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National Human Rights System in the Republic of Moldova

- **ABSTRACT:** *This paper analyses the national mechanism for the protection of human rights in the Republic of Moldova. It examines the constitutional provisions governing fundamental rights and freedoms and provides an in-depth analysis of the institutional framework for the protection of human rights established by the Constitution of the Republic of Moldova. In a global context, the Republic of Moldova has ratified the most important human rights instruments. Its Constitution reiterates the list of fundamental human rights and freedoms adopted from the Universal Declaration of Human Rights and the International Human Rights Covenants. Following completion of the screening process for accession to the European Union (EU), Moldovan authorities have undergone both internal and external evaluations of the effectiveness of the national human rights protection mechanism. It generates continuous initiatives to align the national legal framework with the requirements of the EU's acquis.*

The research is based on a questionnaire containing clear guidelines for a comprehensive approach to the national human rights protection system. The article was developed to support a comparative analysis of national human rights protection systems by examining constitutional frameworks, the definition and implementation of fundamental rights, and the institutional and procedural mechanisms that ensure their protection.

- **KEYWORDS:** *Constitution, fundamental freedoms, human rights, human rights system, Republic of Moldova*

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1. The Protection of Fundamental Rights in the Constitution of the Republic of Moldova

■ 1.1. Terminological Distinctions: Human Rights, Fundamental Rights and Constitutional Rights

Human rights have increasingly been analysed as a fundamental prerequisite for maintaining international peace and security, forming a cornerstone of modern international law. An initial acknowledgment of human rights and fundamental freedoms is enshrined in Article 4 of Moldovan Constitution. However, notably, Article 4 does not regulate fundamental rights and freedoms, as these are addressed in Title II, organised across three chapters. Instead, it governs the relationship between international legal instruments concerning fundamental human rights and the national legislation, specifying the application of national laws in alignment with key multilateral international agreements and other treaties to which the Republic of Moldova is a party.¹

Additionally, the Civil Procedure Code² and the Criminal Procedure Code³ reiterate the constitutional guarantee of the direct applicability of international norms in cases of conflict between international human rights treaties and domestic legislation. These constitutional provisions recognised fundamental human rights and freedoms as principles of public international law at the time of the Republic of Moldova's establishment and the adoption of its Constitution.

Such rights are enshrined in numerous universal and regional legal instruments. The constitutional provisions on fundamental human rights and freedoms are simply fundamental human rights and freedoms, which, at the time of the formation of the Republic of Moldova and the adoption of the Constitution of the State, were unanimously recognised as a fundamental principle of public international law enshrined in a large number of legal instruments of universal and regional character.⁴ The rule of law upholds and safeguards the rights of all individuals, without discrimination. These rights are inherent to human beings by virtue of their nature, forming an integral part of their essence; hence, they are often referred to as natural rights. Natural human rights exist objectively and independently of any legal framework or individual, requiring no formal legal codification for their validity.⁵ Therefore, human rights are binding components of human dignity, giving the prerogative to act as a human being.

1 Negru et al., 2012, p. 33.

2 Article 2 paragraph 3 of the Civil Procedure Code of Republic of Moldova of 30 May 2003.

3 Article 7 paragraph 2 of the Criminal Procedure Code of Republic of Moldova.

4 Negru et al., 2012, p. 33.

5 Buga and Bujor, 2013, p. 19.

Human rights and freedoms are frequently categorised based on their constitutional arrangement. The first category encompasses inviolable rights, which include fundamental protections that safeguard an individual's life, freedom of movement, physical integrity, personal security, and home. The second category comprises social, economic, and cultural rights, which facilitate the material and cultural development of individuals, enabling their active participation in societal life. The third category consists exclusively of political rights, empowering citizens to engage in the governance of the state and participate in political decision-making processes. The fourth category pertains to socio-political rights, which citizens may exercise either to support their material development or contribute to state governance. Lastly, the fifth category includes guaranteed rights, such as the right to petition and seek redress. This allows individuals, whose rights have been violated by an unlawful act of a state body, to request annulment of the act and claim compensation for damages, as prescribed by law.⁶

Hence, human rights constitute the subjective rights of individuals, essential for life, dignity, and the free development of the human personality, as enshrined in the Constitution and international treaties. Notably, while fundamental human rights are enshrined as a supreme value, the state is constitutionally obliged to uphold and guarantee all rights and freedoms, whether or not they are explicitly recognised as fundamental.⁷ Like several nations, the Republic of Moldova adheres to the doctrine of the rule of law, which prioritises the individual and their rights above other social values and emphasises the supremacy of law. In legal scholarship, the 'protection of human and citizens' rights' is interpreted both narrowly and broadly. Narrowly, it is a procedural mechanism; broadly, it is a constitutional obligation of the state and encompasses the systematic activities of human rights protection institutions.⁸ Hence, we conclude that there is no legal distinction between the terms 'human rights', 'fundamental rights', 'constitutional rights', as all refer to rights anchored in the Constitution, interpreted in light of international treaties. The Moldovan legal framework does not draw separate categories or hierarchies among them.

■ 1.2. *The Constitutional Framework for the Protection of Human Rights and Freedoms*

The Constitution of the Republic of Moldova addresses the issue of human rights and freedoms. A wide range of freedoms and rights, including the right to life, freedom of expression, and equality before the law and in the ownership of property, are guaranteed. By the constitutional provisions on human rights and freedoms, we must understand the fundamental rights and freedoms contained in

6 Ibid., p. 21.

7 Turcan, 2015, p. 28.

8 Guceac, 2017.

Title II, Chapter I 'General Provisions' - Articles 15–23, and Chapter II 'Fundamental Rights and Freedoms' –Articles 24–54. Additionally, the Constitution mandates that all state authorities respect and protect these rights.

■ 1.3. *The Constitutional Approach to International Human Rights Treaties*

As noted, Article 4 does not directly regulate fundamental rights and freedoms. Instead, its first paragraph stipulates that the constitutional provisions concerning human rights and freedoms are to be applied in accordance with the Universal Declaration of Human Rights, the Covenants, and other international instruments to which the Republic of Moldova is a party. Consequently, the provisions of Article 4 paragraph (1) clarify that, in all instances of conflict or inconsistency between the domestic legislation of the Republic of Moldova, arising from constitutional provisions due to misinterpretation or misapplication, priority shall be given to international legal instruments. These instruments take precedence over the national legislation.⁹ The second paragraph of Article 4 of the Moldovan Constitution confirms the priority of international regulations in the field of human rights.

