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**RÉPUBLIQUE DE MOLDOVA/ REPUBLIC OF MOLDOVA/ REPUBLIK MOLDAU/
РЕСПУБЛИКА МОЛДОВА**

**The Constitutional Court of the Republic of Moldova
Curtea Constituțională a Republicii Moldova**

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**Report of the Constitutional Court of the Republic of Moldova to the XVIIth
Congress of the Conference of European Constitutional Courts**

***Role of the Constitutional Courts in Upholding and Applying the
Constitutional Principles***

REPLY TO THE QUESTIONNAIRE FOR THE NATIONAL REPORTS

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; equality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

In a rule of law where the Constitution recognizes and respects of human dignity, fundamental rights and freedoms, secures the supremacy of law and clearly specifies the separation and balance of powers, eligibility and accountability of public authorities, judicial independence, the Fundamental Act is a general dynamic model of this value system and aims to ensure steady progress of the society. The success of this mission depends on the clarity which is implied to express these values in the Constitution, on their viability in the society and on ensuring the supremacy of the Constitution at all levels of social life.

The constitutional text is not a mathematical formula to leave no room for interpretation. The Constitution generally represents the result of specific historical, political, social and economic conditionings, which gives a constitutional identity to it. Therefore, the interpretation and application of constitutional provisions should be made only in the spirit of the constitutional identity of the state.

In this regard, the Constitutional Court has an eminent role. The task of Constitutional judges is to interpret the Constitution, defining and maintaining thus the balance of powers, the

proper conduct of the political process and the constitutional state of the rule of law, of rights and freedoms, with major and profound political, economic and social implications for the entire society.

The constitutional jurisdiction procedure requires a review of the compliance of normative acts with the Constitution, aiming to achieve the principle of supremacy of the Constitution. In its affirmation as a basic tool for the protection of democratic principles, the Constitutional Court directs its jurisprudence so that it remains dynamic and evolutionary, thus making more efficient the mechanism of ensuring the exercise of fundamental rights and freedoms of citizens which are guaranteed by the Constitution. In the process of exercising the constitutional jurisdiction by way of constitutional review, the Court, which has a monopoly in terms of assessing the constitutionality of contested legislation, always faced the claims raised by general principles of law, either expressly inserted in the Constitution or resulting from the national constitutional jurisprudence or the outstanding jurisprudence of international judicial bodies, the first in this list is the European Court of Human Rights. These principles, generally accepted and universally applied by the vast majority of constitutional courts, represent the basis for the existence of a democratic state - the protection of human rights and freedoms, free development of human personality, justice and political pluralism - all inserted in Article 1 of the Constitution of the Republic of Moldova.

The judgment of the Constitutional Court is in itself a generally binding legal finding, based on the elucidation of the essence of the constitutional issue following the official interpretation of the relevant norms of the Constitution and the explanation of the reasoning inserted therein as reported to the challenged provisions.

The acts of the Constitutional court have *erga omnes* effect, being binding and enforceable against all subjects, regardless of the level of authority. They emphasize the consistent, objective and demanding character of the constitutional jurisdiction to ensure the supremacy of the Constitution, observance of human rights and fundamental freedoms, at the same time pointing out the way in which the idea of constitutionality and the role of the Court as a stabilizing factor in the society and moderating force between the branches of state power is perceived. The impartial exercise of these powers outlines the position of the Constitutional Court as an essential component of the rule of law.

The current legislative framework on the activity of the Constitutional Court¹ regulates only the elements of the judgments or opinions delivered by the Court, without indicating which are the sources of law that should underpin the reasoning of the corresponding judgment or

¹Law no. 317-XII of 13.12.1994 on the Constitutional Court, Constitutional Jurisdiction Code nr. 502-XIII of 16 June 1995 <http://constcourt.md/pageview.php?l=en&idc=15&t=/Overview/Legal-framework/The-legal-framework/>

opinion. The manner in which the reasoning and the assessment of the judgment are executed, by virtue of the autonomy of the instance of constitutional review, are not and cannot be expressly prescribed in regulatory norms, their choice being the exclusive prerogative of the Constitutional Court.

However, the Court has concluded in its case law that, as a source of law, the Preamble to the Constitution has a key role in understanding and applying the text of the Constitution and may be invoked as a source of law.²

2. What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

Title I of the Constitution of the Republic of Moldova enshrines the "general principles" such as rule of law, democracy, human dignity, free development of human personality, justice and political pluralism, separation and cooperation of powers. While in other titles of the Constitution, such principles as universality, equality, access to justice, the presumption of innocence, non-retroactivity of law etc., are enshrined.

