

# Constitutional Court of the Republic of Moldova

Decision no. AG-3 of 3 June 2014  
on the approval of the

## **Rules on the examination of complaints submitted to the Constitutional Court** *(with subsequent amendments)*

*(published in the Official Gazette of the Republic of Moldova no.185-199 of 18.07.2014)*

### **I. GENERAL PROVISIONS**

1. These Rules provide the specific procedure for the examination of complaints submitted to the Constitutional Court (hereinafter – the Court).
2. These Rules shall be applied and construed in line with the provisions of the Law on the Constitutional Court no. 317-XIII of 13.12.1994 and the Code of Constitutional Jurisdiction no. 502-XIII of 16.06.1995.
3. The Judges, the Assistant-judges and the Constitutional Court staff responsible for the management and examination of case files shall preserve confidentiality of the information they have access to throughout the whole examination procedure.

### **II. PROCEDURE TO PREPARE ADMISSIBILITY OF THE COMPLAINT**

4. The complaints submitted to the Court by the subjects entitled by the law, including the judges/the panel of judges of the Supreme Court of Justice, courts of appeal and ordinary courts – in cases of submission of exceptions of unconstitutionality, are transmitted by the Registration, Registry and Archives Service to the President of the Court.  
*[sect. 4 amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*
5. Upon receiving the complaint the President of the Court by a resolution orders the transmission of the complaint to the Court Secretariat to carry out the analysis prior to admissibility.
6. The Secretary General shall assign the complaint to the Legal Expertize Division and coordinates the entire analysis procedure prior to the admissibility thereof.
7. The Legal Expertize Division reviews the complaint within a 15 days term, as a rule, starting with the date of assignment by the Secretary General. In case of necessity the term for examination may be provided by the President of the Court.
8. While performing prior examination of complaints concerning the control of constitutionality of laws, exceptions of unconstitutionality and interpretation of the Constitution, Legal Expertize Division prepares the Analytical Sheet of the complaint, a document for internal use.
9. The Analytical Sheet contains the following structural elements:
  - a) *subject of the complaint* – clearly outlines the provisions of the challenged normative act or the constitutional provisions which interpretation is requested;

*b) nature of the challenged rules* – briefly lays down the essence of the issue covered by the contested norms or by the constitutional rules which interpretation is requested;

*c) constitutional provisions invoked* - indicates direct wording of the articles of the Constitution alleged to be violated;

*d) arguments of the author of the complaint* – briefly and clearly indicates the essence of the problems addressed in the complaint and the information that is considered by the author to be relevant for the complaint;

*e) conclusions on the subject of the complaint* - indicates the scope of the challenged law and the relationship with other legal provisions; the challenged norm is examined in light of constitutional provisions invoked;

*f) relevant international references* – indicates the norms of international acts, expert reports by international bodies, the case-law of the European Court of Human Rights and the jurisprudence of the constitutional courts of other states, if these are relevant for the subject of the complaint;

*g) case-law of the Constitutional Court* – indicates references to the previous judgments or decisions of the Court when it ruled in a case that is similar or even identical to the subject of the complaint;

*h) procedural and substantive conclusions* – clearly indicates the causal link between the contested rules and constitutional provisions alleged to be violated, as well as compliance with the requirements of procedure and form while submitting the complaint.

10. When establishing relevant international sources the Legal Expertise Division collaborates with the Research and Analysis Division.
11. The Analytical Sheet shall be signed by the head of the Legal Expertise Division, head of the Research and Analysis Division and by the Secretary General and shall be transmitted to the President of the Court together with the case file.
12. The President shall dismiss the complaint if in the Analytical Sheet there has been stated that the complaint was lodged by the subject that is not entitled to do so or the complaint is submitted repeatedly and the 9 months term following the date when the subject has withdrawn previously submitted complaint has not yet expired.
13. When examining the complaint prior to its admissibility there may be addressed requests to the authors of the complaint with a view to clarify all the aspects that are crucial for the resolution of the complaint.

