no. 9 on the constitutionality of the Law no. 273-XVI of 7 December 2007 "On changing and amending the Electoral Code no. 1381-XIII of 21 November 1997", laws prohibiting the holding of a public office (implicitly holding a seat in the Parliament) by the citizens of the Republic of Moldova who were also holding the citizenship of another state. The Constitutional Court held that states parties to the European Convention on Nationality are not deprived of their right to establish for their civil servants incompatibilities related to holding multiple citizenships. It also noted that such an approach of the issue correlates with the case-law of the ECtHR on electoral rights, which held that albeit Art. 3 of the Protocol no. 1 of the Convention guarantees to every person "the right to vote" and "the right to stand for elections of the legislature", these rights are not absolute, are not clearly provided for by the Article 3, are not defined by it, "leaving room for implicit limitations." The court of constitutional jurisdiction also found that the law was pursuing a legitimate aim – loyalty to Moldovan State, in the light of the importance of State's sovereignty and the necessity for a permanent political and legal relationship between the elector and the state. Thus, the permission for the MPs to hold double citizenship was in breach of the constitutional provisions on the independence of MPs' mandate, State's sovereignty, national security and non-disclosure of confidential information.

*Effet ex nunc*, the domestic law was modified following the ruling of the Great Chamber of the ECtHR of 27 April 2010 on the case *Tănase v. Moldova*, finding a breach of the Article 3 of the Protocol no. 1 of the Convention. The Great Chamber held that any restriction of electoral rights should not exclude a group of persons from participating in the political life of a country. In this regard, there was emphasized the disproportional effect of the law on the parties, at the time when the application was lodged. Pluralism and democracy should be based on dialogue and on the spirit of compromise, which involves various concessions of certain persons or groups of persons, which are justified by the aim to uphold and promote ideals and values of a democratic society.

In the light of the above mentioned, there shall be emphasized that the ongoing evolution of the case-law of the ECtHR determined the Constitutional Court in some situations to reconsider its own case-law.

### **3. Constitutional instruments enhancing /dealing with /for social integration**

3.1 *What kind of constitutional law does your Court apply in cases of social integration - e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", Staatszielbestimmungen, ...?*

The Constitution of the Republic of Moldova contains important provisions which form the basis of a comprehensive system of legal guarantees aimed at ensuring human rights.

The Constitution of the Republic of Moldova is the efficient legal mechanism that protects the rights and fundamental freedoms and the Constitutional Court is the sole authority of constitutional jurisdiction that has a system of procedures and an operating mechanism that ensures compliance with the principles of the Constitution and defends the rights and freedoms of the citizens.

One of the most effective means by which the Constitutional Court ensures the guarantee of all social rights enshrined in the Basic Law is the exercise, upon appeal, of *the review of constitutionality of laws*, decrees of the President, as well as of the decisions of the Government. In exercising this competence, the Court decides over the constitutionality of the challenged normative acts that are subject to constitutional review in terms of compliance with the constitutional provisions, incident to the matter. In Republic of Moldova is regulated only the procedure of "abstract review" of constitutionality. Until now, subject to constitutional review were only the laws published in the Official Journal (*a posteriori* review), but by the interpretation of the constitutional norms on 14 February 2014, the Constitutional Court ruled that, in the meaning of the Article 135 para. (1), lett. a) of the Constitution, the review of constitutionality of laws includes the laws passed by Parliament, both after and prior publication in the Official Journal of the Republic of Moldova (*a priori* review).

The *a priori* constitutional review of laws is integrated, inseparably, in the legal mechanism aimed to contribute to the effective preventive protection of the rights and fundamental freedoms of the person.

Furthermore, the uniform application of all social guarantees can be also ensured by the *official interpretation of the Constitution* which is the exclusive prerogative of the Constitutional Court.

By assigning the Constitutional Court with this competence there is guaranteed that no other authority of state power of the Republic of Moldova is entitled to give an official interpretation of the Basic Law, interpretations that are mandatory for central government bodies, local authorities, enterprises, institutions and organizations, officials, citizens and their associations.

The Judgments of the Constitutional Court on the interpretation of the Constitution are mandatory throughout the state's territory, are final and cannot be appealed by any authority of the state.

