



Synthèse / Summary / Kurzfassung / резюме

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

The Constitutional Court of the Republic of Moldova

Curtea Constituțională a Republicii

Anglais / English / Englisch / английский

**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***

SUMMARY

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

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.

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.

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

Also, 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.

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.

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.

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.

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 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), 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.

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.