

The European Neighbourhood Instrument

COMPARATIVE REPORT

OF THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT

OF MOLDOVA AND OF THE EUROPEAN COURT OF HUMAN RIGHTS

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EXECUTIVE SUMMARY

In the light of the responsibility of the CCM to interpret and enforce the constitutional provisions on human rights and freedoms in accordance with human rights conventions in force for the RM pursuant to Article 4(1) of the Constitution, the ECHR and, respectively, the jurisprudence of the ECtHR indisputably stand as legal sources within the legal system of the Republic of Moldova.

Although compliance between the ECtHR and CCM case-law was not within the scope of this report, it is evident that CCM applies ECHR standards and the analysis of the jurisprudence of the CCM proves the role of the ECtHR jurisprudence being a key one within the scope of protection of human rights and freedoms – in regard of the core of the constitutional issues, as the so-called “human rights judgements” constitute the essential part of the jurisprudence of the CCM.

In order to avoid the submission of manifestly ill-founded or inadmissible claims to the ECtHR, there is a constant need to popularize the Convention and the ECtHR case-law among members of legal professions, during and after their legal education. It is also expected that providing professional training to judges, prosecutors and law enforcement officers on how to apply Convention standards in practice could influence the number of well-substantiated claims.

The most frequent types of human rights violations usually result from the unlawful practice of domestic authorities rather than the state of law. It could be therefore argued that most violations of rights and freedoms guaranteed by the ECHR and its additional Protocols in the RM are caused by unlawful practice or abuse of power rather than legislation contrary to the Convention standards. Still, in some cases, violations of rights or freedoms protected by the Convention system are the consequence of the lack of adequate substantive or procedural rights guarantees or effective legal remedies provided in the domestic law.

The potential violations of human rights resulting either from “bad law” or the lack of adequate and effective protection provided for by law could be equally dealt with by the CCM. The exception of unconstitutionality raised by the parties to the judicial proceedings or trial courts on their own motion could challenge laws or the established practice of their application in relation to the Convention standards. In this sense, the exception of unconstitutionality raised in the course of judicial proceedings could improve the state of human rights protection without the need to seek recourse to international courts.

The protection of human rights and freedoms within the activity of the CCM is still primarily implemented by applying the means provided for by the Constitution of the RM.

Although the role of the CCM in respect of the protection of human rights remained essentially the same through the years of its activity, the recent modification of interpretation of Article 135(1) of the Constitution of the RM, has enabled wider access to the constitutional justice.

The Moldovan legislation does not provide for direct access to the CCM and the CCM cannot act on its own motion. However, the simplification of proceedings in 2016 for bringing exceptions of unconstitutionality and the actions taken by the Ombudsman and the members of the Parliament have transformed the CCM into a genuine human-rights tribunal with over 70% of judgments delivered on human rights matters. The CCM has already delivered judgments on a wide range of rights and freedoms. Still, effective use of the exception of unconstitutionality, as well as potential increase of involvement from the non-governmental organisations and the Ombudsman in bringing cases, which cover new rights or aspects of rights and reflect the pressing needs of the Moldovan society, could contribute to further development of human rights constitutional case-law and may result in the decrease of number of applications lodged at the Strasbourg Court.

I. Introduction

1. In February 2016, a consortium led by the German Foundation for International Legal Cooperation (IRZ) and comprising the Constitutional Court of the Republic of Lithuania and the School of German Law at Warsaw University as members, started its engagement under the Terms of Reference of the “Support to the Constitutional Court of the Republic of Moldova” project (EuropeAid/136903/DH/SER/MD). The project is developed within the provisions of the “Justice Sector Reform Strategy 2011-2016 (JSRS)”.

2. The overall objective of the project is to accelerate the sustainable reform of the justice sector in Moldova and to ensure the rule of law by strengthening the Constitutional Court of the Republic of Moldova (*further in the report referred as the CCM*). The purpose of the project is to:

- Strengthen the CCM as it is foreseen in the Justice Sector Reform Strategy 2011-2016 (Strategic direction 6.1: revision of composition and criteria for selection of judges, procedures for reviewing complains, range of subjects entitled to apply to the CCM, etc.) in consultation with the Council of Europe's Venice Commission;
- To improve procedures and internal organisation of the CCM;
- To increase capacities of the CCM staff in providing support for the judges;
- To increase awareness of CCM judges on different methods of interpretation and jurisprudence of the ECHR and the EU members states constitutional control institutions, the Venice commission, the Council of Europe, OSCE and other international organisations' recommendations; and
- To increase awareness among the general public and specific target groups on the mandate and work of the CCM.

3. The Project provides assistance to the CCM within the context of the reforms promoted by the Justice Sector Reform Strategy for the years 2011-2016 and the Action Plan to implement the Strategy, enhancing the efficiency and effectiveness of this institution within the framework of strengthening its activities.

4. The project aims to support the beneficiary in the process of relevant reforms, be it the preparation and implementation of legislative amendments or modernising the work of the CCM in accordance with available European best practices. More particularly, the Action Plan of the project envisages assistance in amending the current legislation governing the activity of the CCM, with the widest possible and inclusive public discussions on these matters. The project also aims at assisting the beneficiary in efficient implementation of the adopted legislation, including assistance for the development of regulations and methodologies on the internal procedures in line with the revised laws on the CCM, as well as assistance in applying these new procedures.

5. In order to achieve these goals and in line with activities 1.4.1 and 2.3.1 of project's workplan, the project team found it appropriate to elaborate comparative analyses of the CCM case-law in relation to the rights and freedoms enshrined in the European Convention on Human Rights (*further in the report referred as the ECHR*). This exercise should provide the beneficiary, but also relevant target groups with the comprehensive information regarding the scope of the work of the CCM. It would also allow Moldova's relevant authorities, civil

society and international partners to identify those rights and freedoms around which assistance and/or increased efforts are to be sought in the years to come. For the beneficiary institution, the comparative report shall be of added value as it would provide with the clear picture on legal areas to be focused and relevant resources to be allocated in the future.

6. The CCM is not in a position to act on its own motion. Hence, the present comparative report highlights the fields where, thanks to the concerted efforts of relevant actors, the CCM was or was not in a position to influence the developments and uphold the rights and freedoms protected by the Constitution of the Republic of Moldova and the ECHR. Furthermore, the present report provides with the analyses of the available statistical data and presents concrete recommendations on possible follow up actions/efforts.

7. To produce the comparative report, the team consisting of international experts was composed. Namely, the present report was prepared by Ms Anna Sledzinska-Simon (Poland), Mr Gediminas Mesonis (Republic of Lithuania) and Ms Janeta Hanganu (Republic of Moldova). In the elaboration of the present report the expert's team was supported by Ambassador Mamuka Jgenti, EU-funded project's Key-Expert on ECtHR Jurisdiction (Georgia). The mission of expert's team to the Republic of Moldova took place in March 2017. The authors of the comparative report would like to thank the leadership and staff of the beneficiary institution for the support provided during the mission and also wish to express the gratitude to the EU-funded project team for the assistance rendered in the preparation of this report.

II. Case-law of the European Court of Human Rights concerning the Republic of Moldova

8. This part of the report aims to map areas of human rights protection concerning the Republic of Moldova addressed in the case-law of the European Court of Human Rights (*further in the report referred as the ECtHR*). It describes the situation in the Republic of Moldova in the light of the general court statistics regarding most frequent violations, individual applications, and execution of judgments. By drawing conclusions from the existing analyses of the state of implementation of the Convention standards at the national level, this part of the report also suggests using the exception of unconstitutionality as a filter of potential complaints filed to the ECtHR.

9. The Republic of Moldova and the Convention system. The Republic of Moldova became a member state in the Council of Europe and signed the Convention for the Protection of Human Rights and Fundamental Freedoms on 13 July 1995. The Convention was ratified together with Protocols No. 1, No. 4., No. 6 and 7 on 12 September 1997. The government of Moldova signed Protocol No. 12 on 4 November 2000, but till today it has not been ratified. The Protocols No. 13 and 15 were ratified respectively on 18 October 2006 and 14 August 2014. Most recently, on 17 March 2017, the Republic of Moldova signed Protocol No. 16.

10. The status of the Convention in the Moldovan legal system is established by Article 4(1) of the Constitution, which states that the constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights and other human rights conventions to which the Republic of Moldova is a party.ⁱ Pursuant to Article 4(2) of the Constitution, in case of conflict between international conventions and domestic legislation priority shall be given to the former. The direct applicability of the Convention is also confirmed in the codes of civil and criminal procedure.ⁱⁱ

11. The ECHR, with its individual complaint mechanism seems to be very popular in the Moldovan society. With its 2,9 million population the country is among Council of Europe member states with the highest number of individual applications per capita.ⁱⁱⁱ In the period between the ratification of the Convention and 2016 (the last reporting year) the ECtHR decided on 11,374 individual applications lodged against the Republic of Moldova, 10,954 of which were declared inadmissible or struck out of the list, and 420 ended with a judgment. Between 1997 and 2016, the ECtHR delivered 339 judgments against the Republic of Moldova, finding at least one violation in 307 and no violation in 6 cases.^{iv} In 2016 the Court delivered 23 judgments, and in 19 found at least one violation.^v

12. The most frequent violations found by the Court with respect to the Republic of Moldova concern:

1. Right to a fair trial - 40%;
2. Right to protection of property - 39%;
3. Inhuman and degrading treatment - 26%;
4. Right to liberty and security - 24%;
5. Right to effective remedy - 16%.

13. The above figures reflect the general statistics of the Court in which the most frequently found violation concerned the right to a fair trial (Article 6), the second - the right to liberty and security (Article 5), and the third - the right to life or the prohibition of torture and inhuman or degrading treatment (Articles 2 and 3).