Article 8 enshrines, as a constitutional principle, one of the core tenets of international law – the principle of *pacta sunt servanda*, which obliges states to fulfil their commitments under international law in good faith. Furthermore, the Republic of Moldova's commitment to adhere to the principles and universally recognised norms of international law grants these norms supremacy over domestic legislation, including organic and ordinary laws and subordinate legal acts. However, this provision should not be construed as conferring primacy upon general international law over the Constitution. Only international human rights norms stemming from covenants and treaties to which the Republic of Moldova is a party are afforded priority under the Constitution, as stipulated in Article 4, paragraph (2).¹⁰ The second paragraph of Article 8 reaffirms the state's obligation to cooperate with other states based on unanimously recognised international principles and norms. These are to be understood as rules of conduct of utmost generality that are universally valid and legally binding on the subjects of international law. They are mandatory rules and protect values fundamental to the international legal order: international security and cooperation and fundamental rights and freedoms.¹¹

We note a textured relationship between the Constitution and international law, particularly concerning human rights treaties. While the Constitution of Republic of Moldova affirms the supremacy of international human rights norms over domestic legislation. This framework reflects Moldova's commitment to

⁹ Negru et al., 2012, p. 36.

¹⁰ Ibid., p. 56.

¹¹ Ibid., p. 55.

international cooperation and the rule of law, ensuring that fundamental rights and freedoms are upheld in accordance with domestic and international legal standards. To elucidate the provisions outlined in the aforementioned norms, the Constitutional Court of the Republic of Moldova (CCM) issued a judgment concerning the interpretation of specific provisions of Article 4, in Decision No. 55 of 14 October 1999. In this judgment, the CCM affirmed that competent legal authorities, including the CCM and the judiciary, are authorised to apply international law norms within the scope of their respective jurisdictions, following the relevant legislative framework, during the adjudication of individual cases. In the resolution section of the judgment, it concluded that Article 4 guarantees the fundamental human rights and freedoms enshrined therein and the universally recognised principles and norms of international law, as referenced in Article 8. The term ‘generally recognised principles and rules of international law’ refers to principles and rules of universal applicability.

The CCM further emphasised that these principles, along with international treaties ratified by the Republic of Moldova, form an integral part of the country’s legal system and are incorporated into domestic law. Concerning any conflicts between domestic legislation and international human rights protections, it ruled that where discrepancies arose between international covenants and Moldova’s domestic laws, national legal bodies were required to apply international standards. Specifically, universally recognised norms of international law (*jus cogens*) and international human rights law were directly applicable within Moldova’s legal order. International instruments safeguarding human rights held particular significance for the jurisdiction of national courts.¹² The CCM accords due regard to the interpretations of the European Court of Human Rights (ECtHR), recognising its case law as an integral part of national law. Consequently, the constitutional provisions concerning fundamental human rights and freedoms are interpreted by the CCM in accordance with the ECtHR’s jurisprudence. There is no hierarchy of rights in the analysis of the Constitutional Court. If the Court finds the existence of an interference with the applicable fundamental right, it will proceed with the analysis of its proportionality, applying the stages of the proportionality test.¹³

■ 1.4. *Constitutional Protection of Human Rights: Institutions, Beneficiaries and Fundamental Principles*

In the Republic of Moldova, all state authorities are mandated to uphold and safeguard human rights and freedoms. However, Article 59¹ of the Constitution

12 Constitutional Court Decision No. 55 of 14 October 1999.

13 Forms and Limits of Judicial Deference: The Case of Constitutional Courts National Report: Republic of Moldova. XIXth Congress of the Conference of European Constitutional Courts, p. 10 [Online]. Available at: https://cecc.constcourt.md/pages/congress/questionnaire/Questionnaire_Republic%20of%20Moldova_EN.pdf (Accessed: 17 March 2026).

explicitly mentions the responsibility of People's Advocate to protect human rights and freedoms.

The Constitution *expressis verbis* does not explicitly use the terms 'vertical' and 'horizontal' regarding human rights. However, both concepts are included in the constitutional provisions. For example, the equality before the law enshrined in Article 16 guarantees equality for all individuals before the law and the right to non-discrimination, available to the state (vertical) and individuals (horizontal) in relation to each other. The right to a healthy environment, provided by Article 37 of Constitution, merges into vertical and horizontal concepts. On the one hand, the state is obliged to ensure a healthy environment and free access to accurate information regarding environmental conditions, living and working standards, and the quality of food and appliances. On the other hand, from a horizontal perspective, private individuals and legal entities are accountable for any harm caused to an individual's health or property due to ecological infringements, establishing a reciprocal duty to respect others' environmental rights.

Under the Constitution, individuals with disabilities¹⁴, foreign nationals¹⁵, children¹⁶, including orphan children¹⁷, mothers¹⁸, unaccompanied minors¹⁹, and young people²⁰ are identified as vulnerable social groups requiring special protection.

The supreme values of the state are enshrined and protected by the Constitution, which constitutes the legal basis for the state's organisation and functioning, determining its content and purposes, being the 'identity card of a state'.²¹ Title II of the Constitution (Fundamental Rights, Freedoms and Duties) lists the fundamental rights and freedoms safeguarded by the Constitution. This title comprises three chapters. Chapter I. General Provisions, covering Articles 15–23, Chapter II. Fundamental Rights and Duties, covering Articles 24–54, and Chapter III. Fundamental Duties, covering Articles 55–59.

The Constitution affirms in Chapter I Article 1 that human dignity, fundamental rights and freedoms, the unimpeded development of the human personality, justice and political pluralism are paramount values, recognised and safeguarded. Simultaneously, principles such as universality, equality, free access to justice, the presumption of innocence and the non-retroactivity of the law are enshrined in other sections of the Constitution. Although Moldovan legislation (hard law) does not explicitly define the concept of the rule of law, it has been shaped and refined through the jurisprudence of the CCM. The rule of law has

14 Art. 51 of the Constitution.

15 Art. 19 of the Constitution.

16 Art. 50 of the Constitution.

17 Art. 49 of the Constitution.

18 Art. 50 of the Constitution.

19 Art. 50 of the Constitution.

20 Art. 50 of the Constitution.

21 Turcan, 2015, p. 25.

emerged as a principle encompassing formal legality, ensuring consistency and regularity in establishing and maintaining democratic order, and a conception of justice grounded in the recognition and full affirmation of human personality.²²

As noted, the rule of law entails the structuring and execution of state authority in full adherence to legal norms, with emphasis on constitutional provisions. In this context, the state operates under the supremacy of the Constitution and is defined by several key attributes: the recognition and effective safeguarding of human rights and freedoms, the constitutional establishment and controlled application of the principle of separation of powers among the branches of government, the accountability and sanctioning of public authorities exceeding their constitutional mandates, the formation of government exclusively through democratic elections, the establishment and functioning of an independent and impartial judiciary, the assurance of the rule of law as an expression of the general interest, the proper implementation of market economy mechanisms and the active combat against corruption.²³