To ensure supremacy of the Constitution and to elucidate the compliance of the challenged provisions with the constitutional norms, the Court operates, in particular, through the above mentioned instruments, with the provisions of the constitutional article which guarantees the allegedly violated right, with its previous case-law, as well as, under Article 4 of the Constitution, with the provisions of international treaties to which Republic of Moldova is a party and the reasoning of the judgments of the European Court of Human Rights.

3.2. *In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?*

Under Article 25 of the Law on Constitutional Court and Article 38 of the Constitutional Jurisdiction Code, in Republic of Moldova the subjects entitled to submit application to the Constitutional Court are the following: President of the Republic of Moldova, Government,



Minister of Justice, Supreme Court of Justice, Prosecutor General, members of the Parliament, parliamentary fractions, ombudsman, People's Assembly of Găgăuzia (Gagauz-Yeri).

Given the existing legal framework of the Republic of Moldova, **the individual rights holders, namely the citizens, are not subjects entitled to apply to the Constitutional Court.**

3.3. *Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?*

In context of the above mentioned in the previous paragraph, in the Republic of Moldova there is regulated only the procedure of "abstract review" of constitutionality, by which the court of constitutional jurisdiction does not rule on the merits of the appeal, but only on the compliance of the decision of a state authority (normative acts issued by the Parliament, the Government and the President of the Republic of Moldova) with the constitutional provisions. Therefore, the citizens are not subjects entitled to appeal the Constitutional Court.

Concurrently, in the Republic of Moldova the Constitutional Court has the competence to solve *pleas of unconstitutionality of the normative acts, upon appeal of the courts of law*. Thereby, according to procedures, if during the examination of the case there is found that the norm that is to be applied or that has already been applied is contrary to the provisions of the Constitution of the Republic of Moldova and the review of constitutionality of the normative act is in the Constitutional Court's competence, the court of law lodges an application that will be submitted with the court of constitutional jurisdiction through the Supreme Court of Justice.

A plea of unconstitutionality can be raised directly by the court of law during a trial **or even by the parties of the trial**. Since the exception of unconstitutionality has been raised, the trial is suspended until the statement of the Constitutional Court on the constitutionality of the legal provisions invoked in the application.

For Republic of Moldova the exception of unconstitutionality **represents an indirect access of the person** to the constitutional justice through the courts of common law.

3.4. *How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?*

As underlined above, the most important competence of the Constitutional Court is the review of constitutionality of laws, decrees of the President, decisions and ordinances of the Government.

During this process, the court of constitutional jurisdiction can rule on the constitutionality or unconstitutionality of a law or of a legal provision.

Under Article 140 of the Constitution, laws and other normative acts or parts thereof **become null** and void from the moment of **adopting** by the Constitutional Court of **the appropriate judgment** to that effect. The judgments of the Constitutional Court are final and cannot be appealed.

The ruling of the Constitutional Court represents itself a generally mandatory legal finding, based on the elucidation of the essence of the constitutional issue following the official interpretation of the corresponding norms of the Constitution and after explanation of their reasoning related to the challenged norms.

This effect of the judgments of the Constitutional Court, as well as its consequent activity in making constitutional justice effective, are justifying the fact that, by emphasizing the subject matter of the constitutional norms and by developing the rules derived from their interpretation, the acts of the Constitutional Court are guiding the evolution of the entire legal system, as well as the process of interpretation and enforcement of laws. Only such a

positioning substantially ensures the implementation of the principle of Constitution supremacy.

Observance of the Constitutional Court judgments is a necessary and essential condition for a proper functioning of the public authorities of the state and for the assertion of the rule of law.

Decision of finding the unconstitutionality is part of the normative legal order; by its effect the unconstitutional provision ceases to exist for the future.

The Parliament or the Government, as applicable, are required to repeal or to modify those normative acts, thus settling them in compliance with the Constitution. The Parliament or the Government intervention, within the 3 months period provided by law, for purposes established by the Judgment of the court of constitutional jurisdiction, is an expression of indefeasibility and compulsoriness of the judgments of the Constitutional Court.

In *Judgment No. 33 of 10 October 2013 on interpretation of Article 140 of the Constitution*, the Court held as a principle that **the legal provisions repealed by the legal text declared unconstitutional are re-entering the active legal stock, continuing to produce legal effects until the entry into force of the new regulations**, which is a specific effect of losing constitutional legitimacy, a sanction that is different and much more serious than a simple repealing of the normative text.