14. Due to lack of publicly available information, the report cannot analyze the nature of complaints currently pending before the Strasbourg Court and therefore, relies on an analysis of ECtHR judgments only. The type and number of violations found with respect to the Republic of Moldova between 1997 and 2016 is presented in the table below:

Article in Convention or Protocol thereto	Type of right or freedom	Number of violations
2	Right to life – deprivation	2
2	Right to life – lack of effective investigation	9
3	Prohibition of torture	9
3	Inhuman and degrading treatment	80
3	Prohibition of torture, inhuman and degrading treatment - lack of effective investigation	43
5	Right to liberty and security	74
6	Right to a fair trial	124
6	Length of proceedings	11
6	Non-enforcement of judicial decisions	21
8	Right to respect for private and family life	23
9	Freedom of thought, conscience and religion	4
10	Freedom of expression	17
11	Freedom of assembly	14
13	Right to an effective remedy	49
14	Prohibition of discrimination	4
P 1 - 1	Right to protection of property	106

P 2 - 2	Right to education	2
Other Articles	Other	9

Source: Statistics by State^{vi}

15. **Individual applications lodged to the Court.** In 2016 alone 839 applications lodged against the Republic of Moldova were allocated to a judicial formation, while the Court dealt with 777 applications and declared 750 applications inadmissible or struck them out of the list.^{vii} In sum, in 2016 there were 1,283 pending applications against the Republic of Moldova, out of which 331 were communicated to the government, 6 were declared admissible, 81 applications allocated to a single judge or a Committee formation, and 867 – await the first examination by the Committee or the Chamber.^{viii}

16. A high number of applications against a high contracting party to the Convention evidently prove that the individual complaint to the ECtHR is commonly considered as an effective legal remedy against possible violations of human rights by domestic authorities. Moreover, it could be assumed that individuals not only take advantage of direct access to an international human rights supervisory institution but also have the trust in the ECtHR.^{ix}

17. Still, the percentage of applications brought against the Republic of Moldova, which did not meet the admissibility criteria is quite significant. In 2016 it constituted over 89% of cases allocated to a judicial formation. Since the present report relies on publicly available information, its findings do not reflect reasons for declaring a case inadmissible by a single judge formation.

18. Nevertheless, authors of this report wish to emphasize that in order to avoid the submission of manifestly ill-founded or inadmissible claims, there is a constant need to popularize the Convention and the ECtHR case-law among members of legal professions, during and after their legal education. It is also expected that providing professional training to judges, prosecutors and law enforcement officers on how to apply Convention standards in practice could influence the number of well-substantiated claims.

19. **Execution of ECtHR judgments.** The Republic of Moldova has currently 363 judgments under the supervision of the Committee of Ministers (except one new case, 144 cases are subject to standard procedure, 141 - to enhanced procedure, and 77 cases are closed). In the last years the Republic of Moldova remained among several states (including the Russian Federation, Turkey, Ukraine, Bulgaria and Italy) leading in the number of cases subject to the enhanced supervision procedure. In the supervision procedure the execution of judgments against the Republic of Moldova concerned subject matters presented in the table annexed to the present report (Annex 1).

20. The subject-matters revealed in the above-mentioned table constitute the most problematic zones in human rights protection in the Republic of Moldova. It could be also noticed that the most frequent types of violations usually result from the unlawful practice of domestic authorities rather than the state of law. It could be therefore argued that most violations of rights and freedoms guaranteed by the ECHR and its additional Protocols in the Republic of Moldova are caused by unlawful practice or abuse of power rather than legislation contrary to the Convention standards. Still, in some cases, violations of rights or freedoms protected by the Convention system are the consequence of the lack of adequate substantive or procedural rights guarantees or effective legal remedies provided in the domestic law.

21. The most serious violations concerning the use of torture, ill-treatment, lack of access to adequate medical care or poor conditions in detention are usually related to organisational problems in the administration of detention centers or non-enforcement of criminal or disciplinary procedures in case of abuse of power and breaches of rules of conduct in the police, security forces or military. Likewise, the recurring problems concerning access to justice, insufficient reasons given to various court decisions, fairness and length of civil and criminal proceedings, non-enforcement of courts decisions and the lack of respect for their finality are typically caused by practice contravening domestic laws.

22. It is however clear that some problems arising from the existing practice could be remedied by legislative changes. In the analyses of the execution of Court judgments by the Republic of Moldova there are many examples of general measures adopted in the form of new laws, including internal rules or codes of conduct, which significantly improved the protection of human rights in particular with respect to the prohibition of torture, protection of liberty and security and the right to a fair trial.^x

23. In evaluation of the impact of the Convention system on human rights in state parties three Moldovan cases are cited as examples of effective legislative changes aimed to enforce the Convention standards.^{xi} Following the pilot judgment in *Olaru and Others v. the Republic of Moldova* (Nos. 476/07 et al., judgment of 28 July 2009) the Parliament adopted Law No. 87, which provided for remedies in cases of excessive length of judicial proceedings and enforcement of court judgments. The new legislation was considered effective to remedy problems regarding non-enforcement of judgments on social housing (*Balan v. the Republic of Moldova*, No. 44746/08, decision (inadmissible) of 24 January 2012).

24. Likewise, a new legislation was passed by the Parliament in response to *Genderdoc-M v. the Republic of Moldova* (No. 9106/06, judgment of 12 June 2012) in which the Court found a violation of the applicant's freedom of assembly. The amendments to the Act on the Organisation and Conduct of Assemblies limited statutory grounds for imposing restrictions on peaceful assemblies and thus introduced additional constraints on public authorities dealing with assemblies organised by NGOs advocating LGBT rights.

25. In 2009 the Moldovan Parliament also repealed the law banning MPs and several public officials from holding dual citizenship following the Grand Chamber judgment in *Tănase v. the Republic of Moldova* (No. 7/08, Grand Chamber judgment of 27 April 2010). Yet, at first, the Constitutional Court of Moldova missed the chance to apply the Convention standard established in this case by the Chamber judgment (*Tănase and Chirtoacă v. the Republic of Moldova*, No. 7/08, judgment of 18 November 2008). In this judgment, although not final, the ECtHR ruled that the means employed by the Moldovan government to secure loyalty to the state were disproportionate and therefore, in breach of Article 3 of Protocol No. 1 to the Convention. In its first judgment no. 9, of 26 May 2009, the CCM held that the prohibition to hold dual citizenship is in conformity with the Moldovan Constitution and the Convention. The failure of the CCM to recognise the effects of *Tănase and Chirtoacă* judgment was criticised as a bias in favor of the Communist Party.^{xii} However, in 2014 the CCM reviewed its 2009 judgment and brought it in line with the ECtHR rulings.

26. In this context it should be noted that according to local experts the level of compliance with the ECtHR case-law, including the judgments against the Republic of Moldova, is relatively high. Still, it has not always been followed by domestic courts, including the Supreme Court of Justice.^{xiii} In their evaluation of the state of execution of the ECtHR judgments in the Republic of Moldova, local experts observed that since 2011 the

Constitutional Court explicitly recognises the Convention standards in its jurisprudence (*inter alia* by making references to the jurisprudence of the ECtHR) and gives adequate recognition to the Court judgments.^{xiv}

27. Authors of the present report wish to express confidence that improving the enforcement of the Convention standards by all domestic authorities, and primarily by national courts, including the Supreme Court of Justice, as well as the CCM, may positively contribute to the prevention of repetitive violations regarding rights and freedoms guaranteed by the Convention and additional protocols.

28. CCM as a complaint filter. Under Moldovan law, parties in ordinary court proceedings and ordinary courts of their own motion may raise an exception of unconstitutionality to question the constitutionality of laws and normative acts applicable to that particular case and to seek the staying of those proceedings until the CCM rules on that question of constitutionality.^{xv} The present section aims to analyse whether the exception of unconstitutionality may be used to eliminate violations of human rights at the national level without the need to seek recourse in the ECtHR. In short, the question is whether the exception of unconstitutionality may be used to filter complaints that individuals would otherwise lodge to the Strasbourg Court.

29. The concept of a complaint filter explored in this section is based on the idea that violations of human rights resulting from:

- legislation contrary to the Convention standards; both in terms of quality of law and its foreseeability,^{xvi} as well as substantive and procedural provisions; or
- lack of adequate protection of human rights provided for by law

could have been removed by the CCM if it had the chance to review them and followed the Convention standards. This concept of a complaint filter is substantively different from the proposal of the Ministry of Justice to introduce the “normative framework to create a national mechanism to filter the high amount of applications” addressed to the ECtHR, which was announced on 23 April 2014 on its website.^{xvii}

30. The table below presents the selected examples of the ECtHR judgments against the Republic of Moldova. The issues raised in the indicated cases have not been addressed in cases lodged to the CCM (in the field of its competence) and even if addressed, they could have been declared as inadmissible, or eventually, the CCM could have decided them in a different way than the ECtHR (not to mention differences in the competence of these two courts). Nonetheless, the table below allows having a glimpse into the national constitutional provisions that could have been relevant for the protection of human rights while deciding on issues analogous to those addressed by the ECtHR case-law. It thus aims to demonstrate that several problems of human rights protection could have been potentially eliminated by the CCM, had an exception of unconstitutionality been raised at the level of a trial court before the applicants lodged their complaints to Strasbourg.

	ECtHR judgment	Case details	Convention right or freedom	Type of violation	Constitutional provisions relevant for the case	Domestic Legislation under review
1	Boicenco v. the Republic of Moldova	No. 41088/05, judgment of 11 July 2006	Article 5(1); Article 5(3)	Detention without a detention warrant; Lack of possibility for consideration of pre-trial release on bail for persons charged with intentional offences punishable with more than 10 years' imprisonment	Article 25(4) (detention on remand can be provided only on the basis of a court order and lasting no longer than 30 days); Article 25(6)	Article 191 (3) of the Code of Criminal Procedure with regard to pre-trial release on bail
2	Savca v. the Republic of Moldova	No. 17963/08, judgment of 15 March 2016	Article 5(1)	Detention on remand for a period exceeding 12 months	Article 25(4)	Articles 186 (3), (8) and (9) of the Code of Criminal Procedure
3	Urechean and Pavlicenco v. the Republic of Moldova	Nos. 27756/05 and 41219/07, judgment of 2 December 2014	Article 6	Denial of access to a court in cases concerning defamatory statements by the President of the Republic for opinions	Article 71	Interpretation of Article 71 of the Constitution (in the scope concerning immunity for opinions expressed not in the exercise of the mandate

				expressed <i>not</i> in the exercise of his mandate		
4	Iordachi and others v. the Republic of Moldova	No. 25198/02, judgment of 10 February 2009	Article 8 – with regard to the right to secrecy of correspondence	Lack of sufficient guarantees against arbitrariness and abuse of authority provided by law regulating interception of telephone communication	Article 30	Law on Operational Investigative Activities of 12 April 1994
5	Radu v. the Republic of Moldova	No. 50073/07, judgment of 14 April 2014	Article 8	Disclosure of information concerning one's health without consent of the patient contrary to national law	Article 28	Interpretation of Section 8 of the Law No. 982 on access to information
6	Ciubotaru v. the Republic of Moldova	No. 27138/04, judgment of 27 April 2010	Article 8	Refusal to change the ethnic identity recorded in documents pertaining to civil status based on objective evidence	Article 10 of the Constitution (right to identity); Article 28 (private life)	Law no. 100 of 26 April 2001 on documents pertaining to civil Status

6	Ostrova r v. the Republi c of Moldov a	No. 35207/03, judgment of 13 September 2005	Article 8	Denial to a person in a pre-trial detention the right to contacts with the family not expressly provided by law	Article 28 (private life)	Article 18 of the Law No. 1226-XIII on Pre-Trial Detention
7	Ciorap v. the Republi c of Moldov a	No. 12066/02, judgment of 19 June 2007	Article 8	Conditions of meetings with the family - lack of precise prison rules regarding supervisio n measures of family visits in pretrial detention	Article 28 (private life)	Article 19 of the Law on pre-trial detention of 27 June 1997
8	Gutu v. the Republi c of Moldov a	No. 20289/02; judgment of 7 July 2007	Article 5, Article 8, Article 13	Unlawful detention (in cases when a person was not summoned by the investigati ve authority); Unauthoris ed entry of the police on private premises; Lack of effective remedies provided by law to	Article 25(4) (detention on remand); Article 29 of the Constitution (inviolability of home); Article 28 (private life); Article 53 (right of a person prejudiced by a public authority)	Several provisions of the Code of Criminal Procedure regarding forced appearance before the investigativ e authority); Section 13(19) of the Police Law of 18 December 1990; Section 4 of Law No. 1545 on compensati

				claim compensation for unlawful actions by the police except when the complainant was acquitted		on for damage caused by the illegal acts of the criminal investigating authorities, prosecuting authorities and courts,
9	Masaev and others v. the Republic of Moldova	No. 6303/05, judgment of 12 May 2009	Article 9	Imposition of administrative fine for practicing religion which was not recognised (registered) by the state	Article 31 (freedom of religion)	Section 14 of the Law on Religious Denominations and Article 200 § 3 of the Code of Administrative Offences
10	Guja v. the Republic of Moldova	No. 14277/04, judgment of 12 February 2007	Article 10	Lack of protection to whistleblowers (employees disclosing information in public interest)	Article 32 (freedom of expression)	Article 263 § 1 of the Labor Code
11	Hyde Park v. the Republic of Moldova	No. 33482/06, judgment of 31 March 2009	Article 11	Rejection of the application for organisation of a peaceful assembly	Article 40 (freedom of assembly)	Section 6 and 7 of the Assembly Law of 21 June 1995
12	Gender doc-M. v. the Republic	No. 9106/06, judgment	Article 11, Article 14 in conjunctio	Rejection of the application for	Article 40 (freedom of assembly);	Several provisions of the Assembly

	c of Moldova	of 12 June 2012	n with Article 11	organisatio n of a peaceful assembly by an NGO promoting LGBT rights	Article 16 (equality)	Law of 21 June 1995
10	Balan v. the Republic of Moldova	No. 19247/03, judgment of 29 January 2008	Article 1 Protocol 1	Quality of the law with regard to compensation for the breach of intellectual property rights	Article 46 (protection of property)	Several provisions of the Law on Copyright and Related Rights (no. 293-XI) of 23 November 1994
13	Dacia S.R.L v. the Republic of Moldova	No. 352/04, judgment of 18 March 2008	Article 6, Article 1 Protocol 1	Privatisatio n law allowing the state to lodge a lawsuit against the applicant company despite the expiry of the general limitation period; Lack of protection for private property due to the annulment of privatisatio n without compelling reasons and proper compensation – lack of protection against	Article 46 (protection of property)	Article 86 of the old Civil Code with regard to the principle of the equality of arms

				unfettered discretion of state authorities to reconsider and annul privatisation transactions		
14	Tănase v. the Republic of Moldova	No. 7/08, Grand Chamber judgment of 27 April 2010	Article 3 Protocol 1 - the right to participate in the parliamentary elections	Prohibition for MPs and other public officials to hold dual citizenship	Article 38 (free elections)	Section 9 of the Law no. 273 amending the Electoral Code

31. In addition to the above-listed judgments, questions addressed to the government in communicated cases also identify problems of human rights protection resulting from the existing legislation.^{xviii} Therefore, there is a possibility that these issues could have been potentially also dealt with (if the alleged violations of human rights could be confirmed) within the national dimension by applying human rights standards (i.e. in the framework of the exception of unconstitutionality).

32. In sum, it should be emphasised that the potential violations of human rights resulting either from “bad law” (legislation non-conforming to the Convention standards) or the lack of adequate and effective protection provided for by law (absence of legislation conforming to the Convention standards) could be equally dealt with by the CCM. Authors of the present report believe that the exception of unconstitutionality raised by parties to the judicial proceedings or trial courts on their own motion could challenge laws or the established practice of their application in relation to the Convention standards. In this sense, the exception of unconstitutionality raised in the course of judicial proceedings could improve the state of human rights protection without the need to seek recourse to the international human rights courts.

III. Human rights case-law of the Constitutional Court of the Republic of Moldova

33. The human rights case-law of the CCM is shaped by two factors: the scope of the rights and freedoms enshrined in the Constitution of the Republic of Moldova and the list of subjects entitled to bring cases before the Court. This part of the report examines both factors and provides an evolutionary analysis of the human rights case-law from 1995 to 2016. The start of this period is dictated by the first year in which the CCM delivered its first decision. It also roughly coincides with Moldova’s accession to the Council of Europe (1995) and the ratification of the ECHR (1997).

34. The CCM was called to rule and has ruled on human rights aspects in cases calling for a constitutionality control of laws and of other normative acts, for the interpretation of the Constitution, and for ruling on exceptions of unconstitutionality. From 1995 to 2016, the CCM has adopted 721 judgments, 214 of which pertain directly or indirectly^{xix} to one or several rights and freedoms. In 2016, the CCM delivered the highest number of human rights judgments (71% of all judgments), which proves the potential of a constitutional court acting as a human rights court.

35. The present analysis relies on information obtained by direct research into the CCM judgments and by using the general statistical data about CCM activity available in its annual reports from 1996 to 2016. The findings of this research are based only on judgments, and exclude human rights complaints raised in cases declared inadmissible. It should be noted however that the analysis of the scope of constitutional rights includes all complaints raised before the CCM, which exceed the number of human rights judgments because in one judgment the CCM usually addressed more than one complaint. Similarly, the analysis of the distribution of complaints among subjects who initiated the proceedings before the CCM reflects includes all complaints raised, which exceed the total number of human rights judgments because in certain cases similar complaints were raised by several actors. The table regarding the above-mentioned information could be found annexed to the present report (See Annex 2).

36. **Scope of human rights and freedoms.** The Constitution of the Republic of Moldova contains guarantees of rights and freedoms, which follow the Universal Declaration of Human Rights and the ECHR. However, it also provides additional rights guarantees, which are not reflected in the ECHR or are interpreted more restrictively. In particular, the Constitution enshrines the principle of equality and non-discrimination (Article 16 of the Constitution), which is broader in its scope than the prohibition of discrimination contained in Article 14 of the Convention.^{xx} It also guarantees the right of access to information (Article 34),^{xxi} protection from arbitrary deprivation of nationality (Article 17(2)), the right to be acknowledged as a person under law (Article 23), the right to health insurance (Article 36) and social welfare (Articles 47, 49, 50, 51), the right to a healthy environment (Article 37), the right of access to public service (Article 35), the right to work (Article 43), the right to strike (Article 45), and right to compensation for damage caused by authorities (Article 53).

37. The statistical analysis of human rights judgments delivered by the CCM reveals that the most recurrent complaints concern, in decreasing order, the protection of property (from land reform, privatization to monopolies and tax legislation)- 32%; non-discrimination (associated with other complaints or taken separately)- 26%; access to court/effective remedy- 15%; welfare benefits (associated or not with protection of property)- 14%; freedom of association and freedom of assembly, the right to vote/to be elected, the right to work – 6% each; the right to respect for private and family life, presumption of innocence, fair trial guarantees in criminal proceedings and the right to education – 4 % each.

38. A high number of non-discrimination complaints could be explained by the common understanding of equality as equal treatment, which implies that any difference in treatment constitutes discrimination. For this reason, numerous complaints allege unequal treatment with regard to taxation or welfare benefits rather than discrimination on the basis of prohibited criteria.

39. In contrast to the frequent complaints lodged before ECtHR with regard to Article 3 of the Convention^{xxii}, the CCM has examined only one case referring to inhuman and degrading

treatment (chemical castration as a criminal sanction) and was never called to rule on matters concerning the ill-treatment by state agents, detention conditions or ineffective investigation into such allegations. Similarly, the number of cases concerning liberty and security and freedom of expression before the CCM is considerably lower than before the ECtHR (2%). In fact, such complaints do not even reach the level of 10 most frequent complaints raised before the CCM.

40. Difference in the scope of jurisdiction between the CCM and the ECtHR. It should be noted that the CCM's jurisdiction covers the review of domestic laws both in the light of the Moldovan Constitution and international treaties to which the Republic of Moldova is a contracting party. The jurisdiction of the ECtHR covers the review of the compatibility of domestic legislation and its application with the ECHR and its additional protocols. For reasons related to the scope of jurisdiction, the CCM does not and cannot deal with violations of human rights resulting from improper application of domestic law in individual cases. In particular, it may not review proportionality of measures applied in individual cases either by courts or other state authorities or the application of domestic laws. CCM judgments concern exclusively the question of constitutionality of the law or its interpretation, and thus, may not remedy, for example, if court decisions required proof of truthfulness of value judgments in defamation proceedings or if they upheld time-barred appeals. However, unlike the ECtHR, the CCM may provide the Parliament and government with precise legislative instructions for adoption of new normative acts, improving the quality of the existing law, or filling the legislative gaps.^{xxiii}

41. In this context, it should be noted that the overlap in the jurisdiction of both courts is considerable and regards the question of compatibility of domestic law with the Convention standards. Thus, the involvement of the CCM has in principle improved human rights protection in a number of matters such as the assessment of illicit assets susceptible of confiscation,^{xxiv} procedural guarantees for officials considered responsible for ECtHR's finding of a violation (obligation to compensate damage only if there is a judicial finding of negligence or intent),^{xxv} duration of pre-trial release under judicial control,^{xxvi} restrictions on the use of inherited share in a company and indirect expropriation of water pipes,^{xxvii} guarantees of procedural rights for incapacitated persons.^{xxviii}

42. However, the scope of the CCM's jurisdiction generally extends to rights and freedoms, which are not guaranteed in the European Convention of Human Rights or any of its additional protocols. With regard to human rights protection exceeding the scope of the Convention the CCM is called to rule on constitutionality of domestic law in relation to the right to compensation for damages caused by public authorities, the right to work, the right to nationality, access to public service, health insurance, or the right to petition.

43. It should be also emphasised that the jurisdiction of the ECtHR is generally limited by the principle of subsidiarity and that the Convention standard is considered a minimal standard of human rights protection. For this reason, the CCM's analysis of domestic law concerning the individualization of sanctions for administrative offences (unconstitutionality of a fixed fine)^{xxix} is less likely to have been performed by the ECtHR. The CCM's case-law on matters of access to court (i.e. regarding availability of judicial review of decisions concerning public servants or the acts of the Central Bank) shapes the applicability of Article 6 of the ECHR, which does not create a right to appeal as such but guarantees the exercise of the right of access to court only if domestic legislation provides for such access in the first place. The adoption of legal amendments, following the CCM's judgments and addresses, has the

potential of preventing findings of violations by the ECtHR.^{xxx} In this matter, the jurisdiction of the two courts seems not to compete but rather to complement each other.

44. Dialogue between the CCM and the ECtHR. There are several areas in which the CCM and the ECtHR have been engaged in a meaningful dialogue which shaped their respective case-law.

45. In 2009 a case was brought before the CCM by an MP concerning constitutionality of a ban on dual nationality for candidates running for Parliament and in other public service positions. The CCM ruled on the constitutionality of the ban, finding that it responded to a pressing social need.^{xxxix} In 2010, in the above-mentioned *Tănase v. the Republic of Moldova* judgment the Grand Chamber found however that the same legislation once upheld by the CCM violated the right to stand in parliamentary elections.^{xxxix} In 2014, the CCM, acting on its own motion, reviewed its judgment of 2009 and declared the law unconstitutional, making an explicit reference to the Grand Chamber judgment.^{xxxix}

46. In another case decided in 2010, the CCM found the criminal procedure provisions unconstitutional as they allowed bringing the repeated charges, and in consequence, the reopening of criminal proceedings if new evidence was found after the statutory time-limit for charges had lapsed.^{xxxix} In its judgment the CCM relied on the principle of *ne bis in idem* to conclude that the reopening of proceedings in such situation would amount to an inadmissible repeated prosecution. Consecutively, in 2012 and 2014, the ECtHR communicated two cases, which raised concerns about foreseeability of the Moldovan criminal procedure concerning the reopening of criminal cases after the termination of criminal proceedings at the investigation stage if the investigation is later proven deficient.^{xxxix} In 2015, the CCM was asked to rule on the very same issue as communicated by the ECtHR. It clarified that the reopening of criminal proceedings as such does not violate the principle of *ne bis in idem*. It also provided interpretation of the procedural guarantees in the light of the *ne bis in idem* principle and concluded that the legal provisions, which allowed for the reopening of the investigation at the unfettered discretion of the investigating authority were unconstitutional.^{xxxix}

47. More recently, in 2016, the CCM was asked to rule on various aspects of the criminal procedure concerning pretrial detention. On this occasion, the CCM clarified that the 12-month constitutional time-limit referred to the period of detention before conviction in the first instance. Most importantly, the CCM confirmed that no exceptions were allowed to this rule. It also clarified that the 30-day limit for an arrest warrant was absolute. Following this interpretation, the CCM declared that the provision of the Code of Criminal Procedure stipulating a 90-day detention after the case was remitted to a court was unconstitutional.^{xxxix} This judgment stays in line with the ECtHR judgment (adopted before the CCM rendered its judgment, but made public shortly after) in *Savca v. Moldova* (no. 17963/08, judgment of 15 March 2016).^{xxxix} Notably, the ECtHR reached the same conclusion concerning the absolute nature of the 12-month time-limit for the pre-trial detention provided in Article 25(4) of the Constitution of the Republic of Moldova.

48. Subjects initiating the proceedings before the CCM. Under the Moldovan legislation,^{xxxix} the CCM cannot act of its own motion other than for the revision of its own judgments. In this context, it is worth noting that the CCM reviewed on its own motion 3 judgments (2 concerning access to court and 1 concerning the right to stand in elections) in order to bring them in line with the ECHR case-law (in general or the ECtHR's decision against the Republic of Moldova).

49. Pursuant to the Code of Constitutional Jurisdiction cases may be brought before the CCM only by the President of Moldova, the Government, the Minister of Justice, the Supreme Court of Justice, the Prosecutor General, a member of Parliament (“MP”), a parliamentary faction, the Ombudsman, the Children’s Ombudsman, local administration. As noted above, the domestic law also provides for exception of unconstitutionality, which allow parties in ordinary court proceedings and a court of its own motion to question the constitutionality of laws and normative acts applicable to that case.^{xi}

50. Primarily, such exceptions were referred to the Supreme Court of Justice by trial courts and the Supreme Court could decide whether or not to raise the exception before the CCM. In 2016, however, the CCM opened the possibility to trial court to raise the exception of unconstitutionality directly, either on the request of a party to the proceedings or on its own motion if the challenged law is incident to the examination of the case and there is no previous CCM ruling on the same legal issue.^{xli}

51. The statistical analysis of human rights judgments delivered by the CCM reveals that the members of Parliament have been by far the most active actors (50%) initiating the proceedings before the CCM, followed by courts with exceptions of unconstitutionality (21%) and the Ombudsman (15%).^{xlii} MPs have lodged cases concerning a wide spectrum of constitutional rights and freedoms (invoking 21 out of 28 rights upon which the CCM have ruled so far). Their complaints pertained mostly to protection of property, non-discrimination, access to court, welfare benefits and the right to vote/to be elected. Exceptions of unconstitutionality raised by courts covered 17 categories of rights and by the Ombudsman – 15.

52. With respect of exceptions of unconstitutionality, it should be noted that 51% of their total number were brought in 2016, which demonstrates the impact of the CCM judgment no. 2, of 9 February 2016. Because this development has only one year, it could be expected that the volume of cases brought by parties and courts through this procedure will increase in the future and, potentially, become even more varied in terms of categories of rights concerned. So far, the most frequent complaints raised in exceptions concerned protection of property, non-discrimination and access to court. At the same time, more than half of all complaints concerning liberty and security and fair trial guarantees in criminal proceedings were referred to by courts in exceptions.

53. The Ombudsman^{xliii} has lodged complaints mainly concerning non-discrimination, welfare benefits and protection of property. It could be however expected that the Ombudsman will also seize the opportunity, when it presents itself, of bringing more cases to the CCM concerning liberty and security, fair trial guarantees (both civil and criminal), freedom of expression and freedom of assembly.

54. The Government and the Minister of Justice have lodged the least complaints and their focus was on presumption of innocence, right to vote/to be elected, protection of property and welfare benefits. Notably, the Prosecutor General did not lodge any complaints concerning liberty and security or fair trial guarantees in criminal proceedings. However, a case brought by the Prosecutor General is noteworthy in the sense that the CCM had relied directly on the provisions of Article 1 of Protocol No. 4 to the European Convention of Human Rights to find – even in the absence of a similar provision in the Moldovan Constitution – that the provisions of the Criminal Code were unconstitutional because they clashed with the prohibition of imprisonment for debt.^{xliiv}

55. Although the CCM regularly asks for *amicus curiae* from various non-governmental organisations, so far only in one case the exception was requested by an NGO.^{xiv} In most cases these are lawyers who request courts to raise the exception. Authors of this report are of the opinion that the activity of lawyers in this regard should be further encouraged and supported by courts. At the same time, it is recommended that domestic NGOs engage more in the practice of strategic litigation, and identify gaps in legal protection or other deficiencies of law or its established interpretation, which negatively impact human rights. They could also play more active role in monitoring the enforcement of CCM's judgments concerning human rights (especially in cases in which the CCM required the adoption of general (legislative) measures). It is our belief that the findings of this report will give incentive to various civil society actors and donor institutions to develop programs addressing this type of activity.

IV. Exception of unconstitutionality as an opening of indirect access of individuals to a court in matters concerning protection of human rights

56. This part of the report aims to explore the exception of unconstitutionality as a legal institution, which offers indirect access of individuals to a constitutional court. As already noted the judgment No. 2, of 9 February 2016, the CCM provided a new interpretation of Article 135(1)g of the Constitution^{xvi} and in fact expanded the constitutional jurisdiction *ratione personae* beyond the list of subjects entitled to initiate the constitutional proceedings.

57. While consequences of this decision for the state of protection of human rights in the Republic of Moldova are still to be seen, it is worth emphasising that it opened indirect access to constitutional justice to parties in the judicial proceedings who may request a trial court to challenge constitutionality of the law applicable in their case. In this light, the exception of unconstitutionality appears as a new defense mechanism against unconstitutional legislation.^{xvii}

58. In the period between February and December 2016 trial courts lodged 116 exceptions of unconstitutionality. In 2017 (by the time of preparing this report) the CCM registered 34 new applications, which makes a total of 150 cases in a year. It is expected that the popularity of this institution will grow over time and more courts will use it to question constitutionality of laws applicable in cases pending before them (including legal acts which are not longer in force) either on their own motion or request from the parties.