### **III. EXAMINATION OF THE ADMISSIBILITY OF THE COMPLAINT**

14. Upon receiving the complaint and the Analytical Sheet related to it, the President of the Court shall assign a judge-rapporteur to examine the complaint, except for the situations indicated in section 12. If necessary the President of the Court may assign several judges-rapporteurs.
15. The complaints submitted on the same or on a similar subject may be joined by a decision of the President of the Court and assigned to a single judge-rapporteur. If this can substantially extend the deadline for the examination of admissibility, the complaints shall not be joined.
16. The Registration, Registry and Archives Service shall transmit the complaint electronically to all the judges and shall indicate the name of the judge-rapporteur assigned by the President of the Court.

17. Upon receiving the complaint and the Analytical Sheet the judge-rapporteur shall examine the contents of both acts and shall develop an opinion on the complaint.

Flegal

18. The judge-rapporteur is assisted by an assistant-judge and, as a rule, by the legal assistant who has drawn the Analytical Sheet.

19. The time limit for the examination of the admissibility of the complaint constitutes 60 days from the date of their registration. In case of necessity, with a view to a further examination of the complaint, at the request of the judge-rapporteur this term may be extended by the President of the Court.

19<sup>1</sup>. 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. The complaint on the exception of unconstitutionality shall be submitted to the Court together with the case-file where it has been raised to ensure extensive examination of all circumstances.

*[sect. 19<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*

19<sup>2</sup>. In the complaint on the exception of unconstitutionality the judge/panel of judges having addressed the complaint shall outline whether:

- a) the object of the complaint falls within the category of normative acts indicated in art. 135 para.(1) pt. a) of the Constitution;
- b) the exception is raised by the parties to the dispute or by their representatives or by the court *ex officio*;
- c) the challenged provisions shall be applied to resolve the dispute;
- d) there is no previous judgment of the Court referring to the challenged provisions.

*[sect. 19<sup>2</sup> introduced by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*

20. If in the process of examination it is stated that the complaint is not complete, it does not provide sufficient information to be declared admissible or it is necessary to clarify certain aspects, the judge-rapporteur may request the author to supplement the complaint and to present answers to particular questions within a definite period of time.

21. At the final stage of the examination of the admissibility of the complaint the President of the Court shall appoint the date of the sitting where the judge-rapporteur will present his opinion on the complaint.

22. The judges are notified by the Court Secretariat with at least 3 days in advance on the date of the sitting on the examination of the admissibility of the complaint.

23. The sitting on the admissibility of the complaint shall be deemed deliberative if the majority of judges of the Court are present. The sitting shall also be attended by the assistant-judge, the Secretary General and the legal assistant having worked the judge-rapporteur.

*[sect. 23 supplemented by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*

24. The admissibility of the complaint shall be examined in a closed sitting, without the participation of the parties.

*[sect. 24 amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*

- 25.** The judge-rapporteur, based on the opinion presented to the Plenum proposes to adopt one of the solutions:
- a)** declares the complaint admissible;
  - b)** declares the complaint inadmissible;
  - c)** joins the admissibility with the examination of the merits of the complaint;
  - d)** decides to reconstitute the complaint.
- 26.** The proposal presented by the judge-rapporteur are adopted by the vote of the majority of present judges.
- 27.** When adopting decisions on the inadmissibility of the complaints the judges may have dissenting opinions.
- 28.** The complaint shall be declared inadmissible if:
- a)** its resolution is not the competence of the Court;
  - b)** there exists already a judgment/decision/opinion of the Court related to the challenged provisions;
  - c)** the challenged provisions have been amended or repealed;
  - d)** the complaint is obviously groundless;
  - e)** the exception of unconstitutionality has been raised without complying with the conditions provided in section 19<sup>2</sup>.
- [sect. 28 amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*
- 29.** The complaint shall be reconstituted by a letter to the author if:
- a)** the complaint is not motivated and fails to contain the object on which the requirements are based;
  - b)** there has not been demonstrated the causal link between the challenged provisions and constitutional norm invoked;
  - c)** the complaint fails to meet the conditions of form;
  - d)** the author of the complaint failed in due time to submit additional information and to answer the questions addressed by the Court.
- 30.** The decision on the inadmissibility of the complaint shall be communicated to the author of the complaint.
- 31.** The decision on the inadmissibility of the complaint shall be published in the Official Gazette of the Republic of Moldova and shall be communicated to the author of the complaint.
- 32.** If the complaint has been declared inadmissible this fact precludes any repeated submission of a new complaint on the same subject and grounds.
- 33.** If the complaint has been reconstituted by the Court there is still a possibility to file a new complaint on the same object and based on the same grounds, in case the subject entitled to submit complaints removes all the deficiencies pointed out by the Court.

