Peer Assessment mission to Republic of Moldova on the Constitutional Court

(Reference code: JHA IND/EXP 60951)

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1. Background

1.1. General Historical and Constitutional Setting

During the last centuries Moldova had successively been a part of the Ottoman Empire, the Russian Empire, the Kingdom of Romania and the Soviet Union from which it splitted in 1991.[1] The current Constitution (CO) dates from 29 July 1994, establishing the "Republic of Moldova"

- as "a sovereign, independent, unitary and indivisible state"[2], proclaiming its "permanent neutrality"[3] and explicitly prohibiting "the stationing of any foreign military troops on its territory".[4] Obviously stipulating "indivisibility" as well as "neutrality" was meant as providing a legal safeguard

  (i) for the *unity* of the country, mainly with regard to the Transnistrian part which, nevertheless, continues to persist as a de facto completely independent polity backed by the Russian Federation[5], and

  (ii) for the *independence* of the country, mainly with regard to Romania with which, nevertheless, Moldova shares the "State language" (written in the "Latin alphabet")[6]; and
- (actually for the *first time in its history*![7]) as a state "governed by the rule of law" and as "a democratic state in which the dignity of the people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values that shall be guaranteed".[8] Consequentially, also a Constitutional Court (below: CC) – with far reaching competences – was established.[9]

[1] Declaration of Independence of 27 August 1991. Quotations from this Declaration (DI) as well as from the Constitution (CO) are taken from a booklet received at the Constitutional Court (CC) with the title "Block of Constitutionality of the Republic of Moldova. Declaration of Independence. Constitution" (neither indication of editors nor of the year of publication).
[2] Article 1 (1) CO.
[3] Article 11 (1) CO.
[4] Article 11 (2) CO.
[5] Cf, for this specific background, e.g. *Boris Negru*, commentary to Art 11, in: Curtea Constituţională A Republicii Moldova/Hanns Seidel Stiftung (eds), Constituţia Republicii Moldova (2009), 68ff, 71.
[6] Whereas the "state language" is named "Romanian" in the DI, Article 13 (1) CO calls it "Moldovan language". How sensitive the issue is shows CC's Judgement No 36 of 5 December 2013 where the DI, as the "'birth certificate' of the new state", was considered to prevail over Article 13 (1) CO, having the effect that the official name of Moldova's "state language" is "Romanian".
[7] As it is well-known even the former Kingdom of Romania was far from current EU standards of "rule of law" and "democracy", not to speak of human rights, even before the king's dictatorship (1938/1939) or the regime of the "conducătorul statului" *Ion Antonescu* (1940/1944) (see in more detail e.g. *Keith Hitchins*, Rumania 1866-1947 [1994], 377-500).
[8] Article 1 (3) CO.
[9] Cf Titel V (Articles 134 – 140 CO).

1.2. Corruption

Due to various reasons[10] present Moldova faces widespread – if not endemic – corruption. This fact is openly addressed by official acts of State (acts of Parliament as well as judgements of the CC):

- In its Judgement No 4 of 22 April 2013, CC ruled that the Decrees of the President of the Republic (i) appointing a person whose mandate as **Prime Minister** had just been terminated by a Parliamentary vote of no-confidence based explicitly on "suspicion of corruption and other related acts" as Prime Minister ad interim and (ii) nominating the same person as Prime Minister Candidate was unconstitutional[11];
- By Legislative Act No 153 of 5 July 2012 Parliament limited the immunity of **judges** aiming at strengthening thereby the fight against corruption. In its Judgement No 22 of 5 September 2013 "the Court found that vesting the Prosecutor General with the power to file criminal proceedings against a judge with no prior consent of the superior Council of Magistrates is **justified by the peculiarities of corruption cases investigation**, which requires promptness and confidentiality in carrying out of procedural actions."[12]
- Only recently, on 16 April 2015, CC had again to rule in the context of corruption, assessing the constitutionality of the Legislative Act No 325/2013 on Professional Integrity Testing; in points 33 - 39 of Judgement No 7 we find a comprehensive overview of the current situation.[13]

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[10] We may blame here history as well as the current unstable geopolitical situation where at least three major powers (EU, Russia and USA) seek to maximize their respective influence.

[11] Exactly this former Prime Minister was quite recently, in October 2015, arrested in Parliament on the basis of a warrant issued by the national anti-corruption agency; for the rather doubtful background and consequences of this action cf, e.g., Sächsische Zeitung of 21 October 2015 (http://www.sz-online.de/nachrichten/diebstahl-des-jahrhunderts-moldau-versinkt-im-krieg-der-oligarchen-3229892.html).

[12] Cit CC's Press release, emphasis original. With regard to the background of this case we learned by more than one of our interlocutors that for a rather long period the Superior Council of Magistracy failed in taking effective measures against corruption within the judiciary. Moreover, the power conferred on this body to ensure the appointment, transfer, removal from office, upgrading and imposing of disciplinary measures on the judges is said to be not always exercised on the basis of merits and clear performance assessments, but rather by considering personal relations and a sort of nepotism.

[13] Cf in particular:

"33. The Court has consistently stated in its case law that corruption undermines the democracy and the rule of law … Therefore, fight against corruption is an integrated aspect of ensuring the respect for the rule of law [references].

34. The Court notes that fight against corruption has been declared as a national objective within various international conventions and national documents [references].

35. Nevertheless, the Republic of Moldova continues to face serious challenges in combating and preventing corruption, a widespread phenomenon in nearly all public sectors.

36. According to the Corruption Perception Index (CPI) under the monitoring of Transparency International, the Republic of Moldova is ranked 103 out of 175 countries …, registering a decline of 9 positions only in the last two years …".

1.3. Political (In-)Stability

Compared with western standards, political instability is a predominant feature in this country. Against the background of a totalitarian past, however, short-term fluctuation on highest level is rather considered as a proof that the Constitution – having enshrined, in its Article 1 (3), "political pluralism" as one of its "supreme values" – really works.[14]

1.4. Relations EU/Moldova

On 27 June 2014, Moldova and the EU signed an Association Agreement[15] which Moldova promptly ratified on 2 July 2014. Although it has not yet been ratified by all EU members, it was agreed that some provisions would apply provisionally from 1 September 2014.[16] Within this frame, Moldova accepted a couple of obligations to adapt parts of its legislation to EU standards and to undergo major amendments to its justice sector. The details were drawn up in a programme "Support for the Justice Sector"[17] which was backed by a Financial Agreement signed in June 2013 providing for a financial support of € 60 millions.[18]

1.5. Relations Council of Europe/Moldova

A similar initiative has been launched by the Council of Europe which in 2013 set up an "Action Plan to support democratic reforms in the Republic of Moldova" in the fields of democracy, rule of law and human rights.[19] One of the seven „pillars" of the Action Plan - pillar VI – is focused on Human rights' observance in the justice sector and includes reviewing the composition and criteria for the selection of judges of the CC, conducting a study of the regulatory framework on the CC's work, including procedures for reviewing complaints submitted to the Court and reviewing the range

[14] As it put *Alexandru Tanase*, currently CC's President: „The constitutional system of the Republic of Moldova passed the most relevant test of democracy: the democratic alternation of power, as a result of free elections. The Republic of Moldova had 4 presidents and two ad interim presidents. In 23 years of independence there was a succession of 14 governments, now being the 15th one. In the fall of this year, we are going to have ordinary parliamentary elections, conducted on the ground of political pluralism. This aspect inspires optimism, as it confirms the viability of constitutional democracy in the Republic of Moldova." (*Tanase*, Opening Word to the International Conference "The role of constitutional justice in protecting the values of the rule of law" celebrating the 20th anniversary of the constitution of the Republic of Moldova, 8/9 September 2014; see the proceedings edited by the CC [2015], 9ff, 10).