Democracy is codified in Article 5 and is understood as being exercised under conditions of political pluralism. As an integrative concept and phenomenon, democracy embodies the moral, political and legal values of society, shaped by its socio-historical context.²⁴ Democracy, as a political system expressed through the organisation and exercise of state authority, is founded on the principle of popular sovereignty and is committed to advancing the general interest. Pluralism within society functions as a prerequisite and safeguard for democracy, fostering cooperation and maintaining balance within the political system. Accordingly, the interests of citizens must take precedence in the establishment of public authorities, ensuring the regular, free and fair conduct of elections, and the prioritisation of governance programs, achieved through consulting citizens on the most critical issues affecting the state and society.²⁵ This principle is reaffirmed in Article 38(1), which declares that the will of the people is the basis of state power. Thus, the people constitute the sole source of political authority, possessing, through their sovereignty, the right to determine their destiny, define the state's political direction, shape the composition of its governing bodies and exercise oversight over their activities.²⁶

The Constitution recognises justice and the free development of human personality as supreme values. Justice is understood as a moral and legal principle,

22 Report of the Constitutional Court of the Republic of Moldova to the XVIIth Congress of the Conference of European Constitutional Courts Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles, 2017, p. 4 [Online]. Available at: https://www.confconstco.org/reports/rep-xvii/moldova_EN.pdf (Accessed: 17 March 2026).

23 Turcan, 2015, p. 26.

24 Negru et al., 2012, p. 37.

25 Turcan, 2015, p. 27.

26 Stamati, 2017, p. 56.

demanding that individuals receive what is due to them and their rights, freedoms and legitimate interests be upheld. The free development of human personality, as a guaranteed value, serves as a guiding principle for the interpretation of all constitutional provisions concerning liberty, representing the fundamental purpose for which these freedoms are enshrined. The recognition of the free development of the human personality as a constitutional value is, in part, a response to the potential imposition of a system of formal values by the state that could restrict the individual's ability to freely shape their identity.²⁷

Most fundamental rights and freedoms are closely linked to the free development of the human personality, which is inherent to human dignity. Dignity forms the foundation of human rights. It is a fundamental, synthesising right, without which other rights lose their guarantee. No fundamental right may be exercised in a manner that undermines the dignity of another, as human dignity is intrinsic to human rights. Consequently, human dignity cannot be violated, even when fundamental rights are restricted.²⁸ The concept of human dignity as a legal institution has evolved over time. Initially, it focused on the physical protection of dignity. However, presently, it encompasses the safeguarding of personal identity and mental inviolability. Some scholars argue that human dignity is an institution that plays a crucial role in guaranteeing fundamental rights and freedoms. Broadly, all fundamental human rights and freedoms can be viewed as safeguards through which human dignity is upheld. This concludes that human dignity is a supreme value, transcending fundamental rights and freedoms.²⁹

The recognition of human dignity before the law is strengthened by the principle of equality, enshrined in Article 16. Concerning constitutional provisions, the principle of equality encompasses the equal enjoyment of rights and freedoms by all citizens, alongside the equal fulfilment of fundamental duties, irrespective of their legal basis. Article 16, as the primary source of the principle of equality, is interconnected with other constitutional articles that serve as the foundational pillars of equality. This principle comprises three key components: respect for the individual, equality and non-discrimination. Article 16 paragraph (1) asserts that respect for and protection of the individual represent a fundamental duty of the state. This underscores the centrality of the human being within the hierarchy of values safeguarded by the state. By obligating the state to uphold and protect the individual, the Constitution affirms that these principles are paramount.³⁰ The principle of equality before the law is a formal equality of rights, requiring that all individuals exercise their existing rights without exception, irrespective of the personality or identity of the individual. The core principle is that citizens, regardless of the authority they engage with or their personal status,

27 Turcan, 2015, p. 29.

28 Ibid., p. 28.

29 Puscas, 2005, p. 45.

30 Negru et al., 2012, p. 86.

must receive non-discriminatory treatment from public authorities and their representatives. The provision guarantees equality without distinction, prohibiting any legal treatment that places an individual in a subordinate or superior position. Hence, discrimination is an illegitimate and arbitrary distinction that is expressly prohibited.³¹

The Constitution enshrines human dignity, justice, equality and democracy as supreme values that guide the individual's status within the state. Human dignity serves as the cornerstone of the legal framework, ensuring the coherence and protection of all rights and freedoms. While these rights are applied equally in principle, their interpretation may vary based on context, prioritising the protection of dignity and identity. Equality reinforces this by mandating non-discriminatory treatment, while the rule of law and democracy, grounded in popular sovereignty and pluralism, ensure justice and the centrality of the individual in the state's political and legal system.

■ **1.5. Constitutional Catalogue of Fundamental Rights and Freedoms**

The freedoms and rights in the Constitution are organised in catalogues: Title I. General principles, Title II. Fundamental Rights, Freedoms and Duties, containing Chapter I. General Provisions, Chapter II. Fundamental Rights and Duties and Chapter III. Fundamental Duties. Particularly, Chapter II includes right to life and to physical and mental integrity³², right to individual freedom and security³³, right to defence³⁴, the right to freedom of movement³⁵, the right to private and family life³⁶, the right to the inviolability of residence³⁷, the right to the confidentiality of correspondence³⁸, the right of freedom of conscience and religion³⁹, the right to freedom of expression and opinion⁴⁰, the right to freedom of creation⁴¹, the right to information⁴², the right to education⁴³, the right to healthcare⁴⁴, the right to a healthy environment⁴⁵, the right to vote and be elected⁴⁶, the right to administra-

31 Ibid., p. 87.

32 Art. 24 of the Constitution.

33 Art. 25 of the Constitution.

34 Art. 26 of the Constitution.

35 Art. 27 of the Constitution.

36 Art. 28 of the Constitution.

37 Art. 29 of the Constitution.

38 Art. 30 of the Constitution.

39 Art. 31 of the Constitution.

40 Art. 32 of the Constitution.

41 Art. 33 of the Constitution.

42 Art. 34 of the Constitution.

43 Art. 35 of the Constitution.

44 Art. 36 of the Constitution.

45 Art. 37 of the Constitution.

46 Art. 38 of the Constitution.

tion⁴⁷, the right to assembly⁴⁸, the freedom of parties and other social-political organisations⁴⁹, the right to create and to join trade unions⁵⁰, the right to work and to labour protection⁵¹, the prohibition of forced labour⁵², the right to strike⁵³, the right to private property and its protection⁵⁴, the right to social assistance and social security⁵⁵, the right to family⁵⁶, family protection and protection of separated children⁵⁷, the mother, children and young people protection⁵⁸, the protection of people with disabilities⁵⁹, the right to petition⁶⁰ and the right of person injured by a public authority⁶¹.