#### **IV. PREPARATION OF THE CASE FOR EXAMINATION WITHIN THE PUBLIC HEARING OF THE COURT**

- 34.** The complaints declared admissible are prepared for examination within public hearings.
- 35.** While preparing the case for examination within public hearings of the Court the judge-rapporteur, assisted by the assistant judge and the legal assistant from the Legal Expertize Division requests the relevant authorities to present their points of view referring to the complaint. When requesting the opinion over the complaint the Court, if the case may be, develops questions referring the merits of the case. Failure to present such an opinion in due time does not prevent the Court to examine the complaint.  
*[sect. 35 supplemented by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
- 35<sup>1</sup>.** The opinions submitted to the Court are communicated to the parties that are entitled, within the time limit provided by the Court to present their commentaries over the opinions of the other parties.  
*[sect. 35<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
- 36.** The opinions sent to the Court and referring to the complaint are transmitted electronically by the Registration, Registry and Archives Service to the judges.
- 37.** All the acts sent to the author of the complaint or to the authorities shall be signed by the President of the Court.
- 38.** The judge-rapporteur, following an analysis of the object of the complaint, of the opinions presented by the authorities, of the solutions evolving from doctrine and the relevant national and international case-law elaborates the project of the judgment.
- 39.** Following the preparation of the case for examination, with at least 10 days before the date of the public hearing, the author (s) of the complaint and the rest of participants in the hearing are informed about the place, the date and the time of the hearing. In cases of urgency the participants at the hearing can be informed within a more limited period.
- 40.** Besides the author (s) of the complaint the Court invites to participate at the hearing:
- a)** the representative of the Parliament and, where appropriate, of the President of the Republic of Moldova and of the Government, in case of the control of constitutionality of a law;
  - b)** the representative of the Parliament, in case of the control of constitutionality of a decision of the Parliament;
  - c)** the representative of the President of the Republic of Moldova, in case of the control of constitutionality of a decree of the President;
  - d)** the representative of the Government in case of the control of constitutionality of a government decision;
  - e)** the representative of the Parliament and representatives of other institutions concerned, as decided by the President of the Court, in case of interpretation of a constitutional provision;
  - f)** the judge having raised the exception of unconstitutionality within the proceedings in his custody of the party to the dispute (or the representative thereof) in case the exception of unconstitutionality was raised by the latter. If the exception of

unconstitutionality is raised by a panel of judges, the complaint shall be presented within the public hearings of the Court by a delegated judge from the panel;  
*[sect. 40 p.f) amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*

**g)** third parties intervening.

**40<sup>1</sup>.** The author of the complaint may participate at the hearings in person or may delegate a representative.

*[sect. 40<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 November 2015]*

**40<sup>2</sup>.** The representative of the author of the complaint and the representatives of authorities invited at the public hearings of the Court are admitted if they hold a License Degree in Law, unless the Plenum of the Court decides otherwise. This qualification of the representative shall be proven by the corresponding acts.

*[sect. 40<sup>2</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 November 2015]*

**40<sup>3</sup>.** When delegating more than one representative by the author of the complaint or by the authorities at least one representative shall hold License Degree in Law. The President of the hearing, upon consultations with the representatives of the parties shall decide the order of speeches.