Therefore, if certain legal norms on amending/repealing are declared unconstitutional, there shall be applied the provisions in force prior to amendment/repeal, until the necessary amendments will be adopted by the Parliament, according to the considerations of the Constitutional Court on the examined case.

3.5. *Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?*

It is worth emphasizing that the interpretation of constitutional norms by the Constitutional Court plays a fundamental role for the purpose of preventing social conflicts.

The purpose of any interpretation of the constitutional norms is to ensure unity and correct understanding of the matter and its genuine meaning, to solve legal and political discrepancies arising according with the perception and appreciation of the norms of the Basic Law. **Official interpretation of constitutional norms is imperative.**

Interpretation of the constitutional provisions **involves an official and compulsory nature for all subjects of legal relations.** The judgment on the interpretation of a constitutional text has a force of law and is compulsory by considerations supporting it, for all constitutional bodies of the Republic of Moldova. **This applies directly, without any other formal requirements.**

**Reasoning of the Constitutional Court included in judgments of the Court represent the legal ground for regulating certain social relations, by the Parliament.**

Additionally, in order to prevent certain irremediable situations that could result in mass violation of rights and fundamental freedoms of the citizens, the Constitutional Court has the instrument of **“suspending the action of the challenged normative act”**.

The institution of suspending the action of the normative act is very recent for the constitutional jurisdiction of the Republic of Moldova and represents an innovative competence of the Constitutional Court, being included in law in 2014.

Therefore, according to the adopted amendments, the action of the normative acts, properly appealed to the Constitutional Court, which affect or relate to the fields laid out *infra*, may be suspended until the case will be settled on the merits, by issuing a final decision or judgment. As a result, it may suspend the action of:

1) *Acts which affect or relate to the following fields:*

- a) Sovereignty and state power;
- b) The rights and fundamental freedoms;
- c) Democracy and political pluralism;
- d) Separation and collaboration of powers;
- e) The fundamental principles of property;
- f) National unity and the right to identity;
- g) Economic or financial security of the state;
- h) Other fields that the Constitutional Court considers necessary to suspend the action of the challenged act, in order to prevent damage and imminent negative consequences;

2) *Individual acts issued by Parliament, by the President of the Republic of Moldova or by the Government, concerning the state officials exponents of public and/or special political interest.*

According to the amendments, the Constitutional Court shall examine the application for suspension of the challenged normative act at the latest in the second working day after the registration of the application. The decision to suspend the action of the challenged act is adopted by the plenum of the Constitutional Court by a vote of at least three judges. In case of impossibility of convening the plenum of the Court, the decision to suspend is issued by a provision of the President of the Constitutional Court, with further compulsory confirmation of the plenum of the Constitutional Court. The decision to suspend the challenged normative act enters in force on the date of issuing, and shall be published in the Official Journal of the Republic of Moldova. In case there was suspended the action of the challenged normative act, the Constitutional Court will examine, on the merits, the application within a reasonable time, which shall not exceed 15 days from registration. If necessary, the Constitutional Court may decide, in a reasoned manner, to extend the term of 15 days for at most another 15 days.

### 3.6. *Has your Court ever encountered difficulties in applying these tools?*

Mechanisms currently assigned by the Constitution and its subsequent legislative framework, allow the Constitutional Court to effectively solve the conflicts of constitutional jurisdiction.

Concurrently, certain judgments of the Constitutional Court, by which is declared unconstitutional a legal provision or an act, may generate legal vacuum, deficiency and uncertainties in the enforcement of law.

In order to exclude these negative repercussions, Article 28<sup>1</sup> of the Law on Constitutional Court provides that the Government, within a 3 months term at the most from the date of the Constitutional Court judgment publication, lodges with the Parliament the legislative initiative on the amendment or abrogation of the normative act or some parts thereof declared as unconstitutional. The draft law at issue shall take priority within the Parliament examination. Despite the current legal provisions, there are attested cases delaying the enforcement of judgments of the Constitutional Court.

A conclusive example is the *Judgment No. 27 of the Constitutional Court of 20 December 2011 on the constitutional review of certain laws amending the conditions of pension and other social benefits for certain categories of employees*, whereby **were declared**

**unconstitutional** the legal provisions by which there were included new conditions of establishing pensions for judges and was increased the length of employment for women. (CODICES MDA-2011-3-010)

By failing to execute the Judgment of the Constitutional Court No. 27 of 20 December 2011 the legislator has approved a legal vacuum (of 2 years) on the conditions of retirement of judges, which generates the violation of their pension rights.