■ 1.6. *Key Fundamental Rights in the Constitutional System of the Republic of Moldova*

The Republic of Moldova's integration into the European Union (EU) has prompted a series of political and socio-economic transformations. As a member of the Council of Europe (CoE), Moldova has ratified the European Convention on Human Rights (ECHR), committing to uphold the right to a fair trial and ensure the independence of the judiciary as part of its European integration process. Accordingly, the Justice Sector Reform and Anti-Corruption Strategies were implemented to enhance the judicial system. These strategies guarantee access to justice through transparent procedures, supported by independent and impartial courts. Access to justice is a right and a principle that must be upheld under all circumstances, including during armed conflicts, by an effective, well-organised and independent judicial system.

The freedom of expression, enshrined in Article 32, represents a fundamental pillar of democracy. The Moldova-EU Association Agreement reinforces the country's commitment to developing policies that safeguard freedom of expression, including press freedom. The National Media Development Strategy enhances the independence and the quality of information provided by the media. Pluralism of opinion, which is a key element of an independent press, is vital for fostering an informed electorate, particularly in the voting process. Similarly,

47 Art. 39 of the Constitution.

48 Art. 40 of the Constitution.

49 Art. 41 of the Constitution.

50 Art. 42 of the Constitution.

51 Art. 43 of the Constitution.

52 Art. 44 of the Constitution.

53 Art. 45 of the Constitution.

54 Art. 46 of the Constitution.

55 Art. 47 of the Constitution.

56 Art. 48 of the Constitution.

57 Art. 49 of the Constitution.

58 Art. 50 of the Constitution.

59 Art. 51 of the Constitution.

60 Art. 52 of the Constitution.

61 Art. 53 of the Constitution.

freedom of assembly, guaranteed in Article 40, is essential for political pluralism and is intrinsically linked to the right to free expression. Beyond these constitutional provisions, the National Action Plan for the Protection of Human Rights is another strategic document through which the Republic of Moldova commits to strengthening civil society and the political system, ensuring transparency and the democratic participation of citizens in political and decision-making processes.

The right to information, under Article 34, is significant as a catalyst for the development and reinforcement of other political rights. The exercise of this right is intrinsically linked to the enjoyment of other political and socio-economic rights. Consequently, the extent to which the right to information is exercised within a society may serve as an indicator of the level of democratisation attained. In its Judgment No. 19, dated 16 June 1998, the CCM provided an interpretation of Article 34. It regarded this right as inherent to human dignity, emphasising that, by affording citizens access to information regarding social, political, economic, scientific and cultural affairs, the state ensures the possibility for individuals to fully realise their freedom of thought, opinion, creation and public expression, whether by word, image or other means. Furthermore, the right to information legally ensures an individual's entitlement to access public interest information. Hence, the adoption of Law No. 148 on 9 June 2023, concerning access to public information, represents the state's initial step to safeguard this fundamental right.

■ **1.7. Constitutional Limitations on Fundamental Rights and Freedoms**

Article 54, titled 'Restrictions on the Exercise of Certain Rights or Freedoms', sets the conditions under which interference with the rights and freedoms protected by the Constitution may occur. Paragraph (2) of this article stipulates that the exercise of these rights and freedoms may only be subject to limitations as prescribed by law. Such restrictions must comply with universally recognised principles of international law and be deemed necessary in the interests of national security, territorial integrity, the economic welfare of the nation, public order, the prevention of mass unrest and crime, the protection of the rights, freedoms and dignity of others, the prevention of the disclosure of confidential information or the safeguarding of the authority and impartiality of the judiciary.

Consequently, any state interference in the limitation of a right must be carried out in strict adherence to the principle of legality and must be enacted through an organic law. Such interference must conform to universally recognised principles of international law. Hence, the restriction must align with the provisions of the most significant universal instruments for the protection of human rights to which the Republic of Moldova is a party. Furthermore, interference must be justified by a pressing social need, making it a necessary measure. Additionally, the interference must be proportionate to the intended objective; that is, it should serve the general interest, and there must be circumstances in which the

limitation benefits the public good. In the absence of legal provisions defining the limits of proportionality, the issue must be assessed based on specific facts and circumstances, which should be carefully examined by the relevant authority (e.g., a court) before any claim of disproportionality is upheld. For instance, the right to privacy cannot be restricted solely on the grounds that individuals exercising it are conspiring against national security.⁶²

Regarding the CCM's interpretation of restrictions on the right to freedom of expression, the right to private life and freedom of religion, it affirmed that the freedom of expression guaranteed by the Constitution was protected under the ECHR. Consequently, it considers the interpretations of the ECtHR when evaluating any interference with these rights. In the case law of both the CCM and the ECtHR, there is no discernible difference in the level of protection afforded to these rights.⁶³ Regarding Article 16 (Equality), the Republic of Moldova has not ratified Protocol No. 12 to the ECHR. Thus, it does not function as an independent provision and complements other provisions of the Constitution. To assess whether the right to equality may be restricted, the CCM must determine if the alleged discrimination concerns rights or freedoms guaranteed by the Constitution. If such rights or freedoms are applicable, it must evaluate whether the alleged violation of the right meets the conditions outlined in Article 54. A determination of a violation of Article 16 does not automatically indicate a breach of other constitutional rights or freedoms. In assessing infringements on the prohibition of discrimination, the CCM takes into account the case law of the ECtHR in applying Article 14 of the ECHR.⁶⁴

■ 1.8. *Adaptation of Fundamental Rights in the Constitution of the Republic of Moldova to Contemporary Needs*

The Republic of Moldova has made significant strides towards the democratisation of the state, aligning itself with European and international standards. By acknowledging the supremacy of the rule of law and democratic principles, and enshrining these in the Constitution, it has made notable progress in socio-economic development. However, these advances remain insufficient when confronted with persistent challenges, such as corruption, discrimination, political immaturity, external political pressures on the judiciary and authoritarian influences.

62 Negru et al., 2012, p. 221.

63 Questionnaire for the XVIIIth Congress of the Conference of European Constitutional Courts, 2020, Chapters II.II; II.III; II.IV, p. 4 [Online]. Available at: https://www.cecc2017-2020.org/fileadmin/Dokumenty/Pdf/Questionnaire/National_Reports/English/Moldova_-_Questionnaire_XVIII_Congress_of_CECC_eng.pdf (Accessed: 11 December 2024).

64 Questionnaire for the XVIIIth Congress of the Conference of European Constitutional Courts, 2020, Chapters II.V, p. 6 [Online]. Available at: https://www.cecc2017-2020.org/fileadmin/Dokumenty/Pdf/Questionnaire/National_Reports/English/Moldova_-_Questionnaire_XVIII_Congress_of_CECC_eng.pdf (Accessed: 11 December 2024).

