Rapport national / National report / Landesbericht / национальный доклад

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REPORT OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA TO THE XVIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

VIENNE, MAY 12-14, 2014

COOPERATION OF CONSTITUTIONAL COURTS IN EUROPE – CURRENT SITUATION AND PERSPECTIVES

REPLY TO THE QUESTIONNAIRE FOR THE NATIONAL REPORTS

I. Constitutional Courts between constitutional law and European law

1. Is the Constitutional Court obliged by law to consider European law in the performance of its tasks?

The process of establishment and strengthening of the Republic of Moldova as an independent and democratic state (which started in 1991), subject of international law, lead to the internationalization of national law, particularly in the field of protection of human rights and fundamental freedoms.

Over the years the Republic of Moldova has ratified a number of international treaties and conventions (within the United Nations, the Council of Europe as well as within other international bodies). The unanimously recognized principles and norms of international law to which the Republic of Moldova is a party form constituent body with domestic law, while the contents of the provisions of international treaties determine their position within hierarchical scale of domestic legal order.

The Republic of Moldova can never appeal to the provisions of its internal law in order to justify non-compliance with an international treaty to which it is party. International treaties are enforced in good faith following the principle *pacta sunt servanda.* The provisions of international treaties, which are likely to be applied to legal relations without any need to adopt special regulations, are directly applicable and enforceable within the legal and judicial systems of the Republic of Moldova.

The impact of the international law upon domestic law became more prominent following the adoption on 29 July 1994 of the Constitution of the Republic of Moldova. An analysis of constitutional provisions in terms of the relationship between national law and international law highlights the particular importance of international legal instruments, including European, for national legal relations. According to Article 4 par. (1) of the Constitution of the Republic of Moldova, *Constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with* the Universal Declaration of Human Rights, other conventions and treaties to which the Republic of Moldova is a party. This provision entails legal consequences and provides that law enforcement authorities, including the Constitutional Court and the courts of common jurisdiction, within the limit of their competence, are entitled to apply the provisions of international law, in situations provided by the law, in the process of examination of concrete cases. Article 4 par. (2) of the Constitution refers to the correlation between international legal provisions and constitutional norms on fundamental human rights, granting priority to international provisions in case of any discrepancy.

The conclusion is that the constitutional rule cited prioritize international regulations to which the Republic of Moldova is a party whenever there is a conflict between the conventions and treaties on human rights and the domestic laws. The above mentioned constitutional solutions emphasize the commitment of the State to adopt international regulations and subsequently proves responsiveness to their possible and predictable dynamics.

According to the Judgment of the Constitutional Court no. 55 of 14 October 1999 on the interpretation of certain provisions of Article 4 of the Constitution, the Constitutional Court held that *"the given provision entails legal consequences while assuming, first of all, that law enforcement authorities, including the Constitutional Court […] in the process of examination of concrete cases are entitled to apply international law provisions […]granting priority to the international provisions in case of any discrepancy".*

In addition it can be noted that Article 8 of the Constitution prescribes the requirement to comply with international commitments, entailing Republic of Moldova to respect the United Nations Charter and the treaties to which it is part, to institute relationships with other states on the basis of unanimously recognized principles and norms of the international law. Thus by way of constitutional regulations the provisions of international conventions on human rights have acquired a special status, holding in the hierarchy of normative acts a place equivalent to the Fundamental Law and having, in case of discrepancy, superior value over national provisions.

Subsequently, according to the constitutional provisions the Constitutional Court possesses necessary mechanisms to enrich the entirety of guarantees and ways to protect the safeguarded rights and fundamental freedoms, namely through constitutional litigations settled and judgments delivered; in this manner national constitutional jurisprudence is an "effective and stimulating agent" of the process of assimilation and implementation of international law.

2. Are there any examples of references to international sources of law?

a) the European Convention for the protection of Human Rights and Fundamental Freedoms

In view of the above it can noted that the Constitution of the Republic of Moldova does not directly refer to the European Convention on Human Rights and Fundamental Freedoms. Nevertheless, the words *"other treaties to which the Republic of Moldova is a party"* stipulated in Article 4 of the Constitution entails a reference to this international instrument as well.

On 13 July 1995 the Republic of Moldova became a full member of the European Council, and by the Parliament Decision of 24 July, 1997, the Republic of Moldova has ratified the European Convention on Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), signed in Rome on 4 November 1950, as well as the Additional Protocols. At present Protocols no. 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, following their ratification, are in force for Republic of Moldova.

Given the constitutional provisions, the European Convention on Human Rights is directly applicable within national constitutional jurisprudence, and the provisions of Article 3 - prohibition of torture; Article 6 - Right to a fair trial; Article 8 - Right to respect for private and family life; Article 10 - Freedom of expression; Article 11 - Freedom of assembly and association; Article 13 - Right to an effective remedy; Article 14 - Prohibition of discrimination; Protocol 1 - Protection of property, right to education, right to free elections the were most frequently evoked. Relevant judgments of the Constitutional Court, which solution has been determined by the safeguards of the European Convention on Human Rights, will be cited bellow.

b) the Charter of Fundamental Rights of the European Union

The Republic of Moldova is not a member of the European Union and its legislation does not comprise any references to the Charter of Fundamental Rights of the European Union. Still the values of respect for human dignity, freedom, equity and solidarity, democracy and the rule

of law outlined in the Charter of the European Union have been followed by the Constitutional Court as a guiding principle while determining the unconstitutionality of the staying in office of the Prime Minister of a Government dismissed for suspicion of corruption (Judgment no. 4 of 22 April 2013 on constitutional review of the Decrees of the President of the Republic of Moldova No. 534-VII of 8 March 2013 on the dismissal of the Government, in the part concerning the staying in office of the Prime Minister dismissed by a motion of no confidence (on suspicion of corruption) of 8 March 2013 until the formation of the new government and No. 584-VII of 10 April 2013 on the nomination of the candidate for the office of Prime Minister). Thus, taking into consideration that the above mentioned principle constitutes the basis of the foreign policy of the European Union, it fully integrates with the conception of reformative measures adopted by the Republic of Moldova in the context of its foreign policy for European integration in the field of rule of law and respect for fundamental rights and freedoms.

c) other instruments of international law at European level

The Constitutional Court states that besides references in its case-law to the Convention on Human Rights and Fundamental Freedoms, it also grounds its judgments on the provisions of other instruments concluded within the Council of Europe, more often citing:

- European Charter of Local Self-Government;

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

- Criminal Law Convention on Corruption;

- Civil Law Convention on Corruption.

Subsequently, in order to substantiate its judgments, the Constitutional Court also relies on the arguments contained in the resolutions and recommendations of the Council of Europe. These arguments were evoked in the judgments focusing on *the judiciary system, enforcement of court decisions, temporary protection on administrative matters granted by the court, the rights and duties of the opposition in a democratic parliament.*

In addition to the above mentioned international instruments there can be noted the assessments provided by the Venice Commission in its reports, which constitutes undutiful source for the Constitutional Court in addressing issues related to constitutional justice, rule of law, fundamental rights and freedoms, the judiciary, freedom of association, parliamentary immunity, the right of legislative initiative etc. Moreover, in the process of examination of the complaints related to the interpretation of constitutional provisions concerning *the election of the President and the dissolution of the Parliament in case of failure to elect the President*, as well as when examining legal provisions on *prohibition of communist symbols*, *elimination of the immunity of judges for infringements of corruption,* the Constitutional Court has benefitted from the *Amicus Curiae* opinion of the Venice Commission *(Judgment no. 17 of 20 September 2011 on the interpretation of Article 78 of the Constitution, Judgment no. 12 of 4 May 2013 on the constitutionality of provisions prohibiting communist symbols and promoting totalitarian ideologies, Judgment no. 22 of 5 September 2013 on constitutional review of some legal provisions related to the immunity of the judge).*

d) other instruments of international law in force at international level

According to Article 4 of the Constitution, constitutional provisions related to human rights and fundamental freedoms shall be interpreted and applied in accordance with:

- the Universal Declaration of Human Rights;

- the covenants to which the Republic of Moldova is a party;

- other treaties to which Republic of Moldova is a party.

The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948, solemnly states the fundamental rights and freedoms to be guaranteed to any person, being conceived as "a common standard of achievement for all peoples and all nations". The Declaration was the basis for the codification of a separate branch of

international law, as expressed by the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*. These instruments have been ratified by the Parliament Decision of 28 July 1990 and entered into force for the Republic of Moldova on 24 April 1993, being regularly cited in the jurisprudence of the Constitutional Court when the issue of constitutional litigations referred to the principle of equality and non-discrimination, free access to justice, freedom of the person, presumption of innocence, right to intimacy, private and family life, freedom of assembly and association, right to education.

More than that, in its case law the Constitutional Court cited other international instruments concluded within the United Nations, such as:

- *Convention to Eliminate All Forms of Discrimination against Women*;
- *Convention concerning Discrimination in Respect of Employment and Occupation*;
- *Convention against Discrimination in Education;*
- *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment*;
- *Convention against Corruption*.

3. Are there any specific provisions of constitutional law imposing a legal obligation on the Constitutional Court to consider decisions by European courts of justice?

There are no provisions in national constitutional law that would require directly to apply the case law of the European Court of Human Rights (ECtHR) in the national constitutional jurisprudence. However, the essence of the rights guaranteed by the European Convention on Human Rights and its additional protocols is defined in the case law of the European Court which, by way of interpretation, has substantially expanded the application of these rights. While the European Court relies on precedent, the interpretation of the Convention is evolutionary and therefore subject to continuous change.

Given the fact that the European Court case law and the provisions of the European Convention on Human Rights cannot be perceived separately, the need to consider them, for the reasons stated above, is implied out of the provisions of article 4 par. (2) of the Constitution providing that "Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations".

In that respect, in its Judgment no. 42 of 14 December 2000, the Constitutional Court stated that "[...] following the ratification by the Republic of Moldova of the European Convention on Human Rights, *the jurisprudence of the European Court of Human Rights became mandatory for our country*". Subsequently, in its Judgment no. 10 of 16 April 2010 to review the Judgment of the Constitutional Court no. 16 of 28 May 1998 "On the interpretation of Article 20 of the Constitution", the Constitutional Court noted that ***"international legal practice [...] is mandatory for the Republic of Moldova, as a state which acceded to the European Convention on Human Rights and Fundamental Freedoms"***.

Following an assessment in the latest period of the degree of adjustment of its own jurisprudence to the European Court case law it can be noted that the latter constitutes a genuine source of law for national constitutional jurisdiction which is applied with priority irrespective of the state against which ECHR judgment has been issued.

4. Is the jurisprudence of the Constitutional Court influenced in practice by the jurisprudence of European courts of justice?

It is noted that the jurisprudence of the European Court of Human Rights and the provisions of the European Convention on Human Rights are not just relevant in determining a particular solution adopted by the Constitutional Court, in some circumstances they have a leading role and guide the examination of a constitutional litigation. This occurs in particular when the constitutional dispute refers to the core issue of guaranteeing and respecting a

constitutional right safeguarded by the Constitution and the European Convention on Human Rights.

Still there are numerous judgments of the Constitutional Court that have resolved the complaints on unconstitutionality of the provisions infringing the right to property, principle of equality and non-discrimination, rights to defense, free access to justice, fair trial within reasonable time, freedom of assembly and association .

The Constitutional Court in its decisions is not just evoking the provisions of the European Convention on Human Rights, it cites the jurisprudence of the European Court on the interpretation of particular provisions of ECHR.

Accordingly, in its judgments of significant relevance Constitutional Court has also analyzed exceptions to various rights and freedoms, grounding its decisions not only on constitutional provisions, but also on the provisions of the Convention and on the jurisprudence of the Strasbourg Court.

For instance, in its Judgment no. 19 of 18 December 2012, the Constitutional Court pointed out that: "24. [...] although settlement of particular disputes between particular people represents an exclusive responsibility of the courts, which are the sole authorities able to appreciate *in concreto* the effects of a rule application to a given situation brought before court, when appreciating the appealed rule in terms of both constitutional provisions and the provisions of the European Convention on Human Rights, the Constitutional Court delivers its decision taking into consideration the ability of the legal norm to meet *in abstracto* the provisions of the Constitution and of ECHR, considering in the same time the potential effects and risks that the given norm could have upon its recipients".

However, it should be noted that the reference to the European Court setting a minimum level of protection does not preclude establishment of a higher level of protection for fundamental rights and freedoms by the rulings of the Constitutional Court. Accordingly, when examining the constitutionality of the complaint related to the legal norms on "the bailiff's license", in which case the Government requested its rejection due to the fact that bailiffs are excluded by their status from protection of fundamental rights guaranteed by the European Convention on Human Rights, the Constitutional Court in its Judgment no. 19 of 18.12.2012 stated: "28. [...] European Convention in Article 53 (Safeguard for existing human rights) directly recognizes the right of states to provide higher protection than the one offered by the European Convention: "Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party."

The judgments of the Constitutional Court which solutions have been grounded on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms contributed to the emphases of the importance of these international rulings as referred to in the legal framework on human rights, as well as to the assurance of a fair interpretation and application of these rules by national courts in light of constitutional provisions of Article 140 which prescribe the binding nature of the decisions of the Constitutional Court .

It should be noted that while performing constitutional review of legal provisions related to human rights and fundamental freedoms of a person, the judgments of the Court of constitutional jurisdiction of the Republic of Moldova consolidates the principle of direct applicability of the European Convention on Human Rights and of the jurisprudence of the High Court, thus exercising a significant contribution for an effective integration of the provisions of the European Convention on Human Rights within national regulations on human rights involving the mechanism of constitutional review of the regulatory framework based on the position of the Constitutional Court as negative legislator.

Subsequently, continuous evolution of the jurisprudence of the European Court determined Constitutional Court in some particular situations to reconsider its case-law. As an example of such situation could be cited the *Judgment of the Constitutional Court no. 10 of 16.04.2010 on revision of the Judgment of the Constitutional Court no. 16 of 28.05.1998 "*On interpretation of Article 20 of the Constitution of the Republic of Moldova, as amended by Judgment no. 39 of 09.07.2001", where the Court held that individual administrative acts

delivered by the Parliament, the President of the Republic of Moldova and the Government in the exercise of their powers were directly prescribed by the constitutional or legislative rules pertaining to the selection, appointment and dismissal of civil service officials, exponents of a particular political interest, can be subject to constitutional control based on referral by subjects entitled to this right, but should be considered only formally. Nevertheless there was another argument of external nature that conditioned the necessity to review the previous judgment of the Constitutional Court, namely modification of the jurisprudence of the European Court, displayed in the case *Pellegrin v. France* by way of the Judgment *Vilho Eskelinen and others v. Finland*, which has been examined directly by the Grand Chamber. In its Judgment the Constitutional Court cited the following reasons:

> "The need to review the Judgment […] are the possible contradictions between the case law of the Constitutional Court of the Republic of Moldova and the case law of the ECHR as a result of changes in recent years in its case law. The situation described is to be solved by the Constitutional Court to avoid deviations from the international legal practice, which is mandatory for the Republic of Moldova, as a state which acceded to the European Convention on the Protection of Human Rights and Fundamental Freedoms.
>
> [...]
>
> Thus, considering the consistent, interdependent and synchronous case law of the Constitutional Court of the Republic of Moldova against the ECHR case law, it is logical to adopt this decision, as it is necessary for Moldova to be able to pass the "Eskelinen test" […].
>
> [...]
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> Thus, the revision of the Judgment no.16 of 28.05.1998 is dictated both by the Constitution, and by the new case law of ECHR, as well as by the need for Moldova to pass the "Eskelinen test". […] For the purpose of this interpretation, the national and international law are a unitary structure in the Republic of Moldova. Thus, the category of normative acts also includes international regulations to which the Republic of Moldova is a party. Given that by interpretation of the European Convention, the ECtHR case law is part of accessory law to the international treaty (soft law), it becomes part of domestic law as well. Therefore, the amendment to ECHR is equivalent to amendments to legislative acts, which allows the Constitutional Court, under Article 72 of the Code of Constitutional Jurisdiction, to reconsider its own case law."

5. Does the Constitutional Court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?

Starting with 2010 the Constitutional Court referred to the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights in most of its decisions. The phenomenon increased starting with 2011, when the structure itself of the Constitutional Court's judgments has been changed, faithfully reproducing the structure of the judgments of the European Court of Human Rights.

The Constitutional Court relies on the jurisprudence of the European Court whenever it considers it appropriate depending on the subject of the complaint. A practical analysis shows that the majority of the articles of the European Convention on Human Rights were referred to, namely:

● *Prohibition of torture (Article 3 of ECHR)*

When the Court has recognized as unconstitutional certain provisions of the Criminal Code and of the Enforcement Code aimed to establish and apply the safety measure of "*Chemical castration*" of the offenders who would attempt on sexual inviolability of other people, including minors, for the purpose of removing a danger and preventing the facts provided by the criminal law, it has been noted that according to Article 3 of the European Convention on Human Rights no one shall be subjected to torture or inhuman or degrading punishment or treatment, while this prohibition is of an **absolute nature**. Article 3 of the European Convention on Human Rights contains no provision for exceptions and no derogation from this rule is permitted under Article

15 § 2 even in the event of a public emergency threatening the life of the nation (see ECHR judgments *Selmouni v. France of 28 July 1999*, *Assenov and Others v. Bulgaria of 28 October 1998, Peers v. Greece of 19 April 2001*). Similarly, following the judgments of the European Court on the respect for the human dignity while applying medical treatment, the Court held that as it is an interference in the health domain that has to be applied to a mentally sound adult, chemical castration should be carried out only with the free consent and upon full information of the person involved. *(Judgment of the Constitutional Court No. 18 of 4 July 2013).*

● *Right to liberty and security (Article 5 of ECHR)*

While examining Article 5 of the European Convention on Human Rights in conjunction with Article 14 hereto, the Court recalled that according to the European case law ***the use of deprivation of liberty as a disciplinary sanction that might be imposed on military personnel, despite on civilians, did not result in any discrimination incompatible with the European Convention, because the conditions and demands of military life were by nature different from those of civil life*** (see *Engel and Others v. the Netherlands, cited above, § 73*). *(Judgment of the Constitutional Court No. 12 of 1 November, 2012)*

● *Right to a fair trial (Article 6 of ECHR)*

Following an analysis of the principle of free access to justice in conjunction with the provisions of the Code of Civil Procedure, which provide for the observance of the preliminary procedure in cases prescribed by the law, the Constitutional Court stated in terms of the jurisprudence of the European Court ***that the right of access to the courts is not absolute, it may be subject to limitations including of procedural nature, as long as these limitations are reasonable and proportional with the aim pursued, as well it is important that the limitations did not affect the core essence of that right.*** The right of access to a court requires, by its very nature, to be regulated by the State, regulation which may be variable in time and space, depending on the needs and resources of the community and individuals (*Ashingdane v. the United Kingdom*). In this context the Constitutional Court stated that in light of the judgments of the European Court access to justice may be limited, particularly by way of establishing rules of admissibility, where the State enjoys a certain margin of appreciation. These limitations must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (*Guérin v. France, 29 July 1998, § 37*). *(Judgment of the Constitutional Court No. 14 of 15 November, 2012).*

The Law No. 153 of 5 July 2012 amending and supplementing certain legislative acts, including Art. 25 of the Law on the Superior Council of Magistracy in terms of restraining the right to access to justice of the magistrates by introducing the right to appeal only in the part referring to the procedure of delivering/adopting the decisions by the Superior Council of Magistracy. When examining the constitutionality of the given provisions the Constitutional Court referred to the Judgment of the European Court of Human Rights of 19 April 2007 in case *Eskelinen v. Finland*. In this judgment, the Strasbourg Court held that Member States of the Council of Europe may not only restrict the applicability of Article 6 §1 in respect of certain categories of civil servants, but may even exclude the applicability of safeguards afforded by Article 6 §1 in respect of certain categories of civil servants whose duties typify the specific activities of the public service. The states may introduce such restrictions in case there is objective reasons related to the interest of the State in this respect. Thus the Constitutional Court held that in this particular case the Parliament of the Republic of Moldova has stated justly that the Superior Council of Magistracy (SCM) shall observe all procedural safeguards (afforded in Article 6 §1 of the European Convention on Human Rights) while examining the merits of the appeals of the magistrates and the Supreme Court of Justice shall examine the appeals against the decisions delivered by SCM in the part related to the legal issues. In this regard the Parliament stated that the Superior Council of Magistracy, which is an elected body that is composed mainly of judges elected by the whole community of judges, meets all the criteria to act as an

independent and impartial court, appointed by law. *(Judgment of the Constitutional Court No.17 of 2 July 2013)*

● *Right to respect for private and family life (Article 8 of ECHR)*

The Constitutional Court had evoked the jurisprudence of the European Court on the protection of personal data, including medical records when declaring unconstitutional legal provisions specifying the names of diseases and physical defects in the Medical Scales provided in the Appendix no. 2 to the Regulation on military medical expertise within the Armed Forces of the Republic of Moldova; this reference is of a fundamental importance for a person to enjoy the right to respect private and family life as safeguarded in Article 8 of the Convention. When examining the given legal provisions the Constitutional Court referred to the case *Z. vs Finland, Judgment of 02.25.1997*, according to which "without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community. […] ***The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 § 1of the Convention***". *(Judgment of the Constitutional Court No.13 of 6 November 2012)*

● *Freedom of thought, conscience and religion (Article 9 of ECHR)*

In relation to Article 9 of the European Convention on Human Rights, the Constitutional Court referred to the European case law when founding that certain restrictions on conduct and attitudes motivated by religion, although they could not be imposed on civilians, were acceptable in the army. The Court held that ***in choosing to pursue a military career, members of the armed forces have accepted on their own a system of military discipline and the limitations of rights and freedoms implied by it*** (see *judgments Kalaç v. Turkey of 1 July 1997, § 28, and also Larissis and Others v. Greece of 24 February 1998, §§ 50-51*, concerning proselytizing in the army). (*Judgment of the Constitutional Court No.12 of 1 November, 2012)*

● *Freedom of expression (Article 10 of ECHR)*

When examining the constitutionality of the legal provisions on prohibition of the symbols of totalitarian communist regime and of promoting the totalitarian ideologies, the Constitutional Court, as previously, referred to the jurisprudence of the European Court holding that due to the role of ***political parties for the social and political life of the country, the sole associations that are able to exercise the power, they are capable to influence the political regime of the State.*** Political parties, through society projects of global model which are being offered to the voters and using their ability to implement these projects once they acquire necessary power, are distinctive from any other organizations acting in the field of politics *(the case Prosperity Party and Others v. Turkey).*

In order to motivate its position the Constitutional Court referred to numerous cases in the European Court case law concerning the displaying of a symbol of a political movement, within Article 10 of the European Convention on Human Rights: *Vajnai v. Hungary, judgment of 8 July 2008 (see § 53 of this judgment) Fratanolo v. Hungary, judgment of 3 November 2011, and Faber v. Hungary, judgment of 24 July 2012. (Judgment of the Constitutional Court No.12 of 4 June 2013)*

In the process of constitutional review of some provisions of the Broadcasting Code, according to which the decisions of the Council for Coordination on the Audiovisual Activity are enforceable since delivering, the Constitutional Court has examined some general principles on the pluralism in audiovisual media and, taking into consideration the case law of the European Court, has noted that freedom of expression secured in paragraph 1 of Article 10 constitutes one

of the essential foundations of a democratic society and one of the basic conditions for its progress (*Lingens v. Austria, judgment of 8 July 1986, § 41*). Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive (see, for example, *Handyside v. United Kingdom of 7 December, 1976 § 49,* and *Lingens, cited above, §§41-42*). Thus, the Court held that the suspension or withdrawal of the broadcaster's license is likely to impair the procedural safeguards granted to the broadcasters under Article 10 of the Convention and is not compatible with the rule of law. The Court noted in this case that ***due to the fact the purpose of the procedure constitutes temporary or permanent withdrawal of the license granted to a broadcaster, this fact unquestionably involves an interference with the freedom of expression, safeguarded by article 32 of the Constitution and Article 10 of the European Convention on Human Rights*** (*Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey (no. 2) of 12 October 2010*). *(Judgment of the Constitutional Court No. 17 of 6 December 2012)*

● *Freedom of assembly and association (Article 11 of ECHR)*

Similarly, when declaring certain legal provisions on prohibition of the symbols of totalitarian communist regime and of promoting the totalitarian ideologies unconstitutional, the Court took into account the principles encumbered in Article 11 and had emphasized that there is no democracy without pluralism. Therefore the ideas expressed by political parties safeguarded by the provisions of Article 11 of the European Convention on Human Rights represents a joint manifestation of the freedom of expression, which implies their protection under the provisions of Article 10.

Constitutional jurisprudence referred to the case law of the European Court noting that it is particularly important to have a free flow of opinions and information during election campaigns. Thus he Court cited the case *Bowman v. United Kingdom* where European Court stated:

> "[...] Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41–42). The two rights are inter-related and operate to reinforce each other: for example, as the Court has observed in the past, freedom of expression is one of the "conditions" necessary to ensure the free expression of the opinion of the people in the choice of the legislature. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely [...]"

However, the Constitutional Court stated that the European Court in its case law held that "states have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention. ***The limits of freedom of association under Article 11 impose a restrictive interpretation due to the fact that only convincing and compelling reasons could justify any restriction on its exercise***" (*case Sidiripoulos and Others v. Greece, § 40*). (*Judgment of the Constitutional Court No.12 of 4 June 2013*)

● *Prohibition of discrimination (Article 14 of ECHR)*

The Constitutional Court relied on this principle when it was appraised to examine the legal provisions that imposed prohibitions on the military - males to be entitled to parental leave. Taking into consideration the case-law of the European Court in the matter of Article 14 of the Convention (*Burghartz v. Switzerland on 22 February 1994, § 27 and Schuler - Zgraggen v. Switzerland from June 24, 1993, etc.*), the Constitutional Court noted that only that very weighty reasons would have to be put forward before a difference of treatment could be regarded as compatible with the Convention.

Taking ECHR Judgments in *Smith and Grady v. United Kingdom*, § 89, and *Lustig - Prean and Beckett v. United Kingdom, § 82, of 27 September 1999*, the Constitutional Court reiterated that ***as the proper functioning of an army is hardly imaginable without legal rules designed to prevent service personnel from undermining it, national authorities cannot rely on such rules to frustrate the exercise by individual members of the armed forces of their right to respect for their private lives,*** which right applies to service personnel as it does to others within the jurisdiction of the State. The Court held that ***the refusal of authorities to recognize the right to parental leave of the applicant, who was a male military servant, as related to female military personnel which has this right recognized constitutes a violation of Articles 14 and Article 8 of the Convention*** (*Konstantin Markin v. Russia, Judgment of the Grand Chamber of 22 March 2012; Hulea v. Romania of 2 October 2012*). Referring to Article 14 in conjunction with Article 8 of the European Convention on Human Rights, the Constitutional Court held that limiting the entitlement of male military personnel to the parental leave, while female military personnel are entitled to such right, cannot be considered as objective or reasonable justification. Therefore the Court concluded that this difference constitutes discrimination on the basis of sex. *(Judgment of the Constitutional Court No. 12 from November 1, 2012)*

The Constitutional Court also referred to the European case-law while exercising constitutional review of the legal provisions, according to which the establishment of the retirement pension with teachers represent one of the additional grounds for the termination of employment. In this respect, the Constitutional Court noted that according to the jurisprudence of the European Court of Human Rights ***Article 14 has no independent existence in the sense as it relates solely to "rights and freedoms set forth in the Convention"***, *("Relating to certain aspects of the laws on the use of languages in education in Belgium " v. Belgium, 23 July 1968, series A no. 6, § 9).* Subsequently the protection under Article 14 of the Convention is ancillary to the material rights as defined by the Convention, except for the right to work. *(Judgment of the Constitutional Court No. 5 of 23 April 2013)*

● *Protection of Property (Article 1 of Protocol no. 1)*

When examining the legal provisions regarding the suspension of the bailiff's license by the Minister of Justice for violation of the law without involving the Disciplinary Board which is mandated with such a competence, the Constitutional Court applied *mutatis mutandis* the reasoning of the European Court in cases *H. v. Belgium of 30 November1987* and *Buzescu v. Romania of 24 May 2005* and noted that holding a bailiff's license involves the right to form **his/her own patronage** in the process of carrying out the powers stipulated by law and in this regard it may be assimilated to the right to property safeguarded in Article 46 of the Constitution and Article 1 of Protocol no. 1 to the European Convention on Human Rights.

Furthermore, the Constitutional Court held that, despite the fact that the bailiff's activity is not an entrepreneurial one, holding this license offers "a legitimate and reasonable hope" regarding its character and the **possibility of obtaining long-term benefits, which could result from practicing this activity on continuous basis**, therefore, the alleged norms, in the way they were laid down, have been declared unconstitutional. *(Judgment of the Constitutional Court No. 19 of 18 December 2012)*

Similarly, the above mentioned reasoning of the European Court were held by the Constitutional Court in the process of constitutional review of some provisions of the Law on notaries in the part concerning disciplinary actions (suspension or revocation of license) by the Minister of Justice, based on the decision of the Disciplinary Board. The Constitutional Court considered it necessary to examine the text of the norms that were subject of constitutional review, according to the following: 1) if the notary's license constitutes a "property" in the meaning of the Article 46 of the Constitution and Article 1 of Protocol no. 1 to the European Convention on Human Rights; 2) if the suspension and revocation of a notary's license by the order of the Minister of Justice, according to the decisions of the Disciplinary Board, as well as ordering the closure of a notary's office by the order of the Minister of Justice in cases of revocation of the license and noncompliance with the requirements provided by Article 9 of the

Law on notary represents an interference in the right to property; 3) in case of an interference, whether it is predictable, accessible, clear and provided by law; 4) whether the interference is proportional to the aim pursued. Following this analysis, despite the discretion of the state in regulating notarys' activity, once the suspension and revocation of the license is entrusted with the Disciplinary Board and is mandated by law which decides through proceedings to ensure compliance with procedural safeguards, the act of the Minister of Justice being delivered only after the interference of the professional body and being liable of challenge in court, the Constitutional Court held that the way the challenged provisions are laid out leaves no room for abusive implementation and do not contradict the Article 46 combined with Article 54 of the Constitution. *(Judgment of the Constitutional Court No. 15 of 20 June 2013)*

● *Right not to be repeatedly tried or punished (Article 4 of Protocol No. 7)*

When examining the constitutionality of some provisions of Article 320 of the Criminal Code referring to criminal sanction for intentional failure or evasion from execution of court's judgement, if it was committed following the application of an administrative sanction, the Constitutional Court has noted that the European Court, in its jurisprudence, recalls that Article 4 of Protocol No. 7 aims to prohibit iteration of criminal proceedings which were definitely closed, thus avoiding a person to be tried or punished twice for the same offense (*Gradinger v. Austria, Judgment of 23 October 1995*). Therefore, ***the principle non bis in idem can be invoked only if at least two independent different proceedings concerning the same charge have been finalized with more than one conviction*** (*Decision Stanca v. Romania of 27 April 2004*).

The Constitutional Court held that, according to the jurisprudence of the European Court, most offenses are falling within the scope of "criminal matter" of the European Convention on Human Rights. Thereby, the European Court decided that, despite decriminalization of certain offences, the character both preventive and coercive of the administrative sanctions is sufficient to determine the criminal nature of the offense, in accordance with Article 6 of the European Convention on Human Rights (*Peresen v. Denmark, 14 September 1998*). Consequently, not only the guarantees provided by Article 6 in criminal matters (including the presumption of innocence), but also other more general guarantees (Article 7 of the Convention, the double degree of jurisdiction etc.), including the principle of *non bis in idem* are applicable. Therefore, a person that has been subject to administrative sanctions can not be criminally investigated (even if he/she would be acquitted) for the same offence. However, referring to the effective application of sanctions for failure to enforce a final judgment, the Constitutional Court noted that the European Court for Human Rights held, in its jurisprudence**, that failure to carry out a legal obligation represents an immediate offence that is completely consumed by omitting to perform the action prescribed by law.** Such an offense is committed **at a certain time** by a **single fact**. These reasons are subject to Judgment of the European Court in the case *Smolickis v. Latvia of 27 January 2005*, where the Court ruled on repeated sanction of a person for failure to carry out a legal obligation to submit the financial statement. Similarly, the European Court noted that Article 4 of Protocol No. 7 of the European Convention on Human Rights prohibits the repeated sanction of a person for the same conduct and does not exclude successive sanction, based on the conduct manifested at different rounds, even if in substance they have identical or similar nature (Judgment *Smolickis v. Latvia* and Judgment *Raninen v. Finland of 7 March 1996*).

In this context, applying *mutatis mutandis* the reasoning of the European Court in the Judgment *Smolickis v. Latvia*, the Court held that the first sanction under the provisions of the Article 318 of the Administrative Code and the second one under the provisions of Article 320 of the Criminal Code are referring to distinctive periods of time and there is no overlapping between them, even if the failure of the sanctioned person to enforce of the court's judgment took place earlier, during and between those two periods. *(Judgment of the Constitutional Court No. 13 of 11 June 2013)*

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice

The constitutional justice of the Republic of Moldova strives to be in line with the case-law of the ECtHR. Despite the fact that there were cases when the domestic practice was determined to get uniformed following a ruling of the ECtHR , the case of *Tănase vs. Moldova* being an illustrative example of the situation where divergences at local level by the case-law of the Constitutional Court have been settled by the case-law of the ECtHR. Thus, on 26 May 2009 the Constitutional Court delivered Judgment no. 9 on the constitutionality of the Law no. 273 of 7 December 2007 on changing and amending certain legislative acts and of the Law no. 76-XVI of 7 December 2007 on changing and amending the Electoral Code no. 1381-XIII of 21 November 1997, laws prohibiting holding a public office (by default the office of MP) by the citizens of the Republic of Moldova who owed the citizenship of another state. The Constitutional Court noted that the High Contracting Parties of the European Convention on Nationality are not deprived of their right to set for their civil servants incompatibilities related to holding multiple citizenships. It also mentioned that such an approach to this issue correlates with the case-law of the ECtHR in the field of electoral law which stated that although Article 3 of the Protocol no. 1 to the Convention guarantees to every person the "right to vote" and the "right to stand as a candidate in the elections of the legislative", these rights are not absolute, are not clearly provided in Article 3, are not defined by it, "leaving room for implicit limitations". The Court of constitutional jurisdiction has also found out that the law was pursuing a legitimate aim, namely the loyalty to Moldovan State, in the light of the importance of State's sovereignty and of the necessity for a permanent political and legal linkage between the elector and the State. Thus, allowing a member of Parliament to hold double citizenship was contrary to the constitutional principle of the independence of the mandate of the member of Parliament, sovereignty of the state, national security and the non-disclosure of confidential information.

As an *ex nunc* effect, national legislation has been changed following the ruling of the Great Chamber of the ECtHR of 27 April 2010 in *Tănase vs. Moldova* when deciding that there has been a violation of Article 3 of the Protocol no. 1 to the Convention. The Great Chamber held that any restrictions imposed on the electoral rights must not exclude a group of persons from participating in the political life of a country. In this regard, there has been stressed the disproportionate effect of the law on the given parties which at the moment of submitting the application were in opposition.

As an illustration there can be called down the Judgment in *Amihalachioaie vs. Moldova*, where the plaintiff, a lawyer, addressed to the ECtHR alleging the violation of the freedom of expression, upon being sanctioned by the Constitutional Court for his critical views with regards to one of its judgments. The ECtHR found that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts, such a position explains the usual restrictions on the conduct of members of the Bar. However, lawyers are entitled to freedom of expression too and to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds (§§ 27,28).

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

Taking into account the binding nature of international instruments ratified by the Republic of Moldova for all public authorities and considering their priority for the protection of human rights as related to national provisions, this commitment being assigned in constitutional provisions, it is indisputable that the European Convention on Human Rights and the jurisprudence of the European Court for Human Rights is mandatory for all national courts. At the same time, one of the competences of the Supreme Court of Justice is to ensure a uniform judicial practice and corresponding application of substantive and procedural law by the lower courts. In this regard, by the Judgment of the Plenum of the Supreme Court of Justice no. 17 of 19 June 2000 on the application by the courts of certain provisions of the European convention

for the Protection of Human Rights and Fundamental Freedoms in the judicial practice, the Supreme Court of Justice explained that while judging the cases, the courts have to examine whether the law or the act which is going to be applied and which regulates the rights and freedoms safeguarded by the ECHR are compatible with its provisions; and in case of incompatibility, the court shall directly apply the provisions of the European Convention on Human Rights and mention this fact in its judgment.

Subsequently, following this explanatory judgment the courts were noticed that in order to apply correctly the provisions of the European Convention on Human Rights it is necessary to perform a preliminary research of the ECtHR case-law, which is the only authority entitled to deliver official and binding interpretations of the Convention. Therefore, national courts are bound to guide themselves by the case-law of the ECtHR, and in the event of a review of a court judgment, on the basis of ECtHR finding related to the infringement of rights or fundamental freedoms, the judgment of the European Court thus constituting the basis of re-opened proceedings.

In addition, it is important to mention that national courts apply the case-law of the ECtHR both directly and indirectly when considering the judgments of the Constitutional Court delivered with a view to settle the exceptions of unconstitutionality raised within a judiciary process and which are based on the case-law of ECtHR in the field of human rights and fundamental freedoms. More than that, since the moment when the court issues the conclusion on raising the exception of unconstitutionality until the moment of delivering of the Judgment by the Constitutional Court, the proceedings on the case or the enforcement of the judgment shall be suspended. In these situations, despite the fact that the Constitutional Court is not mandated to rule on the merits of the case, its decision may have a direct influence on the matter of the lawsuit which was settled taking into account the decision of the Court of constitutional jurisdiction.

II. Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?

An efficient constitutional justice contributes to the strengthening of democracy and to the rule of law, protection of human rights and fundamental freedoms and advancement of constitutional values and principles; this goal is achieved by delivering well-grounded judgments based on constitutional provisions and on the norms of international law, as well as on the experience of other constitutional courts.

It is to be noted that a constitutional court examines the constitutional case-law of other states, which have already faced similar issues and, considering the circumstances of the case and the similitude of legal institutions which are subject of constitutional review, to analyze and to apply, when appropriate, the reasoning raised in the judgment of that respective court. The arguments evoked in the judgments of constitutional courts of other states are cited in the judgments of the Constitutional Court of the Republic of Moldova to support its own reasoning with a view to strengthen the position of the Court or to exemplify the importance of the examined issue, though without it being a determining factor in passing the judgment.

At the same time, it is important to mention that despite the fact that the judgments of the Constitutional Court do not abound in direct references to the case-law of other constitutional courts when examining the cases brought before it, the Court analyzes the jurisprudence of other states, especially of the states members of the Council of Europe.

There are some examples in the judgments of the Constitutional Court of relevant reference to the constitutional case-law of other states, particularly those having close legal traditions, as follows:

- Judgment no. 28 of 22 December 2011 on the constitutional review of the Law no. 184 of 27 August 2011 on changing and amending certain legislative acts (concerning the complaint

on assumption of Government's responsibility upon a bill of law during Parliamentary vacation), where the Court made a reference to the constitutional jurisdiction of Romania:

> "50. With regards to the matter of assumption Government's accountability, the Constitution of Romania of 1991 has been inspired from the French Constitution of 1958, granting in the article 113, later renumbered as 114, the possibility to assume Government's responsibility before the Chamber of Deputies and the Senate:
>
> "(1) The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a programme, a general policy statement, or a bill.."
>
> 51. Interpreting the provisions of the constitutional text, in its jurisprudence the Constitutional Court of Romania imposed certain conditions under which the Government can assume responsibility to the Parliament. Thus, the Government has a constitutional justification to assume its responsibility under the following conditions, namely: (a) the existence of an emergency in the adoption of measures contained in the law upon which the Government has assumed its accountability; (b) the need for the regulation to be adopted with maximum celerity; (c) the importance of the field regulated and (d) the immediate application of the law in question.
>
> 52. In response to the draft law on revision of the Constitution, the Constitutional Court of Romania recommended expanding the provisions of the article 114 paragraph (1) of the Constitution, for the purposes of the limitation of the object on which the Government can undertake the accountability on a program, a general policy statement or to a sole draft law to organically regulate social relations which concern a single field (Decision No. 799 of June 17, 2011). In this respect, the Constitutional Court of Romania made reference to vicious practice of the Government in ensuring accountability for a draft law that amends 17 laws on property and justice reform.
>
> 53. Referring to the procedure of assuming Government accountability upon a draft law, the Constitutional Court of Romania revealed (Judgment no. 1.557 of 18 November 2009):
>
> "[...] In order not to be termed as a procedure of disregard of the rational that formed the basis for the provisions of article 114 of the Constitution, the Government's accountability upon a text of law may not be assumed arbitrarily, however and under any conditions, due to the fact that this manner of decision-making, in a natural order of the rule of law, constitutes an exception."
>
> 54.Ruling on the constitutional role of a no-confidence motion within the procedure of assuming Government's accountability for a bill, the Constitutional Court of Romania held (Judgment no. 1.525 of 24 November 2010):
>
> "[…] Lodging the no-confidence motion has the significance of triggering the parliamentary control on the activity of the Government […]; it is a weapon made available to parliamentary opposition and it is, not least, a form of opposition's expression on the measures adopted by the Government. Subsequently, hindering the submission and the refusal to debate a no-confidence motion, which has already been lodged, are contrary to the Constitution, as this fact would be equal to the elimination of the possibility of the parliamentary opposition to censure and control the decision of the Government to assume accountability."

- In the Judgment no. 3 of 9 February 2012 on constitutional review of certain provisions of the Law no. 163 of 22 July 2011 on changing and amending a number of legislative acts (regulating for the elimination of specialized courts), the Constitutional Court referred to the case-law of the Constitutional Court of France:

> "67. […] It is known that the principle of legal certainty originated from the German law, which safeguarded the protection of citizens against the secondary effects of the law, especially legislative discrepancies that can derive from its repeated change, the Constitutional Council of France showed that among the elements of legal certainty the can be pointed out accessibility and intelligible nature of the law (Francois Luchaire - Cahiers du Conseil Constitutionnel nr.11). The CJEU caught up the same meaning of the principle of legal certainty in Bosch case, settled by the Decision of 6 April 1962. This was also the approach of the ECtHR in its judgments of 26 April 1979 and 22 September 1994 in *Sunday Times v. UK and Hentrich v. France*, respectively."

- Judgment no. 12 of 4 June 2013 on constitutional review of certain provisions on banning communist symbols and promotion of totalitarian ideologies, the Constitutional Court of the Republic of Moldova made reference to the constitutional case-law of CEE countries, as follows:

> "2) PRECEDENCE IN COMPARATIVE LAW
>
> […]

53. In 1991, the Czechoslovak Criminal Code of 1961 (§ 260) imposed criminal sanctions upon people "supporting and propagating movements which openly were aiming to suppress the rights and freedoms of citizens or spread national, racial, class, or religious antagonism". Being examined in 1992 by the Constitutional Court, this provision of the Criminal Code was declared constitutional. Subsequently, Czech Constitutional Court declared the provision unconstitutional, due to the reason that "an outright prohibition of the support for or propaganda of fascism or communism would be incompatible with the principles of specificity of criminal law", given that "in such a case a fascist or a communist movement would not be adequately defined". The Court also admitted that communist ideology, besides violent ideas in exercising the power in state, can also promote democratic ideas.

54. In 2000, Hungary in its Criminal Code incriminated the use of both fascist and communist symbols, such as the sickle, hammer or the red star. Being notified in the same year, the Constitutional Court of Hungary declared constitutional this prohibition, due to the reasons that "these symbols (the hammer, the sickle and the red-star) had a single, fixed meaning for the inhabitants of Hungary; that they were connected with the communist ideology and the communist regime; that the communist ideology was an ideology of hatred and aggression; and that the symbols were hence symbols of despotism."

Later on, by the Judgment of ECtHR of 2008, Hungary was found guilty for the infringement of freedom to expression in Vajnai v. Hungary in the case related to the conviction of a party member for wearing a communist symbol during a public event. At that moment, the applicant being the Vice-President of the Worker's Party, a left-wing political party registered in 2003, he was convicted for wearing a red-star and propagating this symbol and of an illegal organization. Upon determining that the evidences were based on ways of exercising the right to freedom of expression, ECtHR found the existence of interference which was provided by the law and was pursuing a legitimate aim related to the protection of national security and public order. Manifestations did not lead to violent acts and it was not found whether the chanted slogans, having a violent nature, were chanted by the applicants themselves. Thus, in ECtHR's view even the damage caused by national authorities to the applicants' rights in their freedom of expression could have been justified by the attempt to prevent public disorder, particularly within the tensioned political climate in the country at the moment of the respective undertaking, criminal fines applied to the interested parties, namely four years of imprisonment, were obviously disproportionate by their nature and gravity, relative to the pursued legitimate aim. The Court found that the local authorities went beyond what could have constituted a necessary restriction of the freedom of expression of the applicants.

Related to this issue, European Court on the same question, held that utmost care must be observed in applying any restrictions, especially when the case involves symbols which have multiple meanings. The Court noted that in Vajnai case there were allegations on the legality of prohibition of displaying communist symbols, declaring Section 269B of the Criminal Code "unacceptably broad" (§56), but it did not refer to the sickle and hammer. However, the ECtHR noted that " signs or pictures of identification with ideas, people and events in order to establish a link between the symbol and the ideas, people and events symbolized on the basis of their common characteristics" (Hungary, p.18) the symbols, by their nature, are subject to different interpretations and associations.

In November 2011, the Court found another breach by this law of art. 10 of the Convention in the case Fratanolo v. Hungary related as well to the public display of a red-star symbol by a member of the left-wing party of Hungary. On 19 February 2013, the Constitutional Court found unconstitutional the prohibition on the use of symbols of communist and fascist totalitarian regimes, ruling that there was a breach of the principle of legal certainty and of freedom of expression.

Based on this judgment, in April 2013 the Hungarian Parliament voted the given law in a different wording, operating technical changes with a view to render it compatible with the principle of specificity which was employed by the ECtHR in the above mentioned cases.

[…]

57. Starting with 2009, Poland imposed criminal sanctions on the public promotion of fascist and totalitarian systems. These criminal regulations were challenged before the Polish Constitutional Tribunal, which found them unconstitutional in 2011. In its reasoning, the Tribunal found that the respective provision of the Criminal Code does not meet the applicability criteria in the context of provisions of criminal law, is formulated incoherently, imprecisely and unclearly. The Tribunal stressed that the lack of precision of the challenged provision constituts a breach of the freedom of expression. It also made reference to the settlements of other states, particularly to those of Hungary related to ECtHR case Vajnai v. Hungary.

[…]

101. […] For the sake of comparison, the Constitutional Tribunal of Poland admitted that the phrase "fascist or communist symbols" is not sufficiently precise for the people to understand what particular symbols are banned. The Venice Commission agreed with this opinion.

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

Within the Secretariat of the Constitutional Court there is a Research and Analysis Service which attribution id to analyze the practice of the constitutional courts of other states, to provide pertinent information and to present to the reporting judge relevant information (accessible in Romanian, as well as in English, French and Russian languages) on the solutions from foreign jurisprudence regarding the issues similar to those that are being examined by the Constitutional Court of the Republic of Moldova. Thus, the research of other states' case-law is based on its relevance to the matter of the research thus being used all accessible languages.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

The Constitutional Court of the Republic of Moldova, under the aspect of comparative law, performs researches and analyses the rulings of foreign constitutional courts on matters related to all the fields of law, except for the situations where the challenged acts or provisions are pertaining only to specific situations of our country.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

It is to be mentioned that the Constitutional Court of the Republic of Moldova provides to the Venice Commission any information related to our national legal framework and its own jurisprudence in case it is available, when answering the questions of the liaison officers. The jurisprudence of the Court which could be of relevance for other states is included as summaries in the Bulletins on constitutional case-law of the Venice Commission.