[15] See OJ L 260 of 30 August 2014, 4.

[16] See European External Action Service (EEAS)'s website „EU Relations with Moldova" (http://eeas.europa.eu/moldova/).

[17] See http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf

[18] Text was made available to the authors by the EU Delegation in Chisinau.

[19] See, for the current state of play, the draft Report of the Ministers' Deputies Rapporteur Group on Democracy (GR-DEM) of 6 November 2015, GR-DEM(2015)27.

of subjects entitled to address the Constitutional Court.

1.6. Mission's Mandate

In a Joint Letter to the Head of the EU Delegation in Moldova, the Chairman of the Parliament and the Prime-Minister of Moldova asked the EU to carry out a peer review on Moldova's Justice reform.[20]

2. Preliminary Remarks

2.1. Mission's Objective

The aim of the Peer Review was to assess the functioning and the level of independence of the CC.

2.2. Experts

The EU nominated and proposed to Moldova, and Moldova accepted as experts:

- *Dr. Alexander Balthasar* (Austria), head of the Institute for State Orga-nisation and Administrative Reform in the Austrian Federal Chancellery (Prime Minister's Office); Member of the Bureau of the Steering Committee on Democracy and Governance of the Council of Europe; adjunct Professor (Priv.-Doz.) for Constitutional Law and General Political Theory at Karl-Franzens-University of Graz.
- *Mr. Michael Groepper* (Germany), former judge of the Supreme Administrative Court of Germany (Bundesverwaltungsgericht).

These experts are also the joint authors of this Report.

2.3. Methodology

The Review was carried out mainly by interviews with persons related to the relevant sectors of Moldova. These interviews were mainly scheduled in advance by the EU Delegation, but completed, on the experts' specific request, during their stay. In addition, documentary evidence was provided by (i) the interlocutors, mainly belonging to the CC and (ii) by the EU Delegation in Moldova. To a small extent, also publicly accessible evidence was introduced in this Report.

All Interview partners as well as the main written evidence used in this Report are indicated in Annex 1.

[20] Text was made available to the authors by the EU Delegation in Chisinau.

3. Executive Summary

3.1. General Performance of the CC

The reviewers got the impression that the CC operates quite efficiently. The Court is well organized and well equipped both with material and human resources. The appointed judges and the staff seem to be well trained, performing their duties in a professional manner. The current workload can be tackled within reasonable time limits.

Given the paramount task of a constitutional court to serve as a "Guardian of the Constitution"[21], it is – in particular in Moldovas specific legal environment where doctrine has to be built anew from the scratch – of outmost importance that the CC is able to find solutions which (i) actually solve burning legal problems but (ii) are still sufficiently based on "the law" and (iii) are, moreover, able to convince the parties concerned as well as the general public. In this respect, the **working method** applied by the current CC when elaborating its **judgements** – motivating its judgements at length, finding innovative arguments, not least by invoking general principles of law or making use of international documents, but on the same time basing its conclusions on clear-cut constitutional provisions – can be **endorsed**. What should be **enhanced**, however, is **communication to the general public** in order to avoid misunderstandings (in particular allegations that the Court would act as a political rather than a judicial institution).

3.2. Independence

Sufficient independence of the (members of the) Court being a core institutional issue, we note that (i) the constitutional framework as well as the implementing provisions as such seem, in principle, to meet western standards[22], but that nevertheless (ii) there are indications that this independence continues to need to be defended against adverse advances of other actors:

- In fact it was necessary to deliver Judgement No 18 of 2 June 2014 stating that Article 137 CO prohibits that members of the CC be removed from office before expiration of their term by a Parliament's vote of "loss of confidence" (as it was indeed provided by Legislative Act No 109 of 3 May 2013);
- likewise it was necessary to deliver Judgement No 6 of 16 May 2013 in order to prevent paralysation of the Court by failure to fill a judge's vacancy (and this scenario might easily reoccur).

[21] When Article 134 (3) CO stipulates that the CC „guarantees the supremacy of the Constitution" it obviously shares *Hans Kelsen's view* (cf *Hans Kelsen*, Wer soll der Hüter der Verfassung sein? Abhandlungen zur Theorie der Verfassungsgerichtsbarkeit in der pluralistischen, parlamentarischen Demokratie, edited and introducted by *Robert van Ooyen*, 2008). Cf also, in this regard, *Dumitru Pulbere*, comment on Article 135, in: Curtea Constituţională A Republicii Moldova/Hanns Seidel Stiftung, Constituţia Republicii, 520ff, 524f.

[22] See infra section 4.2.3.

Whereas the term of six years is comparatively short, but might, as such, be justified by the specific need of this country for "short-term fluctuation on highest level"[23] and is, anyway, directly enshrined in Article 136 (1) CO[24], the **option of reappointment offered by organic legislation**[25] obviously affects the needed independence, in particular when financial benefits are combined with a second term[26], and should, therefore, be avoided.[27]

3.3. Scope of action

The **scope of acts** which may be contested before the CC is fixed already by Article 135 (1) (a) CO and, therefore, not easy to amend[28]; in contrast, it is mainly[29] the task of the **organic legislator**[30] to define the **range of "subjects"** entitled to bring an issue (covered by Article 135 (1) (a) CO[31]) to the CC. Hence, there are indeed suggestions to give at least[32] direct access to the CC for individuals aiming at contesting the constitutionality of legislation.[33]

These suggestions are most convincing when the interpretation favoured by the CC that – when a dispute on the constitutionality of legislation arises during court of law proceedings – neither the court of the main proceedings nor the Supreme Court should exaggerate their respective "filtering function" is most disregarded; we hold, however, that since 2012 the current system seems to work.[34]

Taking into account that conferring the said "filtering function" completely to the CC would inevitably require additional resources (maybe even an increased number of judges) for the CC, we refrain from strongly recommending this suggestion.[35]

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[23] See supra section 1.3.
[24] This fact is the major obstacle against proposing an extension of mandate (e.g. to 9 years) in exchange for cancelling reappointment altogether (nevertheless, this proposal seemed to be communis opinio among our interlocutors; see infra section 4.2.2.d and section 5).
[25] See infra section 4.2.2.d.
[26] See, however, in this respect already the CC's Judgement No 20 of 23 June 2015.
[27] See infra section 5.
[28] For the procedure on amending the Constitution see Articles 142f CO.
[29] The sole exception is the **Supreme Court** whose competence of "plea of unconstitutionality of legal acts" is **directly enshrined** in Article 135 (1) (g) CO.
[30] See Article 135 (2) in conjunction with Article 72 (3) (e) CO.
[31] All other competences enlisted in Article 135 (1) CO are only of minor importance, if any, for individuals.
[32] There are, however, also claims made that infringements of the constitution, in particular of fundamental rights, should be allowed to be appealed against before CC even when the source of unconstitutionality should not be the legislation applied but solely the implementation by the courts of law ("constitutional complaint") – a proposal needing amendment of the Constitution (see infra section 4.2.1.f).
[33] I.e. Parliamentary Acts and „Ordinances" issued by the Government.
[34] See infra section 4.2.1.e.ea.
[35] This restraint seems to be even more appropriate with regard to the suggestion of providing "constitutional complaints" (see supra fn 32).