Given the significant demographic shifts in Moldova, such as rising divorce rates and an increasing number of children in single-parent households, there is a pressing need to reassess and strengthen the constitutional provisions related to family life and child protection. The changing social structure, influenced by factors such as emigration and evolving cultural norms, highlights the importance of ensuring that the Constitution offers robust protection for diverse family forms. While the right to family and the protection of children are enshrined in the Constitution, the current legal framework does not fully address the challenges posed by demographic changes. It is crucial to adapt these rights to reflect modern realities, particularly by ensuring adequate support for children in single-parent households and clarifying the responsibilities of both parents in child-rearing. Furthermore, since Moldova has ratified the Convention on the Rights of the Child, which outlines key principles for protecting children's rights, these principles should be explicitly proclaimed in the Constitution to ensure that they are reflected and enforced at the national level.

Given the complex and evolving migration patterns in Moldova, it is essential to reconsider and strengthen the regulation of citizenship rights and the status of foreigners within the Constitution. The increasing number of immigrants, coupled with the potential for multiple citizenships, highlights the need for a comprehensive legal framework to manage migration effectively. Since 2013, Moldova has witnessed a shift where the number of immigrants exceeds emigration authorisations, exacerbated by its alignment with the EU and the liberalisation of its visa regime.⁶⁵ Furthermore, the influx of migrants due to the armed conflict in Ukraine underscores the urgency of addressing the status of foreigners and ensuring that legal provisions related to citizenship are flexible enough to accommodate these new realities. The current constitutional provisions may not be sufficient to address the complexities of modern migration flows. Therefore, there is a need for constitutional reform to regulate citizenship rights, streamline the naturalisation process and establish a framework for the status and rights of foreigners, ensuring their protection and integration into Moldovan society. Strengthening these constitutional regulations would provide a more robust and adaptable migration management system, better aligned with Moldova's demographic changes and international commitments.

In light of the increasing interconnection between environmental quality and public health, it is crucial to strengthen the regulation of the right to a healthy environment and the right to health within the Constitution. While the Constitution acknowledges the right to a healthy environment as a fundamental human right and outlines the state's responsibility to protect it, the rapid impacts of climate change and environmental degradation on public health, particularly for vulnerable groups, such as children and the elderly, highlight the need for

65 BMA, 2022, p. 18.

robust legal provisions. The Constitution currently frames the right to health as an individual right, with collective protections being inferred from international agreements. However, given the shared nature of environmental challenges, there is a compelling need to regulate these rights in a way that reflects individual and collective responsibilities. This would ensure that Moldova's legal framework comprehensively addresses the link between environmental protection and public health, fostering a sustainable and healthier future for all citizens. Therefore, constitutional reform should explicitly integrate the collective right to a healthy environment and public health, ensuring stronger safeguards against the impacts of environmental harm and climate change.

Given the rapid global trend towards digitalisation and the increasing reliance on information technologies, it is crucial to update the Constitution to better regulate the protection of private life and personal data. The current constitutional framework does not adequately address the challenges posed by modern digitalisation, leaving gaps in the protection of privacy and data security. To ensure that citizens' rights are safeguarded in an increasingly digital world, the Constitution must include comprehensive provisions that specifically address privacy rights and data protection. This would align Moldova with international standards and strengthen its legal framework for the security of personal data, ensuring robust protection of human rights in the digital age.

■ ***1.9. Access to Justice and the Right to an Effective Remedy: Constitutional Provisions***

Article 20 proclaims the right to free access to justice, whereby 'everyone shall have the right to an effective remedy before the competent courts against any acts infringing upon their rights, freedoms, or legitimate interests'. Paragraph (1) of the article establishes its scope of application by addressing 'any person', which, through semantic interpretation, encompasses all citizens, foreign nationals and stateless individuals. This broad definition confirms that the article applies universally. The wording of Article 20 explicitly highlights the active duty of the State to guarantee the right to effective legal redress. The term 'effective' is pivotal in outlining the extent of the state's obligations, emphasising the need for meaningful access to justice. The reference to 'competent courts' implies a positive obligation of the state to establish an adequate number of courts and regulate their operations to meet minimum standards for justice. The connection between 'effective satisfaction' and 'competent courts' underscores that human rights protection must be accessible through well-functioning judicial institutions.

Paragraph (2) of the article reinforces the guarantee of free access to justice and ensures the uniform application of constitutional and legislative provisions across the country, stipulating that 'no law may restrict access to justice'.⁶⁶

⁶⁶ Negru et al., 2012, pp. 101–102.

The imperative to ensure the effective protection of guaranteed rights necessitates adherence to certain procedural obligations. While Article 20 guarantees free access to justice, this right, as a cornerstone of a fair trial, lacks a contextual finality, namely, the assurance of a fair trial. Although Article 4 can be relied upon, which stipulates that constitutional provisions on human rights must be interpreted and applied according to the international instruments to which Moldova is a party, it would be more advantageous to explicitly regulate the right to a fair trial. Such regulation should be clear, accessible and predictable, within the Constitution and the organic laws, to ensure comprehensive protection and a robust framework for the effective exercise of this fundamental right.

Broadly, to guarantee fair and complete access to justice, the state bears specific obligations. These include establishing courts with unlimited jurisdiction to hear and adjudicate cases based on factual and legal grounds, and providing all reasonable means, legal and practical, for individuals to access the courts. To ensure full respect for the right of free access to justice, states must imbue this right with two essential characteristics: effectiveness and accessibility. Effectiveness ensures that the judicial system delivers meaningful outcomes, while accessibility ensures that all individuals, regardless of their circumstances, can reach the courts without undue barriers.

Some scholars argue that free access to justice in the Republic of Moldova is an absolute fundamental principle, applicable to constitutional rights and freedoms, which cannot be restricted by the state. This allows any individual to defend their rights, freedoms and legitimate interests as guaranteed by the Constitution and existing state legislation, with the right to freely appeal for ordinary and constitutional justice. Consequently, individuals should have unrestricted access to all procedural means within ordinary and constitutional justice systems to ensure the fair dispensation of justice.