5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?

Cooperation and sharing of experience with other constitutional courts is of great importance for the Constitutional Court of the Republic of Moldova, while developing bilateral and multilateral relationships is one of institution's priorities.

The Constitutional Court of the Republic of Moldova is strengthening and expanding its relationships with equivalent institutions at the European and international level within 4 international structures: European Commission for Democracy through Law of the Council of Europe (Venice Commission), Association of Constitutional Courts Using the French Language (ACCPUF), Conference of European Constitutional Courts (CCCE) and World Conference on Constitutional Justice (WCCJ).

At the same time, the Constitutional Courts in its activity is exploiting the relationship established with international institutions and organizations, such as German Foundation for International Legal Cooperation (IRZ), Hanns Seidel Foundation, UNDP Moldova, OSCE Mission to Moldova, ABA/ROLI Moldova, Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM), Turkish Agency for International Cooperation.

It is noteworthy that constitutional justice is developing by the exchange of information, achieved through the participation of judges and staff of the Constitutional Court of the Republic of Moldova in international conferences, reunions, round tables and study visits.

Subsequently, aiming to intensify and strengthen cooperation relationship in the field of constitutional justice, as well as considering its complexity and dynamism in state which is based on the rule of law, the Constitutional Court of the Republic of Moldova has concluded cooperation memorandums with the constitutional courts of other states, namely:

- Protocol of cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania, signed on 11 December, 2001;
- Memorandum of cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Ukraine, signed on 5 June, 2002;
- Memorandum of cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of the Russian Federation, signed on 1November 2005;
- Protocol of intent on cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of the Republic of Azerbaijan, signed on 14July, 2010;
- Memorandum of cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Georgia, signed on 22September, 2012.

III. Interactions between European courts in the jurisprudence of constitutional courts

1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the Constitutional Court?

As it has been stated above, in terms of constitutional norms, the case-law of the European Court of Human Rights is directly applicable which fact does not exclude the application of the jurisprudence of the European Union, in the event when relevant provisions of the European Convention on Human Rights referred to in the ECtHR judgments can be invoked in the cases examined by the Constitutional Court.

A fortiori, it should be noted that, although the Republic of Moldova is not a member of the European Union, European integration has been assumed as a national priority in the Activity Program of the Government: "European Integration: Freedom, Democracy, Welfare, 2011-2014" and, therefore, Moldova is committed to assimilate the principles and fundamental values of the European Union.

In the context of the European vector and aspirations for EU integration, Moldova has assumed the commitment of approximating its legislation with EU legal requirements. Thereby, according to the national legal provisions "*protection of the rights, freedoms and vested interests of citizens, equality and social justice, as well as the compatibility with EU legislation represents a mandatory condition for any legislative act*."

The Constitutional Court of the Republic of Moldova cited in its practice relevant provisions of the *Preamble of the Treaty on European Union*, the consolidated version, (Judgment of the Constitutional Court no. 4 of 22.04.2013 on the constitutionality of the Decrees of the President of the Republic of Moldova No. 534-VII of 8 March 2013 on the dismissal of the Government, in the part concerning the staying in office of the Prime Minister dismissed by a motion of no confidence (on allegations of corruption) of 8 March 2013 until the formation of the new government and No. 584-VII of 10 April 2013 on the nomination of the candidate for the office of Prime Minister). In the same Judgment it underlined:

> "51. In the European Union, the concept of the rule of law is enshrined in the Preamble and in Article 2 of the Treaty on European Union, which reads:
>
> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights [...]."

It is worth mentioning that, given the need for approximation of its legislation with the Community acquis and given the priority of European integration, the jurisprudence of the Constitutional Court in the last period attests reference to EU Directives (Judgment no. 28 of 20.09.2013 on constitutionality of the Parliament's Decisions on the dismissal and appointment

of the Director General of the Board of National Energy Regulatory Agency). In that Judgment, the Constitutional Court held:

> „55. […] Republic of Moldova joined the Energy Community as a full member in 2010. The Energy Community Treaty was adopted on 25 October 2005, in Athens, and entered into force for Moldova on 1 May 2010. From that moment it became mandatory to respect international legal norms adopted under the Treaty. These include EU Directives that establish the administrative structure for the domains of electricity and natural gas.
>
> 56. Therefore, both the Directive 2003/54/EC concerning common rules for the internal electricity market and the Directive 2003/55/EC concerning common rules for the internal market for the natural gas sector, mentioned the need for an independent regulatory authority in the field.
>
> 57. Directive 2009/72/EC and Directive 2009/73/EC point out that the regulators of energy and natural gas shall be fully independent of any public or private interests, which does not exclude judicial review nor parliamentary supervision. By these directives were repealed the Directives cited above.
>
> 58. The Court noted that, under Community legislation, the independence of the regulatory authority has become a compulsory legal requirement in the EU.
>
> 59. Likewise, the Directive 2009/72/EC and the Directive 2009/73/EC are establishing that, in order to protect the independence of the regulatory authority, "the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once".

Inter alia, the Constitutional Court invokes and retains in its case-law *the Council's Directive 2000/78/EC of 27 November 2000 on establishing a general framework for equal treatment in employment and occupation* (Judgment of the Constitutional Court no. 5 of 2013 on constitutionality of Article 301, par. (1), p.c) of the Labor Code of the Republic of Moldova no. 154-XV of 28.03.2003, in the wording of the Law no. 91 of 26.04.2013 on changing and amending some legislative acts).

Referring to the case-law of the Court of Justice of the European Union, the Constitutional Court holds that this is a judicial institution of the European Union, and its task is to guarantee a uniform interpretation of EU legislation and to ensure that it is applied in the same way in all EU states, although its jurisdiction does not apply to the Republic of Moldova. Simultaneously, taking into consideration the arguments invoked above, the reasoning for appealing to the rich case-law of the Court of Justice of the European Union has to be underlined in order to substantiate the judgments of the Constitutional Court, including separate opinions of the judges (ex. *The separate opinion of the judge Tudor Panțîru,* laid out in the Judgment no. 11 of 28.05.2013 on constitutionality of some provisions of the Article 8, par. (1), p. a), subp. 5) of the Law no. 451-XV of 30 July 2001 on regulating through licensing entrepreneurial activity – this Judgment referred to state monopoly on the national lottery).

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?

Given the fact that Republic of Moldova is not a member of the European Union and that the functional competence of the European Court of Justice does not extend to our country, currently there can not be stated a certain influence of the court of constitutional jurisdiction on the relations between the European Court of Human Rights and the European Court of Justice.

3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?

In the context of the arguments laid out in sections 1-2, currently, in the process of constitutional review there can not be quantified any discrepancies between the findings and solutions of the European Court of Justice in relation to those of the European Court of Human Rights. However, it has to be additionally underlined that the European Court of Human Rights

has direct application in the constitutional review of legal provisions regulating the rights and freedoms protected both by the Constitution and the European Convention on Human Rights.