4. Findings

4.1. Legal framework

On constitutional level the relevant provisions have been enshrined in Title V (= Articles 134 - 140) CO[36]; on organic legislation level, the Legislative Acts (i) No 317-XIII of 13 December 1994 on the Constitutional Court (hereinafter referred to as "Law No 317") and (ii) No 502-XIII of 16 June 1995 on Constitutional Jurisdiction Code have to be taken into account.

4.2. Analysis

4.2.1. The Competences of the CC

The various competences of the CC are enlisted in Article 135 (1) lit a – h CO.

a. State Notary

Among them we find functions of **State notary** (lit **d** and **e**) which may be attributed to a court, but do not belong to the core issues a constitutional court has to be vested with.

b. State Jurisdiction

In contrast, the competences enlisted in Art. 135 (1) lit **f** and **h** CO seem to enable the CC to assume the role of a veritable "**arbiter rei publicae institutionum**". Whereas, however, the Constitution uses the term "ascertains" (lit f) or "decides" (lit h), on organic legislation level the CC is only called to deliver an "advisory opinion"[37] – an apparent contradiction which, as long as the organic legislative provision has to be applied, seems to seriously hamper CC's efficacy in this field.

c. State Advisor

The CC is also called to give an "**advisory opinion**"[38] "on initiatives aiming at revising the Constitution" (lit **c**); this opinion "shall be submitted to Parliament … alongside" the draft bill.[39] Apparently the legislator when deliberating amendments of the Constitution intended to make best use of the CC's "outstanding" professional

[36] See Annex 2.
[37] See Article 63 lit b – e of Legislative Act No 502.
[38] See Article 141 (2) CO in conjunction with Article 63 lit a of Act No 502.
[39] See Article 141 (2) CO.

expertise.[40] Nevertheless we **doubt** that this role as it stands now is really **appropriate**:
This competence covers **all sorts of amendments** of the Constitution **alike**, making no difference whatsoever between the scenario (i) where the legislator enjoys full political discretion and the complementary one (ii) where the Constitution sets legal limits.[41]

- Whereas in scenario (i) the CC lacks any constitutional yardstick[42], so that inevitably its suggestions will be merely of a political or technocratic nature, hence not backed by the Court's specific expertise and, therefore, likely to be overruled at least now and then by the legislator (thus compromising the Court's authority),
- it is, however, in scenario (ii) by far insufficient to attribute only an advisory role to the CC; in contrast, it seems to be perfectly within its remit to decide, a posteriori, on the basis of Article 135 (1) (a) CO on the "constitutionality" even of constitutional amendments. If so, however, the CC should not, when exercising this prevailing function, be already prejudiced by prior "advisory opinions".

d. Authentic Interpretation

Article 135 (1) lit **b** CO confers on the CC the task to **interprete authencically** the Constitution. "A judgment on the interpretation of certain constitutional provisions has the authority of law and is binding for all constitutional bodies of the Republic of Moldova given the assessments which it is based on."[43] If that is true, frequent use of this **legislative** competence[44] could indeed seriously **infringe the balance**[45] **of State powers** invoked in Article 134 (3) CO:
More often than not constitutional provisions grant a considerable amount of discretion to secondary (implementing) legislation which, obviously, is annulled when a constitutional court singles out its own interpretation. Also in the Moldovan constitutional system, however, this discretion should be exercised by "Parliament" being "the sole legislative authority of the State".[46]

e. Control of Norms (of general and of individual application)

Undoubtedly "the largest and the most important power of the" CC is "**control,** upon referral, **of constitutionality of laws**[47], **decrees** of the President of the Republic

[40] Note that, pursuant to Article 138 CO, "the judges of the" CC "must possess outstanding judicial knowledge, high professional competence and a length of at least 15 years in legal field …".
[41] See Article 142 CO.
[42] The sole exception would be international ius cogens.
[43] Cit CC, Report 2014, 14.
[44] When making use of this competence and giving an authentical interpretation sharing the rank of the interpreted provision, it is indeed the CC, which issues constitutional law as such.
[45] The term used there is even stronger („separation").
[46] Cit Article 60 (1) CO.
[47] Obviously this term is meant as a synonym for „legislative acts (of Parliament)".

…and other **regulatory acts** of the Parliament and the Government and of the **international treaties**, which the Republic of Moldova is a party to"[48] (Art. 135 (1) lit a CO).

When assessing this "power" it is necessary not only to analyse the catalogue of "acts" (objects) mentioned in this provision, but to consider likewise the range of "subjects" entitled to "bring forward" an "initiative" enabling the CC to exercise its "power" enshrined in Article 135 (1) (a) CO:

ea. "Subjects"

This range of "subjects" is – with the sole exception of the Supreme Court[49] – not fixed in the Constitution itself, but defined on organic legislation level; Article 25 of Law No 317 contains a catalogue, conferring "the right to submit applications to the" CC to the following „subjects":

> a) the President of the Republic …
> b) the Government;
> c) the Minister for Justice;
> d) the Supreme Court of Justice;
> [e) deleted]
> f) the Prosecutor General;
> g) members of Parliament;
> h) Parliamentary fractions;
> i) Ombudsman;
> j) People's Assembly of Găgăuzia …[50]

On the one hand, this legislative technique could raise concern because at least at first sight the **efficacy** of the "Guardian of the Constitution" is fully **at the disposal of the organic legislator**[51] which might narrow down the catalogue as it pleases. At second sight it is, however, up to the CC itself to assess the constitutionality of any amendment of this catalogue. And at third sight this technique might **also work to grant even more access** to the CC without needing to amend the Constitution.

On the other hand, the current **catalogue** is already a **considerably large** one[52] and, thus, seems to guarantee that indeed every constitutional question meriting consideration[53] can be brought before the CC by at least one channel:

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[48] Cit CC, Report 2014, 12.
[49] See Article 135 (1) (g) CO.
[50] The entitlement lit j is restricted to specific "cases" related to that ethnic minority.
[51] Pursuant to Article 74 (1) CO the adoption of an act of organic legislation requires „the vote of the majority of the elected members of Parliament", whereas for „ordinary" legislation only "the majority of present members" is needed (paragraph 2 of this Article). Nevertheless, this quorum is still much easier to achieve than that provided for amendments of the Constitution itself (see Title VI = Articles 141-143 CO).
[52] Note in particular that lit g is understood as entitling **every single member** of Parliament (!)
[53] More than one of our interlocutors, however, pointed out that a majority of applications were submitted to the CC by a rather small number of members of Parliament – in some

So, while being perfectly correct that there is **no direct access of individuals** to the CC there are, at least de iure, several options of indirect access at their disposal: the Ombudsman[54], the Prosecutor General[55], a (single) member of Parliament.