In order to remedy this situation, the Constitutional Court issued *the explanatory Judgment No. 34 of 11 October 2013* on executing the Judgment of the Constitutional Court No. 27 of 20 December 2011.

In that judgment, the Court stated that until the legal framework will be supplemented with provisions regarding the judge's pension, there shall be applied the previous provisions before those declared unconstitutional.

It should be noted that the judgments of the Constitutional Court are primarily destined to the legislator, as well as to other subjects of the law making. Therefore, the absence of legislative intervention of the Parliament in executing the acts of the court of constitutional jurisdiction equals to the failure to exercise its basic competence, namely the enactment provided by the Constitution.

3.7. *Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?*

Article 25 of the Law on Constitutional Court and Article 38 of the Constitutional Jurisdiction Code provides exhaustively the subjects entitled to submit application to the Constitutional Court, namely: the President of the Republic of Moldova, the Government, the Minister for Justice, the Supreme Court of Justice, the Prosecutor General, members of Parliament, Parliamentary fractions, Ombudsman, People's Assembly of Găgăuzia (Gagauz-Yeri). The applications have to be well-founded and must comply with the requirements provided by the legislation of the Republic of Moldova.

#### **4. The role of constitutional justice in social integration**

4.1 *Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?*

The Constitution of the Republic of Moldova represents the fundamental law as a normative content, but also as the supreme legal framework, as a legal force for the organization and functioning of the state and of the democratic society, enshrining the most important human values.

Citizens of the Republic of Moldova enjoy the rights and freedoms enshrined in the Constitution and other laws. The Constitution of Moldova regulates a wide range of rights and freedoms.

The supremacy of the Constitution required the formation of legal guarantees, such as the fundamental duty to respect the Constitution, the general control of complying with the Constitution and the constitutional review of laws.

Analysing those three guarantees, the primary nature of the constitutional review of laws becomes obvious, as a guarantee of the supremacy of the Constitution in a rule of law state, secured by the Constitutional Court, through the competence given by the constitutional legislator and provided by Article 135 of the Constitution.

From this perspective, **the constitutional review of laws**, exercised by the court of constitutional jurisdiction, which is not subordinated to any other public authority, **appears as an effective instrument, which ensures the supremacy of the Constitution**, the principle of separation of state power into legislative, executive and judiciary, and guarantees the responsibility of the citizen towards the state and of the state towards the citizen.

The Constitutional Court, defined by the constitutional provision of the Article 134, lett. (1) and by its organic law, as the sole authority of constitutional jurisdiction, independent of any other public authority, represents one of the most important pillars of the system of constitutional guarantees.

Approaching the institutional role of the Constitutional Court in the system of governance, the functions that this Court is called upon to carry out in the rule of law state are essential, as well as the manner in which the Court performs its duties.

*4.2 Does your Court de facto act as 'social mediator', or/and has such a role been attributed to it?*

The Constitutional Court has the necessary instruments to enrich the entire set of safeguards and procedures aimed at protecting social rights through constitutional litigation and delivered judgments.

It has to be reaffirmed that the Constitutional Court not only has relevance in stopping or preventing violations of the guaranteed constitutional rights, but its reasoning directs the subsequent enactment by Parliament.

Subsequently, in its relevant judgments, the Constitutional Court examined the limits of various rights and freedoms, taking as a reference point, along with the constitutional provisions, the provisions of the international instruments and the case-law of the European Court.

In the narrow sense of the social rights, in the case-law of the Constitutional Court there is a great number of decisions whereby were solved cases of unconstitutionality on violation of the right to property, of the principle of equality and non-discrimination, of the right to social assistance and protection, aspects regarding citizenship.

*4.3 Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?*

The decisions of the Constitutional Court have shaped the internal politics of the Republic of Moldova in recent years, and in extremely challenging cases the judges of this forum were those who maintained the balance.

Following the parliamentary elections of April 2009, Moldova has faced a political crisis for three years due to the inability of the Parliament to elect the President, which resulted in the dissolution of the legislature.