*[sect. 40<sup>3</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 November 2015]*

**40<sup>4</sup>.** In case a single person is appointed for the hearing and that person fails to comply with the requirements provided in section 40<sup>2</sup>, and the Plenum of the Court has not decided otherwise, the President of the hearing shall refuse to admit this person as a party to the public hearings of the Court and to grant the right to deliver a speech.

*[sect. 40<sup>4</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 November 2015]*

**40<sup>5</sup>.** In exceptional situations and at any stage of the process, if the circumstances or the behavior of the appointed representative justify it, the Plenum of the Court may decide that this person cannot participate at the public hearing and the party being represented has to appoint another person.

*[sect. 40<sup>5</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 November 2015]*

**41.** In particular situations the President of the Court may decide to invite the representatives from the institutions other than those indicated in section 40.

**42.** The judge-rapporteur shall present the draft of the judgment to the judges at least 3 days prior to the date of the public hearing. As an exception, the draft judgment may be presented within a shorter period of time.

**43.** With a view to discuss the key issues addressed in the draft judgment. The President of the Court may request a meeting with all judges before the public hearing.

## **V. ACCESSIBILITY OF INFORMATION AND CASE MATERIALS TO THE PARTIES AND TO OTHER INTERESTED PERSONS.**

**44.** All information referring to the judge-rapporteur, assistant judge or the legal assistant providing support to the judge-rapporteur, as well as any other information on the decision-making process are confidential and shall not be publicly displayed.

**45.** The participants at the process are entitled to be accustomed with the materials of the case file. The case file may be offered for studies upon written consent of the President of the Court and takes place in the presence of a dedicated Court employee.

46. The case file may be offered to the parties or to the legal representatives of the parties upon verification of their identities.
47. At the request of the parties or of their legal representatives, the President of the Court may authorize to make certain copies of the case file materials.
48. All the requests to examine the analytical sheets, opinions, draft decisions and draft judgments, as well as other acts prepared in the process of examination of the complaint, including all confidential documents, shall be denied.

## **VI. EXAMINATION OF THE CASE IN A PUBLIC SESSION OF THE COURT**

49. The complaint is examined during the public hearing of the Court within 6 months from the date of submission. At the request of the judge-rapporteur or of the participants, given the well-grounded reasons the term of the procedure may be extended by the President of the Court.
50. The Court examines the complaint in public hearings that are organized as a rule in four sessions: winter, spring, summer and autumn sessions.
51. In urgent cases the complaints may be examined in extraordinary public hearings outside the ordinary sessions.
- 51<sup>1</sup>. The complaints referring to the interpretation of the Constitution, as well as those requesting the opinion of the Court are examined behind closed doors, without the participation of the parties, unless the Court decides otherwise.  
*[sect. 51<sup>1</sup> amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2015]*  
*[sect. 51<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
- 51<sup>2</sup>. The dispositive part of judgments on the interpretation of the Constitution and of the opinions shall be pronounced publicly. The parties are informed regarding the day, time and place of the public pronouncement of the dispositive part.  
*[sect. 51<sup>2</sup> amended by the Decision of the Constitutional Court no. AG-1 of 9 February 2015]*  
*[sect. 51<sup>2</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
52. The complaints prepared for examination are introduced into the Court agenda.  
*[sect. 52 amended by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
53. The draft agenda of the public hearings shall be proposed by the President of the Court and approved by the Plenum of the Court. Any judge may propose amendments to the agenda of the hearings.
54. Press-releases referring to the public hearings of the Court (time, place and the agenda) are placed on the Court's website.
55. The Secretariat of the Court shall submit the agenda of the hearing to the judges as a rule within at least 10 days before it takes place.
56. Court hearings are chaired by the President of the Court. If the President cannot be present in person, he/she shall designate a judge as the chairman of the hearing. The directions given by the chairman of the hearing are binding for the participants and for the persons present.
57. The chairman of the hearings ascertains the presence of the parties, the reasons of their absence, as the case may be, and if necessary verifies the powers of the representatives.

58. Failure of one party to be present, provided that party has been dully notified on the date, time and place of the hearing, does not hinder the Court from examining the case.
59. The chairman of the hearing makes the presentation of the composition of the Constitutional Court examining the case, the name of the clerk and, as the case may be, of the experts and of the interpreter.
60. The chairman of the hearing shall explain to the participants their procedural rights and duties provided by the Code of constitutional jurisdiction and shall present in brief the essence of the case under examination.
61. Within the Court hearings the parties present the facts and legal aspects of the case and their speeches shall not exceed 15 minutes. The chairman of the hearing may limit the time provided for the speeches.
- 61<sup>1</sup>. At the request of the parties the Chairman of the hearing may grand a term up to 15 minutes to develop an opinion on the question addressed by the judges.  
*[sect. 61<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*
62. The chairman of the hearing shall exclude from the proceedings issues that are not related to the case under examination and to the functions of the Constitutional Court. He/she is entitled:
  - a) to interrupt, upon notification, any participant in the proceedings;
  - b) not to admit a question and/or explanation that is not related to the case, to the proceedings or to the competence of the Constitutional Court;
  - c) to curtail the speech of the participant that violates the rules of pleadings, has an inadequate behavior, violates other rules of procedure within constitutional jurisdiction;
  - d) to order the removal from the court-room of any person that violates the legal and regulatory provisions, as well as the rules of judicial ethics.
63. Following the concluding speeches of the parties the chairman of the hearing announces withdrawal of judges into the counselling room for deliberations. The participants are informed about the place, date and time when the dispositive part of the judgment shall be pronounced.
64. The dispositive part of the judgment is pronounced by the chairman of the hearing.

## **VII. DELIBERATIONS**

65. The judges of the Court deliberate in the counselling room and deliberation is secret.
66. In the counselling room the judge-rapporteur, prior to the voting of the dispositive part, shall present the facts and the legal aspects relevant for the decision-making process.
67. After the judge-rapporteur has presented the information, the judges are invited to speak on the case under examination.
68. In the counselling room the judges are also assisted by the Secretary General, assistant-judge and the legal assistant that may present the facts of the case and may offer information related to the provisions of the national and international legislation as well as the relevant constitutional case-law. They may also provide answers to the questions referring to the case raised by the judges.



69. Following the conclusion of deliberations, the chairman of the hearing asks the judges to vote on the proposals of the judge-rapporteur and of other judges. The chairman of the hearing votes the last. The judge of the Court is not entitled to abstain from voting and the chairman of the hearing. The dispositive part of the judgment is voted only by the judges.
70. If during deliberations it is registered a tie vote, the chairman of the hearing may decide to resume the examination of the case in order to consider new arguments or circumstances that are essential for the case. The case may be also examined repeatedly in other situations when the judges note the need for further examination. In this case the chairman of the sitting announces discontinuation of the hearing or postpones the examination of the case.
71. Following the voting of the dispositive part of the judgment the text of the judgment is revised to make it final, with the participation of the Secretary General, the assistant-judge and the legal assistant that has worked with the judge in the process of examination of the case.
72. On the day of pronouncing of the dispositive part of the judgment a press release and usually the dispositive part of the judgment are placed on the Court's website.
- 72<sup>1</sup>. The dispositive part of the judgment shall be communicated to the parties and to the third parties interested in the case.  
*[sect. 72<sup>1</sup> introduced by the Decision of the Constitutional Court no. AG-2 of 23 June 2015]*

#### **VIII. PUBLIC STATEMENTS FOR THE MEDIA**

73. At the moment of submission of complaints to the Constitutional Court, as well as following the public hearings of the Court public statements for the media may be made within the Court premises only by the representatives of the Court. The authors of complaints and other participants at the proceedings are entitled to make public statement within the Court premises only following direct authorization of the Court.  
*[Chapter III introduced by the Decision of the Constitutional Court no. AG-1 of 9 February 2016]*