With reference to the principle of rule of law, for instance, it is regulated in art. 1 para. (3) of the Constitution, which states that *"The Republic of Moldova is a state of law, where human dignity, rights and freedoms, free development of human personality, justice and political pluralism represent supreme values and are guaranteed."*

Although the legislation of the Republic of Moldova (hard law) does not define the concept of the rule of law, it has evolved through the case law of CCM, becoming a principle which represents not only a formal legality that ensures the regularity and consistency in establishing and implementing democratic order in the country, but also a justice based on the recognition and full acceptance of the human personality.³ The Constitutional Court of the Republic of Moldova noted that the concept of "rule of law" means subordination of the state to the law. No one –either an individual, a legal entity or a public authority - can be above the law⁴. The significance of the rule of law implies guarantees for the functioning of democracy and political

²Constitutional Court Decision no. 4 of 22.04.2013 for the constitutionality control of Presidential Decrees nr.534-VII of March 8, 2013 on the resignation of the Government, in the part that refers to the maintenance in function of the Prime Minister, dismissed by motion of censure (for suspicions of corruption) dated March 8, 2013 before the new government, and nr.584-VII of April 10, 2013 on designating the candidate for Prime Minister.

³Constitutional Court Decision no.43 of 27.07.1999 on the constitutionality control of some provisions of Law no.430 XIII of 19 April 1995 "On the status of councilors in the local council" and of the Electoral Code.

⁴Constitutional Court Decision no.23 of 21.07.1997 on the constitutionality of Presidential Decrees nr.116-II and nr.117-II of 7 April 1997.

pluralism, including ensuring freedom of opinion and expression, the right to associate into political parties and other socio-political organizations, which are inalienable rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights enshrined and guaranteed by the Constitution of the Republic of Moldova.⁵

Given the above mentioned, it can be inferred that the Court refers to the constitutional principles enshrined depending on the subject of the complaint and claims raised. However, in the process of examination of cases brought before it, the Court is guided by the fact that strict adherence to the principles and supreme values is practically the test of the effectiveness of the Constitution in a state of law and depriving citizens of interpretation and functional application thereof could mean depriving them of what is considered the most important public good - confidence in its efficiency.

3. Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence? How they have been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or European law; newly-adopted principles or ones re-introduced from the former constitutions)? Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?

Since the Constitution, as the supreme law of the state, is a political and legal document that establishes the basis of the existence of the State, it covers both principles and values that ensure development of the country in a democratic way, in explicit and implicit forms. Explicit principles enshrined in the Constitution of the Republic of Moldova were presented above. On the other hand, the implicit principles are highlighted and are applied while interpreting constitutional provisions, which is the exclusive prerogative of the Constitutional Court.

Thus, in the process of carrying out its activity the Court has elucidated several aspects following the application of implicit principles enshrined in the supreme law. Thus, for example, the Court established the value of the Declaration of Independence of the Republic of Moldova as a principle, which derives from popular general consensus that legitimated it and its content which is defining for the new state. This gives to the Declaration of Independence, in the constitutional order of the Republic of Moldova, a transversal function [...] in relation to other constitutional provisions (in a manner similar to the general principles of the rule of law,

⁵Constitutional Court Notice no.1 of 03.04.2008 on the draft law on supplementing the art. 81 para. (1) – of the Constitution of the Republic of Moldova.

fundamental rights and freedoms, justice and political pluralism, etc.), being the core of the *block of constitutionality*.⁶ These principles were deduced by the Court based on the aspirations of its people expressed in the Declaration of Independence.

The implicit principles formulated by the Court are based on explicit organic principles stated in the Constitution, such as, the rule of law which was the culmination of the constitutionalisation of the political system. At the same time, the rule of law means that the social order and the state order are based on fundamental legal principles and rules. An essential feature of the rule of law is the rigid subordination of all, including state institutions, to clear, predictable and predetermined legal norms.⁷

From a different perspective, the Court decided that the observance of the principle of legality ensures the respect of other principles, due to the fact that the legality is the condition of existence and the means to achieve the implementation of all constitutional principles. However, the application of the principle of separation of powers is, in turn, a prerequisite to ensure the establishment and operation of a state based on the rule of law.⁸ At the same time, the content and meaning of the theory of separation of powers presumes a balance of powers and their proportional independence, a system of brakes, balances and counterbalances that would mutually influence the authorities, not allowing them to exceed the limits set by the Constitution in exercising the powers.⁹