59. Clearly, there are numerous advantages of instituting the exception of unconstitutionality in trial courts for the protection of human rights. First and foremost, the exception of unconstitutionality should be presented as a requirement of constitutional justice, which enforces the supremacy of the Constitution and its direct applicability. Secondly, the exception of unconstitutionality also appears as an essential element of a fair trial, in particular if one takes into consideration concerns of procedural economy.

60. Given the supreme legal force of the Constitution and the pivotal role of constitutional guarantees of human rights in constitutional democracy, it is required that ordinary courts directly apply constitutional provisions and interpret laws in accordance with the Constitution. Thus, in case of doubts as to constitutionality of laws, which may not be removed by means of legal interpretation, lower courts should have the possibility to challenge such laws instantly without the involvement of the Supreme Court. In particular, lower courts should have the possibility to raise the exception of unconstitutionality with regard to laws the application of which puts legality of a court trial in question.

61. Fairness of judicial proceedings may be at stake if a court applies procedural rules determining the status and rights of parties in the proceedings with regard to access to a court, hearing, examination of evidence, time limits, the right to appeal, etc., notwithstanding doubts as to their constitutionality. Likewise, the application of substantive provisions determining liability for criminal or administrative offence, imposing sanctions, obligations or other restrictions which infringe upon individual rights and freedoms should be prevented as early as doubts as to their constitutionality arise. In this regard, the power granted to trial courts to initiate constitutional review at the early stage of judicial proceedings has clear advantages not only for the legal system as such, but also for the parties and other persons concerned by judicial decisions. It is even more so taking into consideration that most of violations found by the ECtHR with respect to the Republic of Moldova “culminated at the domestic level with a judicial decision or a decision of the prosecutor, which means that the respective situations are attributed to the judicial system or the prosecution office.”^{xlviii}

62. It could be also argued that the exception of unconstitutionality raised by trial courts has more advantages for the protection of human rights than individual constitutional complaint or individual application to an international court or other supervisory human rights body. Although the introduction of individual constitutional complaint in the Republic of Moldova has been advocated by several constitutional law experts and NGOs,^{xlix} indirect access to the Constitutional Court avoids limitations of direct access related to the admissibility criteria.

63. It is also worth noting that the Convention does not guarantee individuals the right to institute constitutional proceedings in the domestic system. The lack of direct access to the Constitutional Court was raised in *Valentin Gorizdra v. Moldova* (no. [53180/99](#)) but the case was rejected as inadmissible under Article 35(3) and (4). His complaint was incompatible *ratione materiae* with the Convention since Article 6 of the ECHR does not guarantee a right of access to a court with competence to invalidate or override a law (see *Ruiz-Mateos and others v. Spain*, Application no. [14324/88](#), Commission’s Report of 14 September 1991, DR 69 p. 227).

64. It should be emphasised that for their admissibility both constitutional complaint and individual complaint to an international court or another supervisory human rights body require exhaustion of legal remedies, which may perpetuate the situation of unconstitutionality (extend it in terms of time and scope), or even make its consequences irreversible or irreparable.

65. Having in mind procedural economy, the aspect of time provides a particularly strong argument in favor of constitutional courts solving problems of human rights protection. As of now the average time for a complaint to be examined by the European Court of Human Rights depends on the importance and urgency of the case. However, most applicants whose complaints were found admissible wait several years for a judgment on the merits of their case.

66. In this context, it should be underlined that in the Republic of Moldova the exception of unconstitutionality brought by a trial court is considered by the Constitutional Court within a relatively short time. In general, the question of admissibility is decided within the period of 60 days, while in case of the exception of unconstitutionality the period of deciding on their admissibility is shortened to 15 days.ⁱ According to the Code of Constitutional Jurisdiction and Rules on the examination of complaints, the CCM examines complaints within a maximum term of 6 months.ⁱⁱ Although there are no specific statutory rules regarding the exception of unconstitutionality raised by a trial court (nor detailed statistics yet) the CCM has given them

priority and the average time of examining them have not exceeded 2-3 months. The internal (yet unwritten) policy on urgent examination of exceptions of unconstitutionality takes into account the interests of the parties in the stayed court proceedings.

67. Moreover, it shall be noted that individual application to an international court such as the ECtHR depends on several admissibility criteria related to the limits of international jurisdiction determined by the international treaty upon which it is based. It is conditioned by the date of ratification of a relevant treaty by the respondent state and proving its responsibility for the alleged violations. It is also constrained by the subjective and substantive scope of protection granted by such treaty.

68. In conclusion, it is possible to assert that human rights protection based on the Constitution and enforced by national authorities (including ordinary courts, the Supreme Court and the Constitutional Court) could seem to be more suitable solution for individuals (mainly in the terms of easier access to the court) provided that national authorities follow the human rights standards. The effective national system of human rights protection avoids limitations of international jurisdiction as well as limitations resulting from the scope of rights protection guaranteed by international treaties (related to the status of a “victim” of alleged violations of rights stipulated in such treaty).

69. Finally, the recent reforms concerning the ECtHR and the Convention system put very strong emphasis on the principle of subsidiarity of international human rights protection and introduced additional, more restrictive criteria of admissibility of individual complaints (see Protocol 14, 15 and 16 to the Convention). Having regard to commitments made during the international conferences held in Interlaken,^{lii} Izmir^{liii} and Brighton,^{liv} it is no longer possible to deny the responsibility of state parties to the Convention to ensure effective protection of human rights within their borders. More specifically, it is expected that constitutional courts prevent violations of human rights resulting from unconstitutional legislation or interpretation of laws, while leaving the ECtHR with exceptional cases resulting from actual acts or omissions by national authorities rather than law as such. Such division of competences has also clear reputational and financial advantages as it could limit the number of cases lost by the Republic of Moldova in Strasbourg and, consequently, decrease the annual expenses for compensation and damages awarded by the ECtHR to individual applicants.^{lv}

70. Although Moldovan law does not provide for direct access to the CCM, the simplification of proceedings in 2016 for bringing exceptions of unconstitutionality and the activity of the Ombudsman and of members of Parliament have transformed the CCM into a genuine human-rights tribunal with over 70% of judgments delivered on human rights matters. Although the CCM has already delivered judgments on a wide range of rights and freedoms, the use of the exception of unconstitutionality, as well as potential increase of the activism of non-governmental organisations and of the Ombudsman in bringing cases which cover new rights or aspects of rights and which reflect the pressing needs of the Moldovan society, could contribute to the development of human rights constitutional case-law.

V. General conclusions

71. The comparative analysis of the jurisdictional activity of the CCM and the ECtHR in general, and of the relevant jurisprudence concerning the protection of the human rights in the Republic of Moldova in particular, gives ground to draw the following conclusions:

72. In the light of the responsibility of the CCM to interpret and enforce the constitutional provisions on human rights and freedoms in accordance with human rights conventions pursuant to Article 4(1) of the Constitution of the Republic of Moldova, the ECHR and, respectively, the jurisprudence of the ECtHR indisputably stand as legal sources within the legal system of the Republic of Moldova.

Accordingly, the ECHR, as well as the ECtHR jurisprudence, which discloses the content of the provisions of the convention, are applicable *inter alia* while implementing the constitutional justice, i.e. within the framework of activity of the CCM – the independent agency carrying out the constitutional jurisdiction, which, *inter alia*, guarantees the protection of human rights and freedoms within the national legal system.

Given the primacy of international human rights treaties under Article 4 of the Constitution and the open adherence to ECHR and ECtHR's case-law, the CCM and the ECHR apply the same standards of human rights protection. At the same time, the text of the Constitution provides for a larger list of rights and freedoms than those currently protected under the ECHR and its Protocols, such as compensation for damage caused by public authorities, access to public service and social rights.

In terms of the scope of their control, the ECtHR can rule on individual cases concerning violations resulting from the inadequate application of domestic law, from inadequate quality of the law or lack of law. The CCM, however, does not have jurisdiction to assess the application of domestic law and performs an *in abstracto* control of laws (quality of the law or legal omission).

The case-law of the two courts has explored somewhat different problematic areas: with more focus on property and non-discrimination and access to court before the CCM, and on fairness of proceedings, property, inhuman and degrading treatment, and liberty and security before the ECtHR. The courts maintain a dialogue and shape each other's case-law with a tendency of consistency in the interpretation and application of Convention standards.

73. Although compliance between the ECtHR and CCM case-law was not within the scope of this report, it is evident that CCM applies ECHR standards and the analysis of the jurisprudence of the CCM proves the role of the ECtHR jurisprudence being a key one within the scope of protection of human rights and freedoms – in regard of the core of the constitutional issues, as the so-called “human rights judgements” constitute the essential part of the jurisprudence of the CCM (as mentioned, in 2016 – 71 percent out of the total amount of the judgments).

The conducted research reveals different intensity of recourse to the ECtHR jurisprudence while implementing the constitutional justice: from directly invoking it to merely mentioning, or even abstaining from referring to it in the constitutional issues related to the protection of human rights.

However, even without the explicit reference to the jurisprudence of the ECtHR the main conventional principles of the protection of human rights reflected therein are taken into account while implementing the constitutional justice. That is to say, that even without indicating the particular provisions elaborated by the ECtHR the CCM decides (to a greater or lesser degree) upon issues involving the aspects relevant to the protection of human rights within the light of the principles of the ECHR. This is despite existent differences of jurisdictional activity of the CCM and the ECtHR (i.e. difference of the competence, distinction in respect of the rights being protected or the scope of the protection itself, etc.).

Hereby, the conventional standard of the protection of human rights and freedoms is respected within the constitutional jurisdiction. Every constitutional issue related to the protection of human rights and freedoms, accordingly, reflects (to a greater or lesser extent) the fundamentals of the ECHR, including the principles elaborated in the ECtHR jurisprudence.

74. The protection of human rights and freedoms within the activity of the CCM is still primarily implemented by applying the means provided for by the Constitution of the Republic of Moldova.

Whereas the national constitutional provisions concerning the protection of human rights and freedoms slightly differ (due to the implementation of social rights, as well as more detailed explicit regulation in respect of certain human rights and freedoms) from the respective provisions embedded in the ECHR. Therefore (though not solely for this reason), the jurisprudence of the CCM on the protection of human rights has certain specific features as compared to the one elaborated by the ECtHR.

These national peculiarities, according to the results of the conducted research, however, could be evaluated only as fortifying and certainly not as weakening, the protection of human rights on the national level.

In addition, the analysis of the national constitutional jurisprudence on the protection of human rights in the light of the ECtHR case-law even allows considering the possibility of the existence of, in a sense, increased protection of certain human rights and freedoms within the national legal system. In other words, in certain cases it may be claimed that the jurisprudence of the CCM implies greater protection of certain human rights than the one provided at the international dimension.

Whereas certain manifestations of, as may be indicated, less pronounced level of protection of certain human rights in the national dimension should be considered as an exception (if not argued in general). The CCM case-law is conditioned by the activism of the actors entitled to bring cases before it. In this sense, it is recommended that domestic NGOs engage more in the practice of strategic litigation, in identifying gaps in legal protection, in monitoring the enforcement of CCM's judgments concerning human rights. The potential increase of the activism of non-governmental organisations and of the Ombudsman in bringing cases that cover new rights or aspects of rights and which reflect the pressing needs of the Moldovan society, could contribute to the further development of human rights constitutional case-law, but also to the decrease in applications lodged at the ECtHR.

75. Although the role of the CCM in respect of the protection of human rights remained essentially the same through the years of its activity (i.e. the CCM guarantees the respective protection in the national legal system within the field of its competence), the recent modification of interpretation of the Article 135(1) of the Constitutional of the Republic of Moldova (as allowing all courts addressing CCM in the scope of the exception of unconstitutionality) has enabled wider access to the constitutional justice.

These changes already prove to have affected, to a certain extent, the number of referrals to the CCM, i.e. the expansion of the issues under consideration within constitutional jurisdiction. At the same time, the conducted research creates preconditions for the consideration that these changes could, essentially, also lead to the increased amount of

constitutional issues in general and, accordingly, to the growth of human rights issues at the CCM; hereby, consequently, ensuring a greater protection itself.

The institution of the exception of unconstitutionality, under the conducted research, thus, in this respect already proves to be the tool for enhancement of protection of human rights and freedoms in the Republic of Moldova.

76. The conducted research also allows envisaging another possible manifestation of changes within the human rights protection field in the Republic of Moldova following the extension of application of exception of unconstitutionality: the already mentioned amelioration of the protection of human rights at the national level could, essentially, result in the reduced number of cases lodged at international level.

The analysis of the ECtHR case-law (in the cases against the Republic of Moldova) in the light of the jurisdictional activity of the CCM creates preconditions for indicating the following relative aspects that are yet to be reaffirmed in practice:

- the national legal system provides, essentially, sufficient protection of human rights in the means of exception of unconstitutionality; despite the different competence of the CCM and the ECtHR in respect of the protection of human rights, the referral of the particular issue to the constitutional court could potentially diminish the need to seek for the protection of the allegedly infringed rights at the international level;
- accordingly, there may be a possible interrelation between the number of the constitutional cases concerning the protection of human rights and the relevant cases against the Republic of Moldova in the ECtHR: the respective number of the cases in the ECtHR could possibly diminish if the amount of the relevant constitutional issues referred to the CCM (of course within its competence provided for by the Constitution of the Republic of Moldova) increased.

In other words, the extension of the scope of application of the exception of unconstitutionality to all courts (i.e. the so-called wider opening of indirect access to individuals to the CCM) could contribute to increasing the level of protection of human rights within the national dimension and, accordingly, to diminishing the necessity of relevant protection at the international level. This is especially relevant from the perspectives of time taken to guarantee the protection of human rights within the mentioned dimensions.

It should be also mentioned that the CCM case-law is unique constitutional jurisprudence reflecting the principles of the national constitution, however, integrated, essentially, to the full extent into the spirit and content of the ECtHR jurisprudence through the analysis of the conventional standard of the protection of human rights and freedoms in the light of the national constitutional provisions.

The provision of the comparable protection of the human rights at the national dimension in the Republic of Moldova could lead to a decline in demand for the relevant protection at the international dimension.

77. Further assessment of the development of CCM's role as a human-rights tribunal, of the impact of the exception of unconstitutionality and of the activism of actors could benefit from an ongoing statistical analysis of CCM's human-rights case-law, to reflect the categories of rights and the actors who brought the cases before the CCM.

Annex 1

Article	Particular aspect of rights protection	Number of judgments under supervision
6 (1)	Access to and efficient functioning of justice - Excessive length of judicial proceeding	1
6 (1)	Access to and efficient functioning of justice - Lack of access to court	3
6 (1)	Access to and efficient functioning of justice - No or delayed enforcement of domestic judicial decisions	2
6 (1)	Access to and efficient functioning of justice - Non respect of the final character of court judgments	4
6 (1)	Access to and efficient functioning of justice - Unfair judicial proceedings (civil rights)	4
6 (1)	Access to and efficient functioning of justice - Unfair judicial proceedings (criminal charges)	10
11	Freedom of assembly and association - Peaceful assemblies	1
11	Freedom of assembly and association - Political parties	1
10	Freedom of expression and information - Hate speech, defamation	3
10	Freedom of expression and information - Other issues	4
9	Freedom of thought, conscience and religion - Authorisation of religious activity	1
8	Protection of private and family life - Abortion, procreation, paternity	1
8	Protection of private and family life - Domestic violence	1
8	Protection of private and family life - Placement of children in public care, custody and access rights	2
8	Protection of private and family life - Protection against defamation and hate speech	2
8	Protection of private and family life - Use/disclosure/retention of information in violation of privacy	1
8	Protection of private and family life - Home, correspondence and secret surveillance	2
P 1 - 1	Protection of property - Disproportionate restrictions to property rights	4
P 1 – 1	Protection of property - Other issues	1
P 1- 1	Protection of property - Taxation issues	1
5 (1), 3, and 8	Protection of rights in detention - Detention and other rights	2
5 (1)	Protection of rights in detention - Lawfulness of detention and related issues	7
3 and 8	Protection of rights in detention - Poor detention conditions - medical care	8
2 and 3	Right to life and protection against torture and ill-treatment - Actions of security forces (police)	9
2 and 3	Right to life and protection against torture and ill-treatment - Special situations	4
2 and 3	Right to life and protection against torture, ill-treatment - Actions of security forces (military)	2

Source: HUDOC-EXEC

Annex 2

Statistical data on the subject matter of judgments delivered by the Moldovan Constitutional Court from 1995 to 2016 on human rights

Year	Right	# and date of judgment	Who lodged the case
1995	Right to vote/right to be elected	#750/06.11.1995	MP
1996	Protection of property	#110/25.01.1996	MP
1996	Freedom of assembly	#168/21.02.1996	President
1996	Protection of property	#12/02.10.1996	MP
1997	Protection of property, welfare payments, non-discrimination	#9/03.03.1997	MP
1997	Protection of property	#12/17.03.1997	exception via SCJ
1997	Freedom to choose one's resident	#16/19.05.1997	MP
1997	Protection of property, social welfare, non-discrimination	#17/10.06.1997	MP
1997	Access to court	#20/16.06.1997	exception via SCJ
1997	Fair trial guarantees (criminal)	#22/30.06.1997	MP
1997	Protection of property	#29/27.10.1997	MP
1997	Protection of property, non-discrimination	#28/27.10.1997	MP
1997	Access to court	#33/23.11.1997	MP
1997	Protection of property	#35/01.12.1997	SCJ
1997	Protection of property	#38/15.12.1997	SCJ
1997	Social welfare payments, non-discrimination	#39/22.12.1997	MP
1998	Protection of property	#3/19.01.1998	exception via SCJ
1998	Presumption of innocence	#2/19.01.1998	MP
1998	Access to court, protection of property	#4/26.01.1998	MP
1998	Social welfare payments, non-discrimination	#7/17.02.1998	MP
1998	Access to court, presumption of innocence	#10/17.03.1998	SCJ
1998	Fair trial guarantees (civil)	#12/16.04.1998	MP
1998	Access to court, non-discrimination	#13/16.04.1998	MP
1998	Right to vote/right to be elected	#15/27.05.1998	MP, President
1998	Right to education	#27/29.09.1998	MP
1998	Freedom of association	#37/10.12.1998	MP
1998	Social welfare payments	#38/15.12.1998	MP
1999	Freedom of association	#3/29.01.1999	MP
1999	Access to information	#4/04.02.1999	MP
1999	Protection of property, social welfare	#19/29.04.1999	MoJ, MP, President
1999	Protection of property	#25/11.05.1999	MP

1999	Protection of property	#26/13.05.1999	MP
1999	Social welfare payments, non-discrimination	#27/18.05.1999	Ombudsman
1999	Protection of property	#29/25.05.1999	MP
1999	Protection of property	#38/08.07.1999	Prosecutor General
1999	Protection of property	#41/20.07.1999	Ombudsman
1999	Access to court, non-discrimination	#43/27.07.1999	Prosecutor General
1999	Protection of property	#46/21.09.1999	MP
1999	Access to public service	#54/12.10.1999	Ombudsman
1999	Protection of property, non-discrimination	#58/09.11.1999	Ombudsman
1999	Protection of property	#59/11.11.1999	MP
1999	Right to work, protection of property	#67/02.12.1999	Ombudsman
1999	Protection of property	#69/14.12.1999	MP
1999	Right to vote/right to be elected	#71/21.12.1999	MP
1999	Liberty and security	#72/23.12.1999	MP
2000	Social welfare payments	#4/27.01.2000	MP, SCJ, PG, ombudsman
2000	Freedom of association	#8/15.02.2000	MP, Ombudsman
2000	Freedom of association	#17/25.04.2000	MP
2000	Access to court, non-discrimination	#18/27.04.2000	PG
2000	Access to court, right to private life	#25/08.06.2000	MP
2000	Protection of property	#26/20.06.2000	MP
2000	Protection of property	#27/24.06.2000	MP
2000	Protection of property	#34/03.10.2000	exception via SCJ
2000	Right to vote/right to be elected, access to information, freedom of association	#35/10.10.2000	MP, President
2000	Freedom of expression	#42/14.12.2000	MP, President
2001	Right to work, non-discrimination	#6/06.02.2001	MP
2001	Liberty and security	#7/13.02.2001	SCJ
2001	Fair trial guarantees (civil)	#11/15.02.2001	MP
2001	Social welfare payments	#10/15.02.2001	MP
2001	Fair trial guarantees (civil)	#12/20.02.2001	PG
2001	Right to vote/right to be elected	#16/29.03.2001	President
2001	Right to compensation for damages caused by a public authority	#37/05.07.2001	PG
2001	Access to court	#39/09.07.2001	CCM own motion
2001	Protection of property	#40/12.07.2001	MP
2001	Social welfare payments, non-discrimination	#46/25.10.2001	exception via SCJ
2002	Right to nationality, access to court	#14/19.03.2002	Ombudsman

2002	Protection of property	#16/28.03.2002	exception via SCJ
2002	Prohibition of imprisonment for debts	#17/02.04.2002	PG
2002	Non-discrimination	#28/30.05.2002	MP
2002	Social welfare payments, non-discrimination	#34/19.09.2002	SCJ
2002	Access to court	#46/21.11.2002	MP, Ombudsman
2003	Protection of property	#10/29.05.2003	SCJ
2003	Freedom of association	#11/03.06.2003	MP
2003	Freedom of association, non-discrimination	#12/19.06.2003	MP
2003	Freedom of association, non-discrimination	#21/09.10.2003	MP
2003	Non-discrimination	#24/06.11.2003	MP
2004	Access to court	#2/19.02.2004	Ombudsman
2004	Social welfare payments, non-discrimination	#9/30.03.2004	MP
2004	Freedom of assembly	#18/29.06.2004	MP
2004	Access to information	#21/02.09.2004	President
2004	Protection of property, right to education, non-discrimination	#25/04.11.2004	MP
2004	Health insurance	#28/14.12.2004	MP
2005	Social welfare payments, non-discrimination	#3/25.01.2005	Ombudsman
2005	Access to court, non-discrimination	#7/29.03.2005	exception via SCJ
2005	Access to court	#16/19.07.2005	MP
2005	Protection of property, non-discrimination	#18/06.10.2005	Ombudsman
2005	Social welfare payments, non-discrimination	#21/22.11.2005	Ombudsman
2005	Protection of property	#24/22.12.2005	exception via SCJ
2006	Right to work, social welfare, non-discrimination	#2/24.01.2006	MP
2006	Protection of property	#5/28.02.2006	MP
2006	Protection of property	#10/20.06.2006	MP
2006	Protection of property	#12/04.07.2006	MP
2006	Social welfare payments	#14/06.07.2006	MP
2007	Protection of property	#6/27.03.2007	MP
2007	Protection of property	#9/12.04.2007	MP
2007	Protection of property, non-discrimination	#8/12.04.2007	MP
2007	Non-discrimination	#13/29.05.2007	MP
2007	Freedom of religion or thought, non-discrimination	#15/05.06.2007	MP
2007	Protection of property, non-discrimination	#16/12.06.2007	MP

2007	Access to information	#18/26.06.2007	MP
2007	Protection of property, non-discrimination	#19/28.06.2007	MP
2007	Right to work, social welfare	#21/20.09.2007	MP
2007	Social welfare payments, non-discrimination	#23/09.10.2007	Ombudsman
2007	Access to court	#26/23.10.2007	MP
2007	Right to education	#30/18.12.2007	MP
2008	Access to court, non-discrimination	#9/20.05.2008	exception via SCJ
2008	Freedom of movement, presumption of innocence	#15/30.09.2008	Ombudsman, exception via SCJ
2008	Social welfare payments	#18/21.10.2008	Ombudsman
2009	Fair trial guarantees (criminal)	#5/17.03.2009	MP
2009	Right to vote/right to be elected, non-discrimination	#9/26.05.2009	MP
2009	Social welfare payments, non-discrimination	#10/02.06.2009	MP, exception via SCJ
2009	Prohibition of forced labour	#11/04.06.2009	exception via SCJ
2009	Access to public service, non-discrimination	#12/30.06.2009	exception via SCJ
2010	Access to court	#10/16.04.2010	CCM own motion
2010	Protection of property, non-discrimination	#21/02.09.2010	exception via SCJ
2010	Right to vote/right to be elected	#25/09.11.2010	Government
2010	Non bis in idem	#26/23.11.2010	exception via SCJ
2010	Right to respect to private life, protection of property	#27/25.11.2010	MP
2010	Access to court	#29/21.12.2010	MP
2010	Right to work	#30/129.12.2010	MP
2011	Right to work, social welfare, non-discrimination	#6/22.03.2011	exception via SCJ
2011	Freedom of movement	#7/05.04.2011	Ombudsman
2011	Right to respect to home and private life	#8/12.04.2011	Ombudsman
2011	Right to work, protection of property, non-discrimination	#11/31.05.2011	Ombudsman
2011	Health insurance, non-discrimination	#13/14.06.2011	Ombudsman
2011	Right to education, protection of property, non-discrimination	#15/13.09.2011	MP
2011	Protection of property, social welfare	#19/18.10.2011	MP
2011	Protection of property, presumption of innocence	#21/20.10.2011	MoJ
2011	Access to court, protection of property	#24/15.11.2011	exception via SCJ
2011	Protection of property, social welfare, non-discrimination	#27/20.12.2011	Ombudsman

2012	Access to court	#3/09.02.2012	MP
2012	Social welfare, non-discrimination	#5/10.04.2012	Ombudsman
2012	Right to education	#6/03.05.2012	Ombudsman
2012	Freedom of expression	#10/12.07.2012	MP
2012	Right to nationality, right to asylum	#11/30.10.2012	exception via SCJ
2012	Right to family life, non-discrimination	#12/01.11.2012	Ombudsman
2012	Right to respect to private life	#13/06.11.2012	Ombudsman
2012	Access to court, right to compensation for damages caused by a public authority	#14/15.11.2012	MP
2012	Protection of property, freedom of expression, access to court	#17/06.12.2012	MP
2012	Access to court	#18/11.12.2012	MP
2012	Protection of property	#19/18.12.2012	MP
2013	Protection of property, access to court	#1/15.01.2013	MP
2013	Right to work, non-discrimination	#5/23.04.2013	MP
2013	Non-discrimination	#11/28.05.2013	MP
2013	Freedom of expression, freedom of association	#12/04.06.2013	MP
2013	Non bis in idem	#13/13.11.2013	exception via SCJ
2013	Protection of property	#15/20.06.2013	MP
2013	Access to court	#16/25.06.2013	Ombudsman
2013	Access to court	#17/02.07.2013	MP
2013	Protection of physical integrity, right to respect for private life	#18/04.07.2013	Ombudsman
2013	Access to court, non-discrimination	#20/16.07.2013	MP
2013	Right to vote/right to be elected	#19/16.07.2013	MP
2013	Access to court	#21/25.07.2013	MP
2013	Fair trial guarantees (criminal)	#22/05.09.2013	SCJ
2013	Protection of property, non-discrimination	#24/10.09.2013	SCJ
2013	Right to petition	#25/17.09.2013	SCJ
2013	Right to education, non-discrimination	#26/19.09.2013	Ombudsman
2013	Presumption of innocence	#29/23.09.2013	Ombudsman
2013	Access to court, right to compensation for damages caused by a public authority	#31/01.10.2013	MP
2014	Protection of property, access to court	#4/06.02.2014	MP
2014	Access to court, right to compensation for damages caused by a public authority	#5/11.02.2014	Ombudsman
2014	Right to work	#12/20.05.2014	MP

2014	Right to respect to private life	#13/22.05.2014	MP
2014	Right to vote/right to be elected	#15/27.05.2014	MP
2014	Nullum crimen sine lege	#14/27.05.2014	MP
2014	Protection of property	#16/28.05.2014	Ombudsman
2014	Protection of property	#17/29.05.2014	exception via SCJ
2014	Right to education	#19/03.06.2014	MP
2014	Freedom of expression	#20/04.06.2014	MP
2014	Protection of property, non-discrimination	#25/06.11.2014	SCJ
2014	Right to petition, non-discrimination	#27/13.11.2014	Ombudsman
2014	Fair trial guarantees (criminal)	#28/18.11.2014	MP
2014	Protection of property, non-discrimination	#30/11.12.2014	MP
2014	Right to vote/right to be elected	#31/11.12.2014	CCM own motion
2015	Right to vote/right to be elected	#2/20.01.2015	MP
2015	Access to court, right to private life	#7/16.04.2015	MP
2015	Protection of property	#6/16.04.2015	Ombudsman
2015	Right to work, non-discrimination	#8/11.05.2015	MP
2015	Fair trial guarantees (criminal)	#10/12.05.2015	exception via SCJ
2015	Fair trial guarantees (criminal), presumption of innocence	#12/14.05.2015	exception via SCJ
2015	Right to education, non-discrimination	#14/15.06.2015	MP
2015	Fair trial guarantees (civil)	#13/15.05.2015	MP
2015	Right to vote/right to be elected	#15/16.06.2015	MP
2015	Protection of property, social welfare	#18/19.06.2015	MP
2015	Protection of property	#17/19.06.2015	MP
2015	Access to information	#19/22.06.2015	MP
2015	Nullum crimen sine lege	#25/13.10.2015	MP
2015	Presumption of innocence	#27/17.11.2015	MP
2015	Freedom of expression, freedom of assembly	#28/23/11.2015	MP
2015	Access to public service	#30/08.12.2015	MP
2016	Access to court	#2/09.02.2016	SCJ
2016	Liberty and security	#3/23.02.2016	exception via SCJ
2016	Fair trial guarantees (civil)	#4/01.03.2016	SCJ
2016	Right to work, presumption of innocence	#6/03.03.2016	exception via SCJ
2016	Liberty and security	#9/29.04.2016	exception via SCJ
2016	Fair trial guarantees (criminal)	#10/10.05.2016	exception via SCJ
2016	Protection of property, non-discrimination	#11/11.05.2016	exception via SCJ

2016	Right to work	#13/13.05.2016	exception via SCJ
2016	Freedom of religion or thought, non-discrimination	#14/16.05.2016	exception via SCJ
2016	Protection of property	#15/17.05.2016	exception via SCJ
2016	Liberty and security	#17/19.05.2016	exception via SCJ
2016	Right to respect to private life	#18/19.07.2016	exception via SCJ
2016	Protection of property, social welfare	#19/19.07.2016	exception via SCJ
2016	Freedom of association	#20/20.07.2016	exception via SCJ
2016	Access to court	#22/22.07.2016	exception via SCJ
2016	Nullum crimen sine lege	#21/22.07.2016	exception via SCJ
2016	Fair trial guarantees (criminal)	#24/14.09.2016	exception via SCJ
2016	Protection of property	#26/27.09.2016	exception via SCJ
2016	Protection of property	#27/27.09.2016	exception via SCJ
2016	Protection of property	#28/11.10.2016	exception via SCJ
2016	Protection of property	#30/01.11.2016	exception via SCJ
2016	Protection of property	#31/03.11.2016	exception via SCJ
2016	Fair trial guarantees (civil)	#32/17.11.2016	exception via SCJ
2016	Access to court	#33/17.11.2016	Ombudsman, MP, exception via SCJ

Endnotes

ⁱ In the judgment No.11 of 31 May 2011, the Constitutional Court confirmed that an international norm can be declared unconstitutional even “if the Constitution or the national laws do not provide for the principles and guarantees set forth in international treaties, or if the international treaties guarantee more comprehensive rights than the Constitution.”

ⁱⁱ See Article 12 of the Code of Civil Procedure and Article 7 of the Code of Criminal Procedure. It is thus important to notice that courts are obliged to apply international conventions directly if in conflict with the domestic laws, while in case of doubts as to whether the law conforms with the Constitution they are obliged to raise the exception of unconstitutionality to the Constitutional Court.

ⁱⁱⁱ In 2016 the amount of applications against the Republic of Moldova per 10,000 is 2,36, while the average number of applications allocated in the Council of Europe member states was 0.64.

^{iv} In the referred period the Court also rendered 23 other judgments against the Republic of Moldova and 3 cases ended with a friendly settlement.

^v Please note that since 2010 the Court annual statistics present a somewhat distorted picture of human rights protection due to the new priority policy introduced in 2009. In pursuance to Rule 41 the Court hears cases according to their importance and urgency rather than the chronological order. In consequence, the Court first deals with the most serious cases. For example, in 2016 10 judgments concerned violation of the prohibition of inhuman and degrading treatment; 4 – lack of effective investigation with respect to the alleged violation of the prohibition of torture, inhuman and degrading treatment; 4 – the right to liberty and security; 1 – the right to private and family life; 3 - right to an effective remedy; and 2- right to protection of property. It does not mean however that there are no allegations concerning other rights or freedoms or repetitive violations.

^{vi} Further see Country Profile, available at:

http://www.echr.coe.int/Documents/CP_Republic_of_Moldova_ENG.pdf

^{vii} Analysis of statistics 2016, p. 42, available at:

http://echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf

^{viii} Analysis of statistics 2016, p. 42.

^{ix} Execution of Judgments of the European Court of Human Rights by the Republic of Moldova, 1997-2012, Legal Resources Center from Moldova 2012, p. 60-62 (“The high number of applications submitted against Moldova could be explained by an increasing level of awareness in the Moldovan society with respect to the activities of the ECtHR, but also by serious dysfunctions in the justice system”). Noticeably, the number of applications against Moldova has gradually decreased. While in 2012 the Court registered a general decrease of the total number of applications, the reasons for such a tendency in Moldova were manifold. First, the applicants expected that the change of government in 2010 would have a positive impact on human rights protection, in particular after the adoption of new laws redressing some systemic violations. Secondly, the decrease could be also related to a high number of applications declared inadmissible and the reluctance of human rights lawyers to appeal to the ECtHR.

^x Execution of Judgments of the European Court of Human Rights by the Republic of Moldova, 1997-2012, Legal Resources Center from Moldova 2012, pp. 115-168.

^{xi} Impact of the European Convention on Human Rights in States Parties: selected examples, PACE, AS/Jur/Inf (2016) 04, 8.01.2016, available at: <http://www.coe.int/en/web/execution/-/the-impact-of-the-european-convention-on-human-rights>

^{xii} Execution of Judgments of the European Court of Human Rights by the Republic of Moldova, 1997-2012, Legal Resources Center from Moldova 2012, p. 42.

^{xiii} Ibidem, p. 45-49.

^{xiv} Ibidem, p. 42.

^{xv} Article 135 para (1) letter g of the Moldovan Constitution and Article 12/1 of the Civil Procedure Code.

^{xvi} *Iordachi and others v. the Republic of Moldavia*.

^{xvii} Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 2013-2014, Report 2015, p. 18.

^{xviii} See i.e. *Liubovi Gudema against the Republic of Moldova*, application no. [16191/07](#) lodged on 3 March 2007 (concerning liability for libelous statements made in the context of criminal investigation); *Andrei Casap against the Republic of Moldova*, application no. [50891/08](#) lodged on 7 October 2008 (concerning damages for undermining the good name of the military).

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- ^{xix} Certain judgments pertain to human rights but the case relied on the breach of other articles of the Constitution; these judgments are marked “indirect” in the generalizing table.
- ^{xx} As of 31 December 2016, Moldova has not ratified Protocol No. 12 to the Convention.
- ^{xxi} The ECHR has only recently interpreted Article 10 of the Convention as including a right of access to information in public interest (*Magyar Helsinki Bizottsag v. Hungary*[GC], no. 18030/11, judgment of 8 November 2016).
- ^{xxii} Which according to the statistical data until 2016 are in decreasing order: right to fair trial, protection of property, inhuman and degrading treatment, liberty and security, effective remedy, effective investigation into inhuman and degrading treatment, respect for private and family life, non-enforcement, freedom of expression, freedom of assembly and of association (http://www.echr.coe.int/Documents/Stats_violation_1959_2016_ENG.pdf).
- ^{xxiii} In 2015 and 2016 alone the CCM notified authorities on 14 occasions on amendments or clarification of law concerning human rights matters, even in cases which did raise as such human rights complaints. See the list of addresses in the CCM’s annual reports.
- ^{xxiv} Judgment no. 6/ 16.04.2015.
- ^{xxv} Judgment no. 23/25.04.2016.
- ^{xxvi} Judgment no. 17/19.05.2016
- ^{xxvii} Judgments no. 27/27.09.2016 and no. 30/01.11.2016.
- ^{xxviii} Judgment no. 33/17.11.2016.
- ^{xxix} Judgment no. 10/10.05.2016.
- ^{xxx} See the list of the CCM’s human rights cases referring to the deficient quality of the law and to legislative omission in the table under Annex 2.
- ^{xxxi} Judgment no. 9/26.05.2009.
- ^{xxxii} See judgment *Tanase v. Moldova*, cited above.
- ^{xxxiii} Judgment no.31/11.12.2014.
- ^{xxxiv} Judgment no. 26/23.11.2010.
- ^{xxxv} Cases no. 56386/10 (<http://hudoc.echr.coe.int/eng?i=001-114364>) and no. 26632/11 (<http://hudoc.echr.coe.int/eng?i=001-148880>).
- ^{xxxvi} Judgment no.12/14.05.2015.
- ^{xxxvii} Judgment no. 3/23.02.2016.
- ^{xxxviii} <http://hudoc.echr.coe.int/eng?i=001-161374>
- ^{xxxix} Article 25 of the Law on the Constitutional Court and Article 38 of the Code of constitutional jurisdiction.
- ^{xl} Article 135 para (1) letter g of the Moldovan Constitution and Article 12/1 of the Civil Procedure Code.
- ^{xli} Judgment no.2/09.02.2016, which also provides for precise admissibility criteria for exceptions.
- ^{xlii} Detailed data is available in the table at Annex 2.
- ^{xliii} The Ombudsman’s institution was created as such in 1997 and underwent a recent reform in 2014; a specialized Children’s Ombudsman was established in 2015.
- ^{xliv} Judgment no.17/02.04.2002.
- ^{xlv} Judgment no.16/18.05.2016.
- ^{xlvi} Article 135(1)g of the Constitution states that the Constitutional Court solves the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice.
- ^{xlvii} See further “Profound changes in the legal system: Constitutional Court of the Republic of Moldova made it possible for every litigant to raise the exception of unconstitutionality” available at: <http://www.bbcj.eu/profound-changes-legal-system-constitutional-court-republic-moldova-made-possible-every-litigant-raise-exception-unconstitutionality/>
- ^{xlviii} Execution of Judgments of the European Court of Human Rights by the Republic of Moldova, 1997-2012, Legal Resources Center from Moldova 2012, Report 2013, p. 12.
- ^{xlix} *Ibidem*, p. 195.
- ^l Rule 19. See also Rule 19(1) introduced by the Decision of the Constitutional Court no. AG 1 of 9 February 2016 stating that the complaints referring to the exceptions of unconstitutionality shall be submitted directly to the Court by the judges/the panel of judges of the Supreme Court of Justice, courts of appeal and ordinary courts examining the case on the merits, and the admissibility of such complaints shall be examined as a priority within 15 days.
- ^{li} Rule 49.
- ^{lii} Interlaken Declaration on the Reform of the European Court of Human Rights (2009).
- ^{liii} Izmir Declaration on *the Future of the European Court of Human Rights* (2010).

^{liv} Brighton Declaration on the Future of the European Court of Human Rights (2012).

^{lv} The amount of compensation and damages, as well as costs and expenses ordered by the European Court of Human Rights to be paid by the Republic of Moldova is significant taking into account the overall economic situation of this country. The data on the financial impact of Court judgments and decisions show that 443 271,60 EUR were spent on this purpose in 2014 and 518 858,94 EUR in 2013. Further see: <http://agent.gov.md/date-statistice/> According to the 2016 Annual Report of the Committee of Ministers on the supervision of the execution of judgments in 2015 the amount of just satisfaction paid by the Republic of Moldova reached 227,339 EUR and in 2016 - 218,337 EUR. Further see:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680706a3d>.