- The Court was required to give interpretation to the legal provisions on the dissolution of the Parliament in case of the failure to elect the President. The court of constitutional jurisdiction has mentioned that, under the provisions of the Article 78, para. 5) of the Constitution, the head of state is obliged to dissolve the Parliament whenever the President of Moldova is not elected as provided by the Constitution. The Constitutional Court underlined that this right of the acting President is a way to respond to restrictions of repeated presidential elections. In this case the incumbent

President not only has the right to dissolve the Parliament, but according to the Basic Law, *is obliged* to do so. (*Judgment No. 6 of 16 March 2010*)

- By *Judgment No. 7 of 24 May 2012* the Court has ruled on the reasonable time for dissolving the Parliament by the head of state.

( <http://constcourt.md/ccdocview.php?tip=hotariri&docid=4&l=en> ).

- Furthermore, on 20 September 2011, by giving interpretation to the Article 78 of the Constitution, entitled "Election of the President", the Court held that: 1) in the meaning of the paragraph (5) of Article 78 of the Constitution, the head of the state is obliged to dissolve the Parliament whenever the President of Moldova is not elected as provided for by the Constitution; 2) provisions of the Article 78 of the Constitution fully apply in case of the Parliament invested following early elections, if the previous Parliament was dissolved due to the failure to elect the head of state; 3) given the principle of supremacy of the Constitution, the Parliament cannot establish by an organic law another majority for electing the President in case of multiple dissolution of the Parliament, caused by the failure to elect the President, and which might violate the provisions of the paragraph (3) of Article 78 of the Constitution. (*Judgment No. 17 of 20 September 2011* <http://constcourt.md/ccdocview.php?tip=hotariri&docid=25&l=en> )
- Regarding the nomination as Prime Minister of a candidate that has previously held that office and was dismissed by a vote of no confidence of the Parliament for reasons of corruption, the Court concluded that it defies the rule of law and the principles of integrity, and threatens the stability of democratic institutions. The Court finds it unacceptable to disregard and ignore a Parliament Decision casting a vote of no confidence to a government and to its Prime Minister, at least as long as no counterevidence was brought and the allegations were not proved unsubstantiated. The Court held that a Prime Minister, who tolerated, within the Government, ministers suspected of corruption and under criminal investigation for corruption, is defiant of the rule of law and designates a self-evident lack of integrity, which renders him incompatible with the held position. (*Judgment No. 4 of 22 April 2013*)

CODICES 2013-1-001 or <http://constcourt.md/ccdocview.php?tip=hotariri&docid=443&l=en>

Additionally to the hampered activity of state institutions, created as a result of the political crisis, the Court intervened on other aspects that are identifying us as a nation, where the political element hesitated to intervene for re-establishing the scientific truth.

Under Article 13, para. (1) of the Constitution, the official language of the Republic of Moldova is „**Moldovan language, based on Latin alphabet**”.

Concurrently, the Declaration of Independence of the Republic of Moldova operates with the term „**Romanian**” for the official language of the newly created state Republic of Moldova.

Therefore, the reference to „**Romanian**” as the official language is a factual situation ascertained in the actual text of the Declaration of Independence, which is the founding act of the Republic of Moldova. Regardless of glottonyms used in the legislation before the proclamation of independence, the Declaration of Independence uses the clearly distinguished and expressly preferred term „**Romanian language**”.

The Court held that **the Declaration of Independence enshrines the creation of the newly independent state and lays the foundations, principles and values of the state organization of the Republic of Moldova.**

The Declaration of Independence, being integral part of the Preamble of the Constitution, **has the value of a constitutional text** and forms a body with the Constitution, being the **primary** and immutable constitutional text of this Constitutional Block. The Court concluded that, in case of divergence between the text of the Declaration of Independence and the text

of the Constitution, **the primary constitutional text of the Declaration of Independence prevails.**

Examining the cumulative effect of the two provisions on the official language, the Court finds that the corroborated interpretation of the Preamble and of Article 13 of the Constitution resides in the uniqueness of the official language, which name is given by the primary, imperative provision of the Declaration of Independence. Consequently, the Court considers that the provision contained in the Declaration of Independence on the Romanian language as the official language of the Republic of Moldova prevails over the provision regarding Moldovan language from the Article 13 of the Constitution. (*Judgment No. 36 of 5 December 2013 CODICES 2013-3-008*).