It shall be mentioned that not only the national laws lay at the basis of implicit constitutional principles, but also a number of international and European standards. Thus, for example, according to Article 4 of the Constitution, the Court must interpret the provisions relating to the fundamental rights and freedoms in accordance with the international covenants and treaties, and if there is a conflict between the covenants and treaties on fundamental human rights to which the Republic of Moldova is a party and its internal laws, the priority is given to international regulations. The Court also held, as a principle, that the jurisprudence of the European Court of Human Rights has the same legal value as conventional provisions due to the fact that the case law is considered as interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶Constitutional Court Decision no. 36 din 05.12.2013 *on interpreting the article 13, para (1) of the Constitution in correlation with the Preamble of the Constitution and the Declaration of Independence of the Republic of Moldova.*

⁷Constitutional Court Decision no.7 of 24.05.2012 *on the constitutionality control of some provisions of Law no. 1234-XIV of 22.09.200 on the procedure of electing the President of Moldova, notification no.1 / 2012 (concerning the procedure of electing the President of Moldova).*

⁸Constitutional Court Decision no.3 of 09.02.2012 *on the constitutionality control of some provisions of Law No. 163 of 22 July 2011 on amending and supplementing certain acts, notification No.30 / 2011 (aimed at specialized courts).*

⁹Constitutional Court Decision no.3 of 09.02.2012 *on the constitutionality control of some provisions of Law No. 163 of 22 July 2011 on amending and supplementing certain acts*

Besides the aforementioned legal sources implied while examining the complaints submitted, the Court may also request the opinions of academia or civil society, which can be crucial in the formulation of value judgments and creating the new jurisprudence.

4. What role does the constitutional court has played in defining the constitutional principles? How basic principles have been identified by the constitutional court over time? What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles? How much importance falls upon *travaux préparatoires* of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles? Do universally recognised legal principles gain relevance in this process?

While examining the complaints submitted, the Court makes use of a range of interpretation methods. Thus, when the Court decided that respecting the principle of legality ensures respect of other principles, it used the logical and systemic interpretation given the fact that legality is the condition of existence and a means of implementation of all constitutional principles. However, the implementation of the principle of separation of powers is, in turn, a prerequisite for the establishment and operation of the rule of law.¹⁰

The same method of interpretation was used when the Court noticed that the Preamble to the Constitution, being at the origin of the constitutional text, is the part of the Constitution that exactly reflects the spirit of the Supreme Law. Thus, the Preamble presents certain mandatory constitutional clauses that can serve as independent sources for norms that are not necessarily reflected in the text of the Constitution. Any interpretation of the Constitution shall be operated taking into account the original aims of the Constitution, which are set out in the Preamble and from which derives the text of the Constitution. In conclusion, when there are multiple interpretations, the option that complies to the provisions of the Preamble shall prevail.¹¹

The Preamble to the Constitution does not represent a mere legal statements. The reasons for the putting down the preamble, the process of its creation and its sociological functions are various. The aim of the preamble is not only to guarantee the rights and provide legal reasoning, but also to establish the fundamental values of the society (constitutional faith)..

¹⁰Constitutional Court Decision no.3 of 09.02.2012 *on the constitutionality control of some provisions of Law No. 163 of 22 July 2011 on amending and supplementing certain acts, notification No.30 / 2011* (aimed at specialized courts).

¹¹Constitutional Court Decision no. 4 of 22.04.2013 *on the constitutionality control of Presidential Decrees no.534-VII of March 8, 2013 on the resignation of the Government, in the part that refers to the maintenance in function of the Prime Minister, dismissed by motion of censure (for suspicions of corruption) dated March 8, 2013 until the creation of the new government, and no.584-VII of April 10, 2013 on designating the candidate for Prime Minister.*

The Constitution of 1994 in its Preamble enshrines the constitutional values: centenary aspirations of our people to live in a sovereign country, expressed by the proclamation of independence of the Republic of Moldova; continuity of statehood of Moldovan people within the historic and ethnic context of its making as a nation; fulfillment of the interests of the citizens of other ethnic origin that, along with Moldovans, constitute the people of the Republic of Moldova; rule of law, civic peace, democracy, human dignity and freedoms, free development of human personality, justice and political pluralism; responsibility and obligations towards the ancient, present and future generations; devotion to the general human values, desire to live in peace and good understanding with all the nations of the world in line with the unanimously recognized principles and norms of international law.