The **main channel** by which individuals may address themselves – indirectly – to the CC is, however, the **ordinary judiciary** (competent for private, penal and administrative law):
Although on constitutional as well as on organic legislation level it is solely the Supreme Court which is entitled to bring a "plea of unconstitutionality" to the CC, the respective codes of procedure[56] **enable every court** to suspend the main proceedings and to refer such a question to the CC, via the Supreme Court. The most relevant remaining question in this quadrangular relationship[57] is to which amount (i) the court of the main proceedings and (ii) the Supreme Court enjoy discretion or are, right to the contrary, reduced to a mere delivery function. CC had several opportunities to express itself on this sensitive issue[58]; what we got from our interlocutors (among them the President of the Supreme Court as well as advocates) is that currently there is no intention of the judiciary to block access to the CC due to substantive reasons, but that some "filtering function" is indeed performed (and also needed) with regard to (i) securing the formal quality of applications and (ii) preventing abuse. What was, however, challenged by many of our interlocutors is whether indeed **two** "filtering courts" were needed.[59]

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cases by just one. As a result, many questions which the CC was asked to answer might not reflect the daily need of the general public but could rather be attempts of political opposition to compensate for defeats in Parliament. It was even insinuated that some applications were "invited" by the CC itself.

[54] Unfortunately, the Ombudsman was neither included in our list of interlocutors nor did another branch of our mission have the task of reviewing this institution. We heard, however, that, due to lack of resources, the Ombudsman could not act as actively as one might wish.

[55] According to Article 124 (1) CO, the "Office of the Prosecutor **represents the general interests of the society and defends rule of law and the rights and liberties of the citizens**, it also supervises and exercises, according to the law, the criminal prosecution and brings the accusation in the courts of law". So, in theory the Prosecutor General seems indeed to be called first to submit applications to the CC in order to guarantee effectively the human rights and fundamental laws of individuals. Most interestingly, however, we learned that, up to now, the Prosecutor General hadn't yet brought any case before the CC (!)

[56] Article 12 of the Code of Civil Procedure (also applicable in matters of administrative law), Article 7 (3) of the Code of Criminal Procedure.

[57] Parties of the main proceedings, court of the main proceedings, Supreme Court, CC; in its Judgement No 15 of 5 June 1997, CC preferred to speak of a "triangular relationship", putting "the courts of law" together.

[58] We were, in this respect, provided with excerpts of (i) the said Judgement No 15 of 5 June 1997, (ii) an „Address" of the CC of 26 March 2007, (iii) the Judgement No 11 of 30 October 2012, (iv) an "Address" of the CC of 30 December 2012.

[59] It seems that Article 135 (1) (g) CO need not be interpreted e contrario; so, while the direct access of the Supreme Court to the CC is already enshrined in the Constitution, it would still be perfectly legal to provide **direct access also for minor courts** via organic legislation referred to in Article 135 (2) CO.

eb. "Acts" ("Objects")

With regard to the catalogue of "acts" ("objects") enshrined in Article 135 (1) (a) CO, we note two peculiarities:

- On the one hand, it is not only formal legislation ("organic" as well as "ordinary"[60]) which which may be submitted to "review of constitutionality", but **also some administrative acts of general application**, namely "ordinances of the Government"[61] – but by no means all of them; for this huge rest (ordinances issued by single ministers or by subordinated authorities) it is up to the judiciary to assess the legality (and to prevent any infringement of the Constitution).
  When we asked our interlocutors whether or not they would be in favour to extend the constitutional review of the CC to all sorts of administrative acts of general application (Austrian Model), we received different answers. Some were in favour, taking into account that some judges of the ordinary judiciary might not be sufficiently trained to answer properly constitutional questions. Others were reluctant, thinking that the legal protection provided by the ordinary judiciary is sufficient. Most of them agreed, however, that such an enlargement of competences of the CC would **not lead to a considerable increase of workload** and that, therefore, the CC would be able to cope with such an additional burden.
- On the other hand, decisions of Parliament and decrees of the President may be reviewed by the CC, even if they are **not of a general nature**. For instance, on 16 July 2015[62] CC annulled a Parliament's Decision[63] on the appointment of a Children's Rights Ombudsperson; likewise, also the constitutionality of an appointment of a judge of the CC itself might be reviewed by the CC (!).[64]
  And it is exactly here where the liberal catalogue of "subjects" has its major implications, enabling the CC to **scrutinize also individual "acts of State"** (decrees of the President of the Republic, decisions of Parliament, decisions of Government) which are even in most Member States of EU, de iure or at least de facto, out of reach for constitutional review.

f. Missing: "Constitutional Complaint"

What is definitely missing in Article 135 (1) CO is a **legal remedy, available for individuals, against decisions of "courts of law"** of last instance (within the

[60] For constellations where even constitutional legislation might be under constitutional review see supra lit c.
[61] At least one field of application of these „ordinances of the Government" is delegated legislation (Article 106 CO).
[62] No 22.
[63] No 140 of 3 July 2015. Cf also, most recently, CC's Judgement No 53a of 4 December 2015.
[64] To be precise, however, this could only happen with regard to those judges appointed by Parliament or by the Government, not also with regard to those appointed by the Superior Council of Magistracy (whereas "decisions" of Parliament as well as of Government are mentioned in the catalogue of Article 135 (1) (a) CO, decisions of the Council are not).

judiciary) which are deemed of infringing the Constitution, in particular fundamental (or human) rights of a party.[65] When discussing this issue, the prevailing opinion was that (i) while it were perfectly true that "ordinary" judges should receive a better training in human and fundamental rights matters, (ii) in principle it should remain the primordial task of the ordinary judiciary to ensure the safeguard of these rights and (iii) there is already an external judicial safeguard – the European Court of Human Rights (ECtHR) – whose pacifying effects (notwithstanding the high amount of cases[66]) should not be underestimated.

It is, however, exactly this **high amount of cases** – in combination with the fact that the Constitution of Moldova even provides a larger and more comprehensive **catalogue of fundamental rights** (see Title II – Fundamental Rights, Freedoms and Duties = Articles 15 – 54) than the European Convention on Human Rights (ECHR) – which would have a severe impact on the size, the composition and the working methods of the Constitutional Court: most probably, not only the number of judges would have to be enlarged considerably, but also the CC would have to split into chambers (following the German model). Also for these practical reasons, the great majority of our interlocutors was rather reluctant to introduce the "constitutional complaint".

4.2.2. The Composition of the CC

a. The Number of Judges

Pursuant to Article 136 (1) the CC consists of 6 judges. With regard to the population of Moldova (slightly above 3 millions), the number of 6 judges of the CC seems not to be inappropriate, in particular when taking into account (i) the qualifications required in Article 138 CO ("outstanding judicial knowledge") and (ii) the comparatively short term of office (six years[67]), read in conjunction with (iii) the requirement set out in Article 11 (1) of Law No 317 (every judge of the CC has to hold Moldavian citizenship[68] and to reside "within the state").
Nevertheless a considerable part of our interlocutors was even on the basis of current competences[69] in favour of slightly increasing the number to 7 or 9, with a view to increase the credibility and the weight of the CC's judgements, in particular if, in case of vacancies, the Court had to act with the minimum quorum of 2/3 of its

[65] German jurisprudence calls this sort of remedy „**Verfassungsbeschwerde**" („constitutional complaint").
[66] For a comprehensive overview cf *Legal Resources Centre From Moldova* (ed), Execution of Judgments of the European Court of Human Rights by the Republic of Moldova 1997-2012 (2012).
[67] See infra lit d.
[68] Although this requirement is widespread it could be worth giving a second thought to the alternative: opening the membership to CC for foreigners could help even to increase professional excellency as well as independence.
[69] Evidently, any considerable augmentation of competences, in particular the creation of a "constitutional complaint" would trigger considerable augmentation of the number of judges (see supra point 4.2.1.f).

members.[70]

b. The Mode of Appointment of Judges

Pursuant to Article 136 (2) CO no judge is appointed by the head of State, but

- two judges are appointed by the Parliament,
- two judges are appointed by the Government,
- two judges are appointed by the Superior Council of Magistracy.[71]

Apparently, this – quite innovative[72] – provision aims at giving the CC a large basis of legitimacy by allowing all the three classic "State powers" (Legislation, Executive, Judiciary) to influence its composition. What is still missing, however, is any kind of direct participation of civil society; hence, should the number of judges be increased[73], it would be an option to give e.g. also the bar's association a fair share in the appointment procedure – the more so, because this "reaching out" could perhaps compensate evident corruption of **all** "State powers".[74]

c. The Formation of the current Judges

For the first time since its creation, no member of the CC had been professional judge of the judiciary. All of the currently acting (five[75]) members – four of them having been appointed between February and April **2013**[76] – have a background as advocates or academic professors.[77]

d. The Term of Office of Judges

Article 136 (1) CO stipulates "a 6-year term of office", without any mentioning that this

[70] See Article 23 (3) of Law No 317. Note that Article 141 (2) CO requires the minimum quorum (for the delivery of an advisory opinion within the meaning of Article 135 [1] [c] CO) not in abstract, but in concrete terms ("vote of at least 4 judges").
[71] For this instrument of judicial self-government see Articles 122f CO. We just note that Article 122 (1) CO integrates also "university lecturers" in this Council (constitutione non distinguente also lecturers at private universities?), but not advocates or notaries as such.
[72] Nevertheless, several Member States of the EU have already adopted homogeneous or at least similar provisions: cf in particular (i) Bulgaria (Article 147 [1]); (ii) Italy (Article 135 [1]); (iii) Lithuania (Article 103 [1]); (iv) Spain (Article 159 [1]), but also (v) Estonia (§ 150 [2]), (vi) Greece (Article 100 [2]), (vii) Luxembourg (Article 95b [3]) of the respective Constitution.
[73] See lit a.
[74] See supra point 1.2.
[75] Judge *Petru Railan*, having been appointed in October 2008, left the Court after expiry of his 6 years' term.
[76] See CC, Annual Report 2013, 22ff (only President *Tanase* was appointed already in April 2011).
[77] Apparently that is why the former pension regime – granting a pension to members of the CC only after a period of 12 ½ years service as a judge – was only recently annulled (by CC's Judgement No 20 of 23 June 2015).

term could be renewed. On the organic legislation level, however, Article 5 (2) of Law No 317 allows that "the judge of the" CC may hold this position for two terms of office".

A rather short term of office the CC's composition allows to reflect quite closely any relevant change in the social and political structure of the country. On the other hand, in this rather small country there will not be excess supply of persons meeting the high requisitions set out in Article 138 CO (and repeated in Article 11 [1] of Law No 317).[78] We were told that currently about 50 people would meet these requirements and that not all of them would be interested in being appointed as a judge of the CC.

Apparently, the organic legislator sought to find a middle way when providing the option of a second term (even without a clear basis in the Constitution). Already the option of a reappointment, however, might "undermine the confidence" of the general public "which must be inspired by the courts in a democratic society"[79], in particular in a country where corruption in all branches of the State entitled to appoint members of the CC is endemic.[80]

The solution – endorsed by many of our interlocutors – could be to extend the single term of office to a maximum of nine years, but at the same time to delete any option for renewal.

e. Vacancies of Judges

Vacancies may easily affect the ability of a constitutional court to perform its functions, in particular when the law requires quora which, due to the vacancies, can no longer be complied with.[81] History[82] as well as most recent experience in a EU Member State[83] demonstrate how close the distance actually is from paralyzing the "Guardian of the Constitution" to a "state of State crisis", which might eventually pave the way for a veritable coup d'état.

Against this background **all available safeguards should be activated** to avoid

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[78] Judge(s) of the CC "must possess outstanding judicial knowledge, high professional competence and a length of service of at least 15 years in legal field, legal education or scientific activity."
[79] Cit ECtHR's Judgement of 29 April 1988, ANo 10328/83, CH/Belilos, point 67.
[80] See supra point 1.2.
[81] Note that the CC **had already to annul** such a provision in order to ensure its proper functioning (Judgement No 6 of 16 May 2013).
[82] See, for the situation in Austria 1933/34, e.g. *Ewald Wiederin*, Münchhausen in der Praxis des Staatsrechts, in: FS Walter (2013), 865ff, 873ff (http://staatsrecht.univie.ac.at/fileadmin/user_upload/inst_staatsrecht/inst_staatsrecht_thienel/WS_2013-14/EW_2013_-_M%C3%BCnchhausen_GS_Walter.pdf).
[83] See, for the current situation in Poland, *Die Presse* of 22 December 2015 http://diepresse.com/home/politik/aussenpolitik/4892812/Polen_Die-Unterwerfung-des-Verfassungsgerichts?from=gl.home_politik and
Frankfurter Allgemeine Zeitung (FAZ) of 17 December 2015 (http://www.faz.net/aktuell/politik/ausland/europa/gesetzentwurf-in-polen-eskaliert-der-streit-ueber-das-verfassungsgericht-13969623.html).

vacancies; in particular we would like to suggest (i) to apply, per analogiam, Article 80 (2) CO[84] also to members of the CC whose successor is not yet appointed[85] (ii) to draw, for complementary situations[86], inspiration from Article 91 CO[87] and to provide a sufficient legal basis for appointing either individually deputy judges[88] or for a general regime apt to fill the vacancies.[89]

4.2.3. Independence

The CC as such[90] as well as its members[91] enjoy **constitutional guarantees** of independence. On organic legislation level, we see that these guarantees are not absolute, but that any interference (due to the institution of criminal proceedings as well as to [supervenient] incompatibility/incapability or violation of duty) needs **prior consent of the CC** itself.[92] An attempt of Parliament to establish an additional ground for premature removal – "loss of confidence" – was declared unconstitutional by the CC.[93]

According to Article 37 of Law No 317 the CC "has its **own budget**, which is an integral part of the State budget. The budget of the" CC "shall be approved by the Parliament at the proposal of the" CC's "Plenum and included into the state budget." This provision – which has no explicit basis in the Constitution – is regarded as a major guarantee for the independence of the CC and of its judges.
Obviously Articles 21ff[94] of Law No 317 aim to provide a sufficient financial basis for the individual member of the CC, during his term as well as afterwards. Although we cannot be expected to assess this regime in detail, we didn't notice any dissatisfaction with it.

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[84] „The President of the Republic of Moldova shall exercise his/her mandate until the newly elected President is sworn in."
[85] Cf also Paragraph 4 (4) of the German Act on the Federal Constitutional Court, stating: „Nach Ablauf der Amtszeit führen die Richter ihre Amtsgeschäfte bis zur Ernennung des Nachfolgers fort."
[86] Death or incapability.
[87] „In the event the office of the President of the Republic of Moldova becomes vacant or the President has been removed, or finds himself/herself in temporary impossibility to execute his/her duties, the interim office shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister."
[88] Cf Article 147 (1) of the Austrian Constitution (B-VG): „Der Verfassungsgerichtshof besteht aus einem Präsidenten, einem Vizepräsidenten, zwölf weiteren Mitgliedern und **sechs Ersatzmitgliedern**".
[89] One could imagine that the first vacancy had to be filled **ex officio** by the President of the Supreme Court, the second by the Dean of the Law Faculty of the State University, etc.
[90] Article 134 (2) CO runs: "The" CC "is independent of any other public authority and shall abide only by the Constitution."
[91] Article 137 CO runs: "For the tenure of their mandate the judges of the" CC "are irremovable, independent, and abide only by the Constitution."
[92] See Articles 16 (1) 19 (2) of the Law No 317.
[93] Judgement No 18 of 2 June 2014.
[94] Article 22 provides a right to "return to the post held prior to appointment" – a provision of which we wonder how seriously it can be implemented outside the public sector.

Nevertheless, in its Judgment No 20 of 23 June 2015, the CC underlined that the principle of independence laid down in Article 137 CO requires that no financial benefits may be made dependent on a second term of office.

4.2.4. The resources of the CC

The judges of the CC are assisted in their work by a considerable number of internal service departments. With the exception of the Assistant Judges (Article 35 of Law No 317) who would be directly placed under the supervision of the Plenum[95], all of these service departments are supervised by the Secretary General. There is (i) a Legal Directorate with subdivisions (Division of Legal Expertise, Research and Analysis Division, Editorial Division, Record Registry and Archive Division), (ii) a Division for External Relations, (iii) a Division of Finance and Logistics (with subdivisions for Finance and Accounting Service and for Logistic Service), (iv) a Human Resource Service and (v) an Internal Audit Service.

The CC currently employs 12 Assistants who have legal formation but are not judges. 6 of them are working for the whole Court, 6 others are more or less closely assigned to individual judges. Usually, they are appointed for lifetime. They must not be confounded with the "Assistant Judges" mentioned above.

There is hardly any reason to criticize the Constitutional Court's equipment with manpower and material such as books, law reviews, and IT devices. However, we were faced with the problem that some access to international jurisprudence might be out of reach due to fees which exceed the CC's limited budget (e.g.: access to the German information system JURIS).

4.2.5. External Relations

There is a clear ambition of the CC to establish itself among its international peers: The CC joined the **Venice Commission** in 1996. Moreover, it is also a member of the Association of Constitutional Courts using the French language, assembling constitutional courts and similar institutions in the **francophone** countries (actually composed of 45 members). In 2000, the CC joined the **Conference of European Constitutional Courts**, an international organisation created in 1952. Since 2014, the CC is also a member of the **International Association of Constitutional Law**, an organisation which focuses on creating and developing a network of constitutionalists. In 2015, the CC joined the association of Constitutional Justice of the Countries of the **Baltic and Black Sea Regions.**

To cope with these contacts, the CC is running an External Relations Division.

[95] Although, following the Soviet Model, there should be 6 assistant-judges, the only one still in office left during our stay. Apparently, the Court would prefer to cancel this hybrid function (neither staff nor judge) altogether and to employ this part of the budget for enlarging the staff.

4.2.6. Working Methods of the CC

Whereas Article 36 of the Law No 317 provides the CC with an "Advisory Scientific Council", the current CC apparently prefers a more flexible way[96] of **consulting** domestic academia[97] as well as asking the Venice Commission for amicus curiae briefs.[98]

In its now[99] duly, even extensively **motivated** judgements, the current CC takes fully account of international law and case-law (mainly of the ECHR and the ECtHR), even of relevant international soft law[100], and does not shrink away from giving useful effect to general principles like "democracy" or "rule of law". That is why the **method of interpretation** applied by the CC might not only be considered to meet modern standards, but sometimes even to be rather "daring".[101]

Currently, the CC is obliged to hear all cases "in public".[102] Although it was suggested by court members to allow a purely written procedure if all parties agree, we consider an oral hearing to be an excellent tool to raise awareness for the requirements of constitutional justice among the parties as well as among the general public, media included.[103] Hence, in our view the oral and public dialogue between

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[96] This might be due to the background of most of the current members of the CC as law professors (see supra section 4.2.2.c).

[97] Mostly represented by the Law Faculty of the State University of Moldova, the National Institute of Justice and some law faculties of private universities, in particular of the Free International University of Moldova.

[98] When doing so, however, CC should seek to act always in a **sufficiently professional and transparent manner** in order to avoid to become a target for public critic: only recently and in a most sensitive case (No 7 of 16 April 2015 concerning the professional integrity testing of public agents, including judges, see supra section 1.2) there were allegations of having "manipulated" "the message of the Venice Commission" (see http://www.jurnal.md/en/politic/2015/1/19/how-cc-manipulates-it-has-distorted-the-message-of-venice-commission-on-the-integrity-test-law/). As far as we were told at the CC, the discrepancy between the official text of the brief and its quoting in the Judgement was due to the fact that the CC drafted its Judgement already on the basis of a draft version of the brief and overlooked the final change of the Venice Commission's wording; in our view it would have been better to wait for the final version – for reasons of accuracy as well as in order to avoid even any appearance of collusion with whomever.

[99] Again, the turning point seems having been the shift to the current composition achieved in **April 2013** (see supra section 4.2.2.c).

[100] Cf (i) Judgement No 4 of 22 April 2013, points 14 -16, invoking the UN Commission on Human Rights Resolution No 2005/32, the Resolution of the Parliamentary Assembly of the Council of Europe No 1594 (2007) and the OSCE Ministerial Council Decision No 7/08, respectively; (ii) Judgement No 8 of 19 June 2012, points 39ff, referring to the "Report of the Venice Commission, CDL-AD (2009) 027 on the imperative mandate and other similar practices".

[101] In this respect, Judgement No 4 of 22 April 2013 may serve as a veritable showcase: although the reasoning is perfectly logic, we presume that not many European national constitutional courts (or scholars) would dare to narrow down the discretion of a head of State to the same extent without an explicit textual basis in the Constitution.

[102] See Article 13 (1) of the Constitutional Jurisdiction Code (Act No 502).

[103] In our opinion this is in particular true with regard to findings achieved by "daring" working methods not yet too familiar in Moldova.

judges and parties is also useful – in particular in this country of transition – where the court does not need further evidence or factual information to be provided by the parties.

4.2.7. The position of the Constitutional Court with regard to the Ge-neral Public and the overall Position of the CC within the poli-tical society of Moldova

Generally speaking when considering whether well-established western European "best practices" should be applied in the same way in Moldova we hold hat the CC, as a fairly new institution, still has a higher "burden of proof" of legitimacy than other, more familiar institutions; hence, it might be wise to apply even a **higher degree of transparency** than is usually applied in western democracies.

The following remarks should be understood against this specific background:

We observed that the CC's Division of Foreign Relations as well as the Editorial Division of the Legal Directorate perform well their duty of **communicating the CC's decisions to the professional community**, mainly by issuing press releases where informative summaries of important decisions are given (also in Russian and English). While the accuracy of such documents is beyond doubt[104], we got the impression that, **in addition**, also **communication in a more colloquial language**[105] would be needed, in order to **reach also the general public** – either directly (via "social media") or indirectly, via the traditional mass media which, as a rule, are not only closely linked to political parties, but lack constitutional knowledge and tend to shedding rather an unfavourable light on the CC.

Nevertheless, we were told by our interlocutors that public appreciation of the CC's case-law seems having risen somewhat.[106]

5. Conclusions and Recommendations

Summing up, we do **not** see an imminent **need** for **major legal amendments**. In contrast, the current framework of the constitution as well as of the organic legislation in which the CC is exercising its functions in general provides sufficient

[104] Usually, these documents are prepared by the assistants, controlled by the judge rapporteur and finalized by the Secretary General.
[105] When using the term "colloquial", we nevertheless do by no means recommend any language which could be considered as inappropriate with regard to other constitutional institutions (in this respect, there might have been an alternative to the expression "legal nonsense" – most recently used in the CC's press release on CC's Judgement No 53a of 4 December 2015, on the constitutionality of Parliament Decision No 224 of 3 December 2015 [!] on abrogating the Parliament Decisions on the appointment of the Board of Directors of National Agency for Energy Regulation [ANRE]).
[106] In recent times the rate of public consent even reached the mark of more than 50%, which was never the case before 2012.

independence. Consequentially, CC's judgements meet the quality standards of EU countries. With regard to the general public, mass media included, however, the CC should improve its communication tools, e.g. by making use of a **professional spokesman**.

A slight increase of the **number of judges** might be advisable, but should be linked to the conferral of **some additional tasks** (like the extension of the scope of Article 135 [1] [a] CO to all kinds of administrative acts of general application). In that case, the **mode of appointment** of judges of the CC could be completed by **including elements of civil society**, in particular the bar's association.

What should be **avoided categorically** in the future, however, is

(i) the option of appointing judges of the CC for a **second term**. Instead, their term could be slightly extended;
(ii) the occurrence of any **vacancy**. In this respect, at least all means of interpretation should be activated.

We refrain from recommending the introduction of the "constitutional complaint", since it would trigger a complete change of the CC's current composition and working methods.[107] What could be done, however, in order to facilitate access of individuals to the CC without overthrowing the whole system is to confer the competence to refer directly to the CC to every court of the main proceedings.

Finally, EU as well as its Member States could perhaps **facilitate access to** their respective **legal information systems** (**doctrine** included) in order to secure the current high quality of the CC also in a middle-term prospect.

[107] Instead, one could imagine of appropriate means to enhance the capability of the ordinary judiciary to provide sufficient protection of fundamental rights of individuals.

6. Annexes

6.1. Annex 1 (Sources)

6.1.1. Interviews

This report is based on interviews with the following persons:

a. Judges and Prosecutor General

aa. CC

1. Dr. *Alexandru Tanase*, President of the CC
2. Prof. *Igor Dolea*, Judge of the CC
3. Prof. *Victor Popa*, Judge of the CC
4. Prof. *Nicolae Osmochescu*, former Judge of the CC

ab. Supreme Court

5. Dr. *Mihail Poalelungi*, President of the Supreme Court, former judge of the European Court of Human Rights

ac. Prosecutor General

6. Mr. *Corneliu Gurin*, Prosecutor General

b. CC's Staff

7. Mrs. *Rodica Secrieru*, Secretary General
8. Mrs. *Mihaela Beschieru*, Head of the External Relation Department
9. Mrs. *Lilia Rusu*, Head of the Legal Directorate
10. Mrs. *Maria Strulea*, Head of the Research and Analysis Division
11. Mr. *Vasile Vasiliev*, Consultant of the External Relation Department
12. Mr. *Natalia Vilcu-Bajurean*, Senior adviser in the Research and Analysis Division

c. International

ca. EU

13. Mrs. *Victoria Neaga*, Project Manager, Justice Operations Section of the Delegation of the European Union to the Republic of Moldova
14. Mr. *Aneil Singh*, First Counsellor, Head of Cooperation of the Delegation of the European Union to the Republic of Moldova
15. Mr. *Eric Svanidze*, Team Leader of the EU funded Project „Support to coordination of the justice sector reform in Moldova"

cb. Council of Europe

16. Mr. *José Luis Herrero*, Head of Office of the Council of Europe representation in Chisinau
17. Mr. *Ghenadie Barba*, Deputy Head of Office of the Council of Europe representation in Chisinau
18. Mrs. *Violeta Frunze*, Project Officer „Support to a coherent implementation of the European Convention on Human Rights (ECHR) in the Republic of Moldova", Council of Europe representation in Chisinau

d. Academia, Bar and Civil Society

19. Mr. *Vitali Catana*, advocat[108]
20. Mr. *Eduard Digore*, Member of the National Lawyers Council of Moldova
21. Mr. *Vladislav Gribincea*, executive director of the Legal Resources Centre from Moldava
22. Prof. *Vladimir Grosu*, former Minister of Justice
23. Mr. *Ion Guzun*, Legal Officer of the Legal Resources Centre from Moldova

6.1.2. Written Sources

Moreover, the report is based on several written sources as indicated in the footnotes; among those:

a. Moldovan Legislation

1. Declaration of Independence of the Republic of Moldova of 27 August 1991 (herein referred to as "DI")
2. Constitution of the Republic of Moldova, of 29 July 1994 (herein referred to as "CO")
3. Legislative Act N° 317-XIII on the Constitutional Court of 13 December 1994 (herein referred to as „Law No 317")
4. Legislative Act No 502-XIII on Constitutional Jurisdiction Code of 16 June 1995

b. CC's Case-Law

CC's case-law (and further relevant information) is accessible in its **entirety** on the **Court's website** (http://www.constcourt.md/), however, most unfortunately for the authors, mainly only in Romanian language. But there is at least a selection of information also available in English (http://www.constcourt.md/?l=en).[109]

[108] Author of a synthesis of the opinions delivered by *Evgeni Tanchev* (see infra fn 112) and *Miroslav Granat (see* infra fn 111*).*

[109] In addition, a more ample collection is available in Russian language (http://www.constcourt.md/ccdocs.php?l=ru).

In addition, we made use of

(i) the Court's annual "Report on the Exercise of Constitutional Jurisdiction" in 2013 and in 2014 respectively,

(ii) CC's Press releases and printed copies of some judgements translated in English provided by CC's staff.

The most relevant judgements of the CC referred to in this Report are:

5. No 15 of 5 June 1997, and No 11 of 30 December 2012, on the proper functioning of the Exception of unconstitutionality in cases pending before the "courts of law"[110]
6. No 8 of 19 June 2012 on the interpretation of the Articles 68, 69 CO.
7. No 4 of 22 April 2013 on the limits of discretion of the President of the Republic when appointing a Prime Minister ad interim or nominating a Prime Minister Candidate
8. No 6 of 16 May 2013 on the required quorum for the CC's composition
9. No 22 of 5 September 2013 on the limitation of immunity of judges of the judiciary
10. No 36 of 5 December 2013 on the name of the State language
11. No 18 of 2 June 2014 on premature end of the term of office of CC's judges in case of Parliament's vote of "loss of confidence"
12. No 7 of 16 April 2015 on the professional integrity testing of public agents
13. No 20 of 23 June 2015 on the pension system for the CC's judges
14. No 22 of 16 July 2015 on the appointment of a Children's Rights Ombudsperson
15. No 53a of 4 December 2015 on the annulment of appointments of board members of ANRE

c. Doctrine

16. *Curtea Constituţională A Republicii Moldova/Hanns Seidel Stiftung* (eds), Constituţia Republicii Moldova (2009)

d. Official Moldovan, EU and Council of Europe Documents

17. *Moldavan Ministry of Justice* (ed), STRATEGY FOR JUSTICE SECTOR REFORM 2011-2015

[110] I.e. the courts competent for administration of justice in the fields of private, administrative and penal law (see Articles 114 - 121 CO).

18. *EU/Moldovan Ministry of Justice* (eds), Annual Report 2014 on the Implementation of the Justice Sector Reform Strategy for the Years 2011-2016
19. *European Commission for Democracy through Law (Venice Commission)*, Amicus Curiae Brief of 11 March 2013 (Opinion No 698/2012) on the Immunity of judges for the Constitutional Court

e. Others

20. *Constitutional Court of the Republic of Moldova* (ed), "20th Anniversary Constitution of the Republic of Moldova" – (Proceedings of the) Internal Conference. The role of constitutional justice in protecting the values of the rule of law (2015)
21. *Constitutional Court of the Republic of Moldova* (ed), Report on the Exercise of Constitutional Jurisdiction in 2014 (2015)
22. *Constitutional Court of the Republic of Moldova* (ed), Report on the Exercise of Constitutional Jurisdiction in 2013 (2014)
23. *Die Presse* of 22. December 2015, Polen: Die Unterwerfung des Verfassungsgerichts
24. *Frankfurter Allgemeine Zeitung* (FAZ) of 17 December 2015, In Polen eskaliert der Streit über das Verfassungsgericht
25. *Mirosław Granat*[111]*,* Report on the Constitutional Complaint: Its Essence, Functioning and Legal Meaning
26. *Legal Resources Centre from Moldava*, Specialisation of Judges and Feasibility of Creating Administrative Courts in the Republic of Moldavia (2014)
27. *Legal Resources Centre from Moldova*, Activity Report 2014
28. *Legal Resources Centre from Moldova*, Transparency and Efficiency of the Supreme Council of Magistracy of the Republic of Moldova (2013)
29. *Legal Resources Centre from Moldova*, Execution of Judgements of the European Court of Human Rights 1997 – 2012 (2012)
30. *Sächsische Zeitung* of 21 October 2015, Diebstahl des Jahrhunderts: Moldau versinkt im Krieg der Oligarchen
31. *Evgeni Tanchev*[112]*,* Report Suggesting some ideas to improve he Constitutional Court in Moldavia
32. *Karl-Georg Zierlein*[113]*,* Konzeptionelle Stellungnahme zum Memorandum on the Draft Law on the Constitutional Court of Moldavia, und zum „Law on the Amendment of the Republic of Moldavia Constitution, of 15 March 2002

[111] Professor for Constitutional Law at the University Warsaw II (University Cardinal Stephan Wyszynski), Member of the Polish Constitutional Court.
[112] Professor and Head of Constitutional Law Department at Sofia and New Bulgarian Universities Schools of Law, Former President of the Bulgarian Constitutional Court, Member of Venice Commission.
[113] Former Director of the German Federal Constitutional Court.

6.2. Annex 2 (Excerpt from the current version of the Moldavian Constitution: Articles 134 – 140 CO)

Title V Constitutional Court

Article 134 – Statute

(1) The Constitutional court is the sole authority of constitutional jurisdiction in the Republic of Moldova.
(2) The Constitutional Court is independent of any other public authority and shall abide only by the Constitution.
(3) The Constitutional Court guarantees the supremacy of the Constitution, ascertains the enforcement of the principle of separation of the State powers into the legislative, executive and judiciary, and it guarantees the responsibility of the State towards the citizen and of the citizen towards the State.

Article 135 – Powers

(1) The Constitutional Court:
    a) exercises, upon appeal, the review of constitutionality over laws and decisions of the Parliament, decrees of the President, decisions and ordinances of the Government, as well as over international treaties to which the Republic of Moldova is a party;
    b) gives the interpretation of the Constitution;
    c) formulates its position on initiatives aimed at revising the Constitution;
    d) confirms the results of republican referenda;
    e) confirms the results of parliamentary and presidential elections in the Republic of Moldova;
    f) ascertains the circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova or the interim office of the President, as well as the impossibility of the President of the Republic of Moldova to fully exercise his/her functional duties for more than 60 days;
    g) solves the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice;
    h) decides over matters dealing with the constitutionality of a party;

(2) The Constitutional Court carries out its activity on the initiative brought forward by the subjects provided for by the Law on the Constitutional Court.

Article 136 – Structure

(1) The Constitutional Court consists of 6 judges appointed for a 6-year term of office.
(2) Two judges shall be appointed by the Parliament, two - by the Government and two - by the Superior Council of Magistracy.
(3) The judges of the Constitutional Court elects its President by secret ballot.

Article 137 – Independence –

For the tenure of their mandate the judges of the Constitutional Court are irremovable, independent, and abide only by the Constitution.

Article 138 – Qualifications for Appointment –

The judges of the Constitutional Court must possess outstanding judicial knowledge, high professional competence and a length of service of at least 15 years in legal field, legal education or scientific activity.

Article 139 – Incompatibilities –

The position of judge of the Constitutional Court is incompatible with holding of any other remunerated public or private position, except for didactic and scientific activity.

Article 140 – Judgments of the Constitutional Court –

(1) 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.
(2) The judgments of the Constitutional Court are final and cannot be appealed against.