The case law of the Court of Justice of European Union (CJUE) has established that the right of access to justice is not absolute. It may be subject to restrictions within the margin of appreciation afforded to each state, provided that these restrictions do not undermine the essence of the right. Similarly, the CCM has addressed the admissibility of such limitations. It affirmed that the requirement for prior out-of-court settlement of disputes constitutes a specific condition for exercising the right to bring a case before the court, which applies in particular circumstances, depending on the nature of the dispute. It disagreed with the reference's assertion that these legal provisions violate Article 20, which guarantees free access to justice, by conditioning access to the courts on completing a preliminary procedure that may delay resolution. The CCM clarified that ensuring effective access to justice does not preclude the introduction of legal conditions for admissibility, such as rules concerning jurisdiction, claim time limits, procedural

forms and court fees. Such conditions do not constitute restrictions, provided they are proportionate to the intended purpose and the purpose is legitimate.⁶⁷

To give practical effect and substance to the absolute principle of free access to justice, the legislator developed constitutional norms through organic laws, such as the Code of Civil and Criminal Procedure. These laws provide the detailed legal framework necessary to ensure that the right of individuals to access justice is fully realised, outlining the procedures and mechanisms through which citizens can seek legal redress and have their rights protected. However, although the title of Article 20, 'Free Access to Justice', may be interpreted broadly to encompass access to ordinary and constitutional justice, its paragraph (1), which refers to 'the right to effective satisfaction by the competent courts', pertains solely to ordinary justice. Hence, the CCM is not considered a part of the national court hierarchy. It stands as the sole body of constitutional jurisdiction, autonomous and independent from the legislature, executive and judiciary. Its primary role is to uphold the supremacy of the Constitution, ensure the separation of powers and guarantee the responsibilities of the state towards the citizen and vice versa.⁶⁸

However, Article 53 enshrines the fundamental right of any person harmed by a public authority to seek recognition of their rights, the annulment of abusive administrative acts and reparation for the damage caused. The constitutional basis for challenging acts of public authorities and holding such authorities accountable for violations of legitimate rights and freedoms is supported by Article 52 (the right to petition), and is expressly provided for in Article 53. This right constitutes a constitutional guarantee for the protection of other fundamental rights and freedoms and serves as a legal foundation for exercising various forms of control over the activity of public authorities.⁶⁹ The legality of administrative acts is a direct expression of the principle of legality that governs public administration. The exercise of discretionary power by administrative authorities is subject to legal constraints, which require adherence to the principles of legality, impartiality, non-discrimination, proportionality, objectivity and consistency in decision-making.

Administrative acts adopted under discretionary power are not exempt from judicial review. On the contrary, they must be subject to legality control, either *ex post* by administrative courts or, complementarily, through preliminary administrative oversight. Article 53(1) enshrines the fundamental right of individuals to obtain recognition of a violated right. This constitutional norm applies to all legal subjects, natural and legal persons, and concerns that any right may be affected by actions or inactions of public authorities. Notably, the inaction of a public authority is equated with an administrative act capable of producing

67 Constitutional Court Decision No.14 of 15 November 2012, paragraphs 66–69.

68 Carnat and Panchiv, 2019.

69 Negru et al., 2012, p. 209.

negative effects on an individual's rights. The injured person may request, cumulatively or separately, the recognition of the claimed right, the annulment of the act and the compensation for damage, whether material or moral. Recognition of the right and annulment of the act constitute prerequisites for the reparation of damage. In such proceedings, the burden of proving the harm and the existence of the right lies with the petitioner, while the public authority must justify the legality of its act or omission. In other words, the petitioner must demonstrate the causal link between the act of the public authority and the damage suffered.⁷⁰

To implement the constitutional provision, the Law on Administrative Litigation No. 793-XIV was adopted on 10 February 2000. This law was subsequently repealed upon the entry into force of the Code of Administrative Procedure, adopted on 19 July 2018 and effective as of 1 April 2019. Currently, the judicial oversight of public authorities is governed by the Code of Administrative Procedure,⁷¹ following Article 53(1); however, within a modernised procedural framework. In its Decision No. 46 of 21 November 2002,⁷² the CCM provided a new interpretation of certain provisions of the now-repealed Administrative Code, maintaining the validity of the underlying constitutional principles while applying the mechanisms established by the new administrative procedural framework.

Within Article 53, conflicts arising from administrative acts may be resolved through several avenues, such as a gracious or hierarchical appeal submitted to the issuing or superior authority; that is, through administrative means, or by judicial means before administrative courts, or through special procedures via constitutional litigation before the CCM.

In the CCM's jurisprudence, a doctrine has emerged regarding administrative acts that are exempt from judicial review.⁷³ For example, material damage encompasses actual losses and the loss of potential gains, while moral damage includes the suffering caused by violations of a person's non-pecuniary rights. In its Decision No. 46 from 21 November 2002, the CCM acknowledged this broad interpretation, which served as the basis for the subsequent understanding of the notions of moral and material damage, correlating them with the necessity of ensuring effective protection of the individual concerning public authorities. Nevertheless, a legal issue examined in the context of the CCM's Decision No. 46 of 21 November 2002 concerns the constitutionality of Article 13(1) of the Administrative Law No. 793-XIV, as amended by Law No. 726-XV, which limited the exception of illegality solely to administrative acts of a normative nature, excluding those of an individual nature. Hence, the dissenting opinion in the Decision of 21 November 2002⁷⁴ criticised this legislative solution on the grounds that it restricted access

70 *Ibid.*, p. 212.

71 Law No. 116 from 19 July 2018 on approval the Administrative Code of Republic of Moldova.

72 Constitutional Court Decision, 2002.

73 Constitutional Court Decision No. 5 of 11 February 2014.

74 Constitutional Court, 2002.

to justice guaranteed by Article 20 by excluding individual administrative acts from the scope of legality control exercised incidentally. The author draws an essential distinction between the ‘exception of unconstitutionality’ and ‘exception of illegality’, arguing that excluding individual administrative acts from the scope of the latter is unconstitutional, as it infringes the right to an effective remedy against actions of public authorities, regardless of their normative or individual character.

■ 1.10. *Constitutional Duties of Individuals in the Republic of Moldova*

The Constitution outlines five fundamental duties: Exercise of Rights and Freedoms (...without any infringement of the rights and liberties of the others) (Article 55), Faithfulness to the Country (Article 56), Defense of Motherland (Article 57), Financial Contributions (Article 58), Protection of the Environment and Monuments (Article 59). The fundamental duties outlined in Chapter III reflect the principle that individuals, by virtue of being members of society, are obligated to perform certain actions. These duties, inherently linked to the rights and freedoms afforded to individuals, acquire their status as fundamental duties due to their correlative nature with these rights. The reciprocal relationship between duties and rights is logically sound and crucial to the functioning of a legal system. No individual or legal entity can solely claim rights without assuming the corresponding duties.

Title II enshrines both fundamental rights and freedoms and fundamental duties, signifying that the supreme law gives equal consideration to both. Just as rights and freedoms are essential for the individual, fundamental duties are equally vital for the state. For citizens to effectively enjoy the rights granted by the Constitution and the laws, it is necessary to establish certain basic duties that safeguard the state and serve as the guarantor of the rule of law. Consequently, Article 55, entitled ‘Exercise of Rights and Freedoms’, underscores the importance of this balance. The exercise of constitutional rights and freedoms is conditioned on two key dimensions: good faith and respect for the rights of others.⁷⁵ As a constitutional principle, good faith carries significant theoretical and practical implications within public law. Respect for the rights of others serves as an external constraint, preventing the abuse of one’s rights and ensuring that the rights of others are not infringed upon.