This means that the constitutional court is obliged to consider these constitutional values and to interpret them taking into account: a) *the aspirations expressed by proclamation of independence of the Republic of Moldova*; b) the historical and ethnic context of people's becoming as a nation.¹²

5. What is a legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of latter's interpretation? Can the basic principles in your jurisprudence constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm? Is there any requirement in law placed upon the judicial acts of enforcement of constitutional principles?

The Constitutional Court of Moldova, according to the Constitution and the legal framework regulating its organization and functioning, exercises its activity only upon referral by the subjects that are empowered by law for this purpose. In this regard the Court is in a position to analyze and interpret fundamental principles just in relation to the specific constitutional right(s) invoked in every complaint. The doctrine which is developed in this manner represents the constitutional jurisprudence which is crystallized through formulating and elucidating certain principles that become universally applicable at the national level.

¹²Constitutional Court Decision no. 36 of 05.12.2013 *on the interpretation of Article 13, para. (1) of the Constitution in correlation with the Preamble of the Constitution and the Declaration of Independence of the Republic of Moldova.*

In the process of examining the complaints the Court always strives to establish the correlation between the challenges legal norms and the Constitutional provisions, taking into account the principle of supremacy of the Constitution. In some situations, however, the Court examines the complaint only based on the constitutional principles if other constitutional regulations are not hampered

For example, the Court declared unconstitutional the security measure used in criminal law (chemical castration) based on the reasoning that the respect and defense of human dignity is an obligation of the public power and the exclusion of punishment or cruel, inhuman or degrading treatment is a condition to respect human dignity. Therefore, regardless of the nature of the crime, a sentence imposed by a court must respect the inherent attributes of the human being (physical and mental integrity, human dignity etc.).¹³

6. What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution does the constitutional court have made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.

Among the constitutional principles that are most often invoked in the case law of the Court are the principle of rule of law, the principle of legality, democracy, separation of powers.

The Court invoked the principle of rule of law in cases related to situations of corruption in administrative bodies or the judiciary, noting that corruption undermines democracy and the rule of law, leads to violations of human rights, undermines the economy and erodes the quality of life. Therefore, the fight against corruption is an integral part to ensuring respect for the rule of law.¹⁴

The Court invoked the principle of legality in a state based on the rule of law in the framework of analyzing the situations relating to the appointment of persons in positions of public dignity. Thus, being notified on the legality of appointment of the Ombudsman for Children's Rights, the Court ruled that, based on international and European standards which call for the establishment of mechanisms to ensure the protection of children's rights by appointment

¹³Decision no.18 of 04.07.2013 on the constitutionality control of some provisions of the Criminal Code No. 985-XV of 18 April 2002 No. 443-XV and the Enforcement Code of 24 December 2004 in the wording of Law No. 34 of 24 May 2012 on supplementing some legislative acts.

¹⁴Decision no.4 of 22.04.2013 on the constitutionality control of Presidential Decrees no.534-VII of March 8, 2013 on the resignation of the Government, in the part that refers to the maintenance in function of the Prime Minister, dismissed by motion of censure (for suspicions of corruption) dated March 8, 2013 until the creation of the new government, and no.584-VII of April 10, 2013 on designating the candidate for Prime Minister.

to these positions of qualified persons, the subject of professional competence, of training, supervision and accountability of specialists requires an adequate and permanent professional training in the area of child rights.

The mechanism of protection of child rights through the Ombudsman with powers in this field must not be purely formal, for the sake of a response to international requirements, but to assume efficiency, so as to meet the requirements and needs of protecting the rights of a child. As a result, the appointment in the position of Ombudsman of a person who fails to meet the legal conditions undermines the principles of democracy and the rule of law. Promoting to this important position meant to ensure the observance of human rights, of a person who does not meet the required experience and reputation, can compromise the principles of legality, equality, impartiality and democracy, under which the Ombudsman operates. This can lead to inefficiency of the Ombudsman institution.¹⁵

Another circumstance when the Court invoked the principle of legality is related to review of constitutionality of legal provisions regulating the establishment by the Government of the proportions of drugs detected in illegal trafficking in order to establish the infringement. The Court grounded its position specifically by invoking the principle of legality in determining the areas of competence of the executive and legislative power, through the principle of separation and collaboration of powers in the state.

Thus, the Court held that the legality, as the basic principle of the rule of law determines the compliance of the norms or the legal act with the superior norms that establish procedural conditions for the elaboration of legal norms. The rule of law is ensured by the entire system of law, including criminal laws, which is characterized by certain distinctive features as compared to other categories of norms. In this context, the Court held that by way of criminal law the legislator may empower the executive to regulate certain legal issues that interfere with primary criminal norms.¹⁶

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

¹⁵Decision no.22 of 16.07.2015 on the constitutionality control of Parliament Decision no. 140 of July 3, 2015 on the appointment of Ombudsmen for children's rights.

¹⁶Decision no.25 of 13.10.2015 on the constitutionality control of some provisions of the Government Decision no. 79 of 23 January 2006 on approving the List of drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking and their quantities.

1. Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law? How are constitutional principles and other constitutional provisions related to international law and/or to the European Union law? Are there any provisions in international or the European Union law that are deemed superior than the national constitutional principles? If yes, how such higher international provisions are applied with regard to the national constitutional principles? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?

As the Constitutional Court stated in its case law, the Constitution is the Supreme Law. The Constitution is evolving from the national community, from the civic nation in itself. The Constitution reflects the social contract - an obligation accepted democratically by all Moldovan citizens in front of present and future generations to live in accordance with the fundamental rules enshrined in the Constitution and to respect them, in order to ensure the legitimacy of the government, the legitimacy of decisions, as well as to ensure human rights and fundamental freedoms in order to ensure harmony in the society.

Principles and general norms of the international law recognized by the Republic of Moldova are part of domestic law, and the hierarchical level of international treaties' provisions in the internal legal order is determined by the content of those treaties.

According to the provisions of Article 4 para. (1) of the Constitution of the Republic of Moldova, constitutional rights and freedoms are interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Moldova is party. This provision entails legal consequences, assuming first that law enforcement bodies, including the Constitutional Court and courts within their competences, are entitled to apply in the process of examination of concrete cases the norms of the international law in the cases determined by law.

Article 4 para. (2) of the Constitution regulates the relationship between the international law and national provisions on fundamental human rights, granting priority to the international provisions in case of inconsistency.

An example of factual implementation of this approach is the jurisprudence of the Court elaborated in the framework of exercising the constitutional control of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union, the

European Atomic Energy Community and its Member States, on the other hand.¹⁷ The complaint concerned a combination of elements and principles with constitutional value, such as the rule of law, sovereignty, independence, neutrality, the economy, in relation to compliance with the international law and international treaties, as well as principles and generally accepted norms of international law. The fundamental principles that were the basis for the Court's reasoning was the orientation of Moldova towards European area of democratic values which results from the constitutive act of the Republic of Moldova, as well as the compliance with the principles of sovereignty and respect for international law.

2. How are the constitutional principles related to each other? Is there any hierarchy within those principles? What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?

Being an act of supreme legal force and a social contract, the Constitution is based on universal and undeniable values, as the fact that sovereignty belongs to the people, democracy, recognition of human rights and fundamental freedoms and their observance, respect for the law and the rule of law, of the system of balances and counterweights, the duty of state institutions to serve the people and their responsibility towards the society, the public spirit, justice, the objective of a fair and harmonious open civil society and of the rule of law.¹⁸

In its case law, the Court held that the rule of law is a comprehensive principle of which arise a number of other subsequent principles. Also, on several occasions the Court held that:

- *the preeminence of law*, characteristic to the state of law, imposes the obligation to respect the law especially by the one who drafted it;

- *compliance with international obligations* assumed by their own will is a legal tradition and a constitutional principle as an inherent component of the rule of law;

- *the principle of rule of law* the requirements of which relate to the major goals of state activity, foreshadowed in what is called the rule of law, implies the subordination of the state to the law, ensuring those means for the law to censor political choices and in this context, to ponder any abusive, discretionary tendencies of state structures. The rule of law ensures the

¹⁷Decision no.24 of 09.10.2014 on the constitutionality control of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, and of the Law no.112 of 2 July 2014 ratifying the Association Agreement.

¹⁸Constitutional Court Notice no.1 of 24.07.2015 on the initiative to revise the Article 78 para (3) of the Constitution of the Republic of Moldova.

supremacy of the Constitution, correlation of laws and of all normative acts with it, the true existence of separation of powers which must act within the legal frameworks, namely within a legal act expressing the general will. The rule of law establishes a series of safeguards, including judicial, that ensure the observance of rights and freedoms of citizens through the self-limitation of the state, respectively the framing of public authorities within the coordinates of the law;

- With reference to the *principle of proportionality*, the Court has held that the limitation of the exercise of some individual rights, in consideration of collective rights and public interests, that concern the national security, public order and criminal prevention, is always a sensitive operation in terms of regulation, and it is necessary to maintain a fair balance between individual rights and interests, on the one hand and the rights and interests of the society on the other hand;

- *National sovereignty* consists in the people's right to decide unconditionally on its interests and to promote them in the ways provided by the Supreme Law;

- The Court emphasized the fundamental essence of *the principle of separation and collaboration of powers*, proclaimed by article 6 of the Constitution as a fundamental principle of organization and efficient functioning of state institutions, to exclude any mutual interference. The Court concluded as an inalienable component of this principle the balance of branches of state power. The Court noted that the principle of separation of powers implies not only that none of the branches of power intervene in the powers of other branches, but that none of these branches neglect the tasks required to carry out their functions in a specific area of activity.

3. How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law? Has the constitutional principles ever been subjected to change in your jurisdiction? If yes, what were the reasons behind it?

The Constitution is the fundamental law governing the political and legal form of state organization. The essence of a Constitution is its stability over time; it must be drawn to represent a reference system for the political and legal life of a human community for a longer period of time. To this end, various technical ways to protect the stability of the Constitution are inserted in the fundamental laws, by providing a certain degree of rigidity of the Constitution. This is a basic feature of all written constitutions (unlike ordinary laws), which contain provisions that enable their review.

The Constitution contains express provisions regarding the possibility of revising the constitutional text. According to Article 141 of the Constitution, the revision of the Constitution may be initiated a) by at least 200,000 Moldovan citizens with voting rights [...]; b) by at least one third of MPs; c) by the Government."

In almost all countries, including the Republic of Moldova, it is more difficult to revise the Constitution than the ordinary legislation. Constitutional rigidity is an important corollary to the rule of the Basic Law. The rigidity of the Constitution is a guarantee for its stability, the latter determines to a large extent, the stability of the entire regulatory system of the state, the certainty and predictability of human behaviors being necessary for the legal certainty (and not only) of community members.

Any law amending the Constitution modifies the content of its provisions and relationships between these provisions and also could alter the balance of values enshrined in the Constitution. When modifying certain provisions of the Constitution, it might influence the content of other provisions and the overall constitutional legal regulation.

In its case law the Court decided that if amending the Constitution, it must be taken into account that this is a full act and all provisions of the Constitution are interconnected to the degree to which the content of some provisions of the Constitution determine the content of other provisions. The provisions of the Constitution form a harmonious system so that no provision of the Constitution can be contrary to other provision thereof. The nature of the Constitution, as an act with supreme legal power, and the idea of constitutionality implies that there are and there could not be internal gaps or contradictions of the Constitution.¹⁹

From this perspective, no amendment to the Constitution may cause a situation in which the provisions of the Constitution and the values enshrined in its provisions contradict each other. No amendment of the Constitution can create a new constitutional settlement under which a provision of the Constitution would cancel or be contrary to another provision of the Constitution, so that it would be impossible to believe that these provisions are in harmony. Therefore, no amendment to the Constitution may be adopted that would affect the harmony of constitutional provisions or the harmony of values enshrined in them.

The concept, nature and purpose of the Constitution, the stability of the Constitution as a constitutional value and the imperative of harmony among provisions of the Constitution, mentioned above, involve some substantive and procedural limitations on amendment of the Constitution. In this regard, Article 142 of the Constitution states that the provisions regarding the sovereignty, independence and unity of the state as well as those regarding the permanent

¹⁹The Notice no.1 of 22 September 2014 on the initiative to revise the articles 78, 85, 89, 91 and 135 of The Constitution of the Republic of Moldova by a republican referendum.

neutrality of the State may be revised only by referendum by a majority of voters included in the electoral lists. However, the Constitution, in para. (2) of Article 142 clearly states that no revision can be made, if it implies the suppression of rights and freedoms of citizens or their guarantees. Also, according to para. (3) of the same article, the Constitution cannot be revised during the state of emergency, siege and war.

Substantive limitations on amending the Constitution are those enshrined in the Constitution on adopting constitutional amendments having certain content; procedural limitations on amending the Constitution refer to the special procedure for amending the Constitution provided for this purpose. *Procedural limitations* on Constitutional amendments arise from the whole constitutional legislation and are intended to protect the universal values underlying the Constitution as the supreme law and social contract, as well as the state as the common good of the whole society, and maintain harmony of these values and harmony of constitutional provisions.

The imperative that no amendment of the Constitution can affect the harmony of the Constitutional provisions or the harmony of values enshrined, does not allow the adoption of amendments which are contrary to at least one of the constitutional values underpinning the state as the common good of the whole society enshrined in the Constitution - the state's independence, democracy, republic as the form of governance and the intrinsic character of human rights and fundamental freedoms.

In this respect, in the Judgment no. 7 of 4 March 2016 on the control of constitutionality of certain provisions of Law no. 1115-XIV of 5 July 2000 amending and supplementing the Constitution of the Republic of Moldova (the modality of election of the President) the Court found that the amendment of 2000 of the contents of Article 78 of the Constitution (which changed the modality of election of the President from universal elections to elections by the Parliament) designed to ensure the functionality of state institutions, created a new situation, which generated a break of this constitutional unit, because it failed to ensure the normal functioning of the institution of the President. The Court held that the constitutional reform of 2000 created an imperfect system of governance, where there was a potential for conflict between the authorities, which was a direct consequence of ignoring by the Parliament of the previous opinion of the Constitutional Court on constitutional amendment.

Following the systemic coherence of the Constitution and with a view to ensure its functionality, the Court found that the challenged provisions were adopted in violation of the procedure for revising the Constitution. Thus, given the imperative to avoid a legal vacuum and considering the urgency of addressing the constitutional deadlock in the context of the close expiry of the term of office of the current President, the Court ordered the revival of the legal

mechanism which was in force before the constitutional amendments in order to ensure the election of the president by direct vote of the citizens.

4. Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?

The procedure of Constitutional revision, enshrined in Article 141 of the Constitution, stipulates that the constitutional draft laws will be submitted to Parliament only together with the opinion of the Constitutional Court, adopted by a vote of at least 4 judges. In this way the Constitution establishes *ab initio* the competence of the Constitutional Court, the sole authority of constitutional jurisdiction in the state, to conduct the *a priori* control of all draft laws to amend and/or supplement the Supreme Law. This competence was conferred to the Constitutional Court by the constituent legislator precisely in considering the role and position that the Constitutional Court occupies in the political and legal system of the society, which allows it to consider impartial amendments, away from the temptation of political actors to take conditional decisions.

In the same vein, the Court opinions on the amendments to the Constitution aim to protect the fundamental values of the Constitution against the abusive practices by political, social or institutional actors. Therefore, ignoring or overcoming these opinions may serve as grounds for invalidity of such modifications.²⁰

5. Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?

The competence of the Constitutional Court to examine and deliver opinions on all draft constitutional laws before their submission to the Parliament represents particular constitutional analysis of constitutional amendments.

Any law amending the Constitution modifies the content of its provisions and relationships between these provisions and also could alter the balance of values enshrined in the Constitution.

²⁰Decision no.7 of 04.03.2016 on the constitutionality control of certain provisions of Law no. 1115-XIV of 5 July 2000 on amending and supplementing the Constitution of the Republic of Moldova (the modality of electing the President).

No amendment to the Constitution may cause a situation in which the provisions of the Constitution and the values enshrined in its provisions contradict each other. No amendment of the Constitution can create a new constitutional settlement under which a provision of the Constitution would cancel or be contrary to another provision of the Constitution, so that it would be impossible to believe that these provisions are in harmony. Therefore, no amendment to the Constitution may be adopted that would affect the harmony of constitutional provisions or the harmony of values enshrined in them.

In the framework of the political process of amending the provisions of the Constitution in Parliament, it is required to respect the substantive and procedural imperatives established for the regulation of amendments to the Constitution. Violation of these imperatives can, following the judicial constitutional review exercised by the Constitutional Court, lead to declaring the unconstitutionality of a legal act which amends certain provision of the Constitution. The Court also pointed out that after the delivery of opinion by the Constitutional Court, the intervention in the text of the draft law amending the Constitution is not allowed and ignoring or overcoming it may serve as grounds for invalidity of amendments.²¹

6. Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court's reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? What is legal effect of a decision of the constitutional court finding the constitutional amendment in conflict with the constitution? Please, provide examples from the jurisprudence of the constitutional court.

Until 2016 the Constitutional Court had exercised its powers only in terms of *a priori* control of draft laws to amend and/or supplement the Constitution, pursuant to Art. 135 para. (1) letter c) and Article 141 para. (2) of the Constitution, according to established procedure.

However, by the Judgment no. 7 of 4 March 2016 on the constitutional control of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending and supplementing the Constitution of the Republic of Moldova, the Constitutional Court exercised control of

²¹Decision no.7 of 04.03.2016 on the constitutionality control of certain provisions of Law no. 1115-XIV of 5 July 2000 on amending and supplementing the Constitution of the Republic of Moldova (the modality of electing the President).

constitutionality of a law amending the Constitution that was already in place, which is a control of constitutionality of constitutional amendments. This practice is new for Moldova, but not for other European countries (Lithuania, Czech Republic, Turkey, Ukraine, etc.) and allows ensuring harmony between constitutional norms and guaranteeing the stability of the Constitution.

Thus in its decision of 04 March 2016, the Court ruled on amendments to the Constitution adopted by the Law 1115-XIV of 5 July 2000 amending and supplementing the Constitution of the Republic of Moldova which modified the manner of electing the President (the transition from direct elections by citizens to parliamentary elections by a vote of 3/5 of the MPs). Accordingly, amendments to the Constitution, which created a different and more complicated system to elect the President have caused political instability, because in the period 2009 - 2012 the powers of the President were exercised by interim presidents, and due to the fact that the Parliament failed to elect the President and was dissolved, it was necessary to conduct early parliamentary elections.

MPs have notified the Constitutional Court on several occasions challenging different aspects of the constitutionality of the constitutional amendment adopted, invoking, *inter alia*, that while adopting the constitutional amendment the Parliament did not follow the prescribed procedure of submitting the opinion of the Constitutional Court together with the draft law amending the Constitution, which is mandatory according to Article 135 para. (1) and Article 141 para. (2) of the Constitution. The complaints submitted were based on the fact that in the Parliament the challenged provisions of the draft law amending the Constitution were essentially modified, and these modifications were not submitted to the Constitutional Court for repeated opinion.

However, in 2016, in the process of examination of this case, the Court noted that in practice the contested provisions were revealed to be a source of instability and institutional deadlocks. This was the reason why the regulations in question were the subject of a new complaint of unconstitutionality, this becoming, according to the Court, a new element, likely requiring reconsideration of both the solution adopted, as well as considerations on which is based and, consequently, reconsider the relevant case-law. In that case, the Court held that while adopting the amendments to the Constitution in 2000, the Parliament has not complied with the constitutional procedure provided in order to request the Constitutional Court to deliver a repeated opinion on the initiative to revise the Constitution, and therefore, declared unconstitutional the Law of 2000 amending the Constitution which was adopted in breach of the procedure.

The Court held that the provisions of the Constitution do not grant the Parliament the right to submit a draft law amending the Constitution which can differ substantially from the draft law

amending the Constitution initially submitted by the authorized subject and approved by the Constitutional Court. After the delivery of the opinion by the Constitutional Court, the intervention in the text of the draft law amending the Constitution is not allowed and ignoring or overcoming it may serve as grounds for invalidity of such modifications. In case of MPs' amendments accepted by the Parliament in the second reading of a draft law on amending the Constitution, repeated opinion of the Constitutional Court is required.

The stability of the Constitution is a peculiarity of the Constitution, which, together with other characteristics, *inter alia*, first and foremost, in conjunction with special and supreme legal power of the Constitution, distinguishes legal constitutional regulation and (ordinary) regulation provided by the legal acts with inferior legal power. The stability of the Constitution does not oppose to the possibility of amending the Constitution when necessary, but the procedure for amending the Constitution is more difficult and complex compared to the modification of organic and ordinary laws.

The constitutional provisions that introduce limitations on the review, have legal value and cannot be circumvented, they substantiate their position on the existence of principles and provisions of the original constituent legislator, that are imposed to the derived constitutional power. The Court notes that the respect of the review procedures, that would allow time for public and institutional debate, can contribute significantly to the legitimacy and acceptance of the Constitution, and to the development and strengthening of democratic constitutional traditions. Conversely, if the rules and procedures of constitutional revision are subject to interpretation and controversy, or if they are implemented too hastily or lacking democratic debates, this could undermine political stability and, ultimately, the legitimacy of the Constitution itself.

7. Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How the judicial review is observed in this regard? Would the expansion or recognition of constitutional court's authority encourage the realisation of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.

In its jurisprudence the Court faced the situation to remove the mechanisms that generate unbalance of constitutional institutions, thus ensuring the unity and coherence of the Constitution. The Court held that in order to implement the constitutional obligation on the role of the Constitutional Court as a guarantor of the Constitution, one of the fundamental tasks of a

constitutional court consists in securing the normative order originated in the Constitution. Also, the solution of the Court must be an "effective" one, which cannot contain a simple opinion, appreciation, notification, recommendation or request. In this context, the role of the Court in the matter of amending the Constitution aims to protect the fundamental values of the Constitution against the abusive practices by political, social or institutional actors.