75 Negru et al., 2012, p. 203.

2. Fundamental Rights Adjudication in the Republic of Moldova

■ 2.1. Bodies Responsible for the Protection of Fundamental Rights

The Constitution of the Republic of Moldova, adopted on 27 July 1994, expressly stipulates that respecting and protecting the person constitutes a primary duty of the state (Article 16, paragraph (1)). The state ensures the right of every person to know their rights and duties. It publishes and makes accessible all laws and other normative acts (Article 23). Hence, any person has the right to effective satisfaction from the competent courts against acts that violate his rights, freedoms and legitimate interests. No law can limit access to justice (Article 20).

Regarding the *judicial control of the protection of fundamental human rights and freedoms*, the Constitution provides in Article 115 that justice is carried out through the Supreme Court of Justice (SCJ), appeal courts and district courts. According to the law, specialised judges can work for certain categories of cases. The establishment of extraordinary courts is prohibited.

These constitutional provisions were developed through the Law on Judicial Organization,⁷⁶ which stipulates, as the courts' duties, the administration of justice for defending and realising the fundamental rights and freedoms of citizens and their associations, enterprises, institutions and organisations. The courts judge shall hear all the civil, administrative and criminal cases, and any other cases for which the law does not provide another competency (Article 4). Every person has the right to effective satisfaction from the competent courts against acts that violate their rights, freedoms and legitimate interests. Citizens' associations, enterprises, institutions and organisations have the right, as established by law, to take action in court for the defence of their legitimate rights and interests that have been violated (Article 6).

The powers of the SCJ of the Republic of Moldova are summarised as follows: a) Examining, as a first instance, the categories of cases established by law; b) Examining, as an appeals court, cases of social and legal importance, and those that reveal particularly serious violations of the law and human rights; c) Examination of review requests in the cases established by law; d) Raising the exceptions of unconstitutionality of the normative acts to be applied to the resolution of a concrete case; e) Solving other types of requests and legal problems provided by law.⁷⁷

To ensure the uniform interpretation and application of legislation in the justice system, the SCJ develops guidelines regarding the application of procedural legislation and the individualisation of criminal penalties and administrative sanctions, issues, at the courts' request, advisory opinions regarding the

⁷⁶ Law No. 514 of 6 July 1995 on judicial organisation.

⁷⁷ Law No. 64 of 30 March 2023 on the Supreme Court of Justice.

application of the legislation and decides on the procedure in the interest of the law. The documents issued in this regard are of a recommendation nature and are published on the SCJ's official web page.

Notably, on 9 June 2014, the Plenum of the SCJ adopted the decision regarding the application by the courts of some provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁷⁸ Through this decision, the plenary reiterated that the primary responsibility to ensure respect for the fundamental rights and freedoms provided for by the European Convention, according to the principle of subsidiarity, rests with the state. This principle presupposes that, before appealing to the institutions of the Convention, the claimant must have addressed his complaint to all national institutions that could offer an effective and adequate remedy, since the respondent state 'must first have the opportunity to rectify the situation referred to by its own means and within the national legal system'. The decision of the Plenum offered a series of explanations for the application of the provisions of the European Convention on Human Rights in the domestic legal order. a) *The People's Advocate (Ombudsman)* ensures the respect of human rights and freedoms by public authorities, organisations and enterprises, regardless of the type of property and legal form of organisation, and by persons holding positions of responsibility at all levels. The Ombudsman contributes to the defence of human rights and freedoms by preventing their violation, monitoring and reporting on the way of respecting fundamental human rights and freedoms at the national level, improving the legislation related to human rights and freedoms, international collaboration in this field and promoting human rights and freedoms and their defence mechanisms.⁷⁹ b) *The Equality Council*

The adoption of Law No. 121 on 25 May 2012 concerning the assurance of equality serves to implement the Council of the European Union Directives,⁸⁰ creating the legal framework for the prevention and combating of discrimination, while establishing the responsible institutions, including the Equality Council. The Council is an extrajudicial mechanism for the protection of individuals' rights of non-discrimination. According to Article 11(1) of the aforementioned Law, the Council operates as an autonomous budgetary authority, comprising five politically unaffiliated members appointed for a term of five years. Three of these members represent civil society and at least three Council members must hold a law degree.⁸¹ Pursuant to Article 11(3), any individual who is a citizen of the

78 Plenary Session of the Supreme Court of Justice Decision No. 3 of 9 June 2014 on the application by courts of law of certain provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms [Online]. Available at: https://jurisprudenta.csj.md/search_hot_expl.php?id=181 (Accessed: 31 December 2024).

79 Law No. 52 of 3 April 2014 on the Ombudsman.

80 Council of the European Union, 2000a; Council of European Union, 2000b; Council of the European Union, 2004.

81 Art. 11 para. 2 of the Law No. 121 of 25 May 2012 on equality.

Republic of Moldova, possesses higher education, has an impeccable reputation, demonstrates tolerance towards minority groups and has at least five years of recognised activity in human rights protection may apply to become a Council member. Additionally, the individual must not have a negative integrity record over the past five years, must not have failed a professional integrity test and must not be prohibited from holding public office or positions of public dignity.⁸² The Council President must notify the Parliament three months before the expiration of the Council members' mandates. For appointing new candidates to the Council, the Parliament establishes a special commission, which organises a public competition. This competition must be held at least 30 days before the expiration of the outgoing members' mandates.⁸³ The process adheres to the principles of open and transparent competition, equal treatment and diversity.⁸⁴ Candidates are interviewed by the special commission, which issues reasoned opinions regarding each selected candidate and presents them to the plenary session of Parliament. Candidates are appointed by a majority vote of the elected deputies.⁸⁵

The Council President is elected by a majority vote of the Council's membership and operates permanently.⁸⁶ The status of a Council member ceases upon the expiration of their mandate, resignation, revocation or death. A Council member may be revoked by the Parliament in circumstances that prevent the fulfilment of their mandate or at the request of the Council, adopted by a majority vote of its members, in case of non-performance or improper fulfilment of their duties. A new Council member exercises their role until the expiration of the revoked, resigned or deceased member's mandate.⁸⁷ The status of a Council member is suspended by the Parliament if they are formally accused of committing a criminal offence during their duties or an offence related to any form of discrimination.⁸⁸ Council members, except the Council President, are convened for meetings by the President and receive a remuneration amounting to 10% of the average national salary for each meeting attended.⁸⁹ In its activity, the Council is supported by an administrative staff, and the Council President is entitled to employ staff within their office.⁹⁰

The responsibilities of the Equality Council include analysing the compliance of national legislation with international standards on discrimination

82 Art. 11 para. 3 of the Law No. 121 of 25 May 2012 on equality.

83 Art. 11 para. 4 of the Law No. 121 of 25 May 2012 on equality.

84 Art. 11 para. 6 of the Law No. 121 of 25 May 2012 on equality.

85 Art. 11 para. 8 of the Law No. 121 of 25 May 2012 on equality.

86 Art. 11 para. 11 of the Law No. 121 of 25 May 2012 on equality.

87 Art. 11 para. 9 of the Law No. 121 of 25 May 2012 on equality.

88 Art. 11 para. 10 of the Law No. 121 of 25 May 2012 on equality.

89 Art. 11 paras. 11–12 of the Law No. 121 of 25 May 2012 on equality.

90 Art. 11 paras. 13–131 of the Law No. 121 of 25 May 2012 on equality.

and the right to submit proposals for improving legislation in this regard.⁹¹ The Council contributes to raising awareness and educating society to eliminate discrimination and cooperates with international bodies that have responsibilities in this field.⁹² For protection against discrimination, the Council examines related complaints, conducts fact-finding visits regarding the subject of complaints or the implementation of its prescriptions/recommendations, identifies and investigates administrative offences following the provisions of the Code of Administrative Offences and notifies the criminal prosecution authorities in cases of discriminatory acts that meet the elements of a crime.⁹³ However, the Council can amicably resolve conflicts arising from discriminatory acts.⁹⁴

The Council's budget is developed, approved and managed following the principles, rules and procedures established by legislation on public finances and fiscal-budgetary accountability.⁹⁵ Furthermore, the law allows activities for preventing and combating discrimination to be funded from other sources not prohibited by law.⁹⁶ The law on equality does not explicitly specify whether complaints submitted to the Council are exempt from state fees. However, it states that individuals who bring court actions related to discriminatory acts are exempt from paying the state fee, with only the stamp duty being applicable, as stipulated by the State Fee Law No. 213/2023.⁹⁷

Any person, regardless of their legal status, and representatives with a legitimate interest in combating discrimination concerning an individual, group or community, may file a complaint with the Council.⁹⁸ The complaint can be submitted within one year from the date of the discriminatory act or from the date the complainant became aware or should have become aware of the discriminatory act. In cases of ongoing or prolonged discriminatory acts, the time limit starts from the date of the last action/inaction.⁹⁹ Submitting a complaint to the Council does not constitute a mandatory preliminary procedure for bringing the matter before a court. The examination of the complaint by the Council ceases if a similar complaint is filed with the court.¹⁰⁰ The time limit for examining the complaint is 90 days; however, it may be extended by up to 60 days, if additional consultations are required. The burden of proof regarding the absence of discrimination lies with the defendants.¹⁰¹ Following the examination of the complaint, the Council

91 Art. 12 para. 1 points a)–c) of the Law No. 121 of 25 May 2012 on equality.

92 Art. 12 para. 1 points g)–h) of the Law No. 121 of 25 May 2012 on equality.

93 Art. 12 para. 1 points i)–l) of the Law No. 121 of 25 May 2012 on equality.

94 Art. 12 para. 1 point m) of the Law No. 121 of 25 May 2012 on equality.

95 Art. 11 para. 11 of the Law No. 121 of 25 May 2012 on equality.

96 Art. 22 para. 2 of the Law No. 121 of 25 May 2012 on equality.

97 Art. 21 of the Law No. 121 of 25 May 2012 on equality.

98 Art. 13 para. 1 of the Law No. 121 of 25 May 2012 on equality.

99 Art. 13 para. 3 of the Law No. 121 of 25 May 2012 on equality.

100 Art. 13 para. 4 of the Law No. 121 of 25 May 2012 on equality.

101 Art. 15 para. 1 of the Law No. 121 of 25 May 2012 on equality.

adopts a reasoned decision based on the majority vote of its members. Its decision may include recommendations for ensuring the victim's reinstatement of rights and preventing similar acts in the future. The decision is communicated to the parties within 15 days and takes effect from the date of communication. The defendant is obliged to inform the Council of the remedial measures taken within 30 days.¹⁰² The decisions are published on The Council's website, while ensuring compliance with data protection regulations.¹⁰³

■ 2.2. *The Constitutional Court of the Republic of Moldova: Structure, Competences, and Sources of Law*

The development of the draft Constitution in 1994 was conditioned by the need to create a legal framework for evolution towards a state of law and democracy, sovereign and independent, unitary and indivisible. The need to create an independent constitutional authority was expressed by the representatives of the autochthonous doctrine, taken over and implemented by the parliamentary committees and the Commission for finalising the draft Constitution, by introducing a separate title in the Constitution than that of 1994. Thus, Title V of the Constitution conferred that the CCM was the sole authority of constitutional jurisdiction in the territory of the Republic of Moldova, independent from any other public authority and subject only to the Constitution, as a guarantor of the supremacy of the Constitution (Article 134). Simultaneously, the Supreme Law expressly regulates its attributions (Article 135), the status of constitutional judges (Articles 137, 138 and 139) and the legal value of the acts of the CCM (Article 140). Thus, on 23 February 1995, the CCM was created as the first and only authority of constitutional jurisdiction in the history of the Republic of Moldova.¹⁰⁴

The CCM's activity is currently regulated by the Law on the CCM¹⁰⁵ and Regulations on the Procedure for Examining Petitions Submitted to the CCM¹⁰⁶. For exercising constitutional jurisdiction, the CCM shall perform the following functional duties: a) Upon referral, it exercises constitutional review of laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government and international treaties to which the Republic of Moldova intends to become a party; b) Interprets the Constitution; c) Delivers opinions on initiatives to revise the Constitution; d) Confirms the results of republican referendums; e) Confirms the results of the election of Parliament and the President of the Republic of Moldova, validates the mandates of Members of Parliament and the President of the Republic of Moldova; f) Determines the

102 Art. 15 para. 5 of the Law No. 121 of 25 May 2012 on equality.

103 Art. 15 para. 7 of the Law No. 121 of 25 May 2012 on equality.

104 Curtea Constituțională a Republicii Moldova, n.d.

105 Law No. 74 of 10 April 2025 on the Constitutional Court.

106 Regulations on the Procedure for Examining Petitions Submitted to the Constitutional Court.

circumstances that justify the dissolution of the Parliament, the dismissal of the President of the Republic of Moldova, the interim in the office of the President or the impossibility of the President of the Republic of Moldova to exercise their duties for more than 60 days; g) Settles exceptions of unconstitutionality of the normative acts mentioned under point a), upon referral by the courts of law; h) Rules on matters regarding the constitutionality of a political party.

■ 2.3. *Roles of the Constitutional Court in Fundamental Rights Protection*

The CCM, being the authority of constitutional jurisdiction in human rights, is most often called upon to express itself on the exceptions of unconstitutionality, which is a procedure initiated by ordinary courts, at the initiative of the parties or *ex officio*, of the control of compliance of a law or another normative act with the constitutional norms. It reflects the existence of the triangular relationship between the party in the process, the court, in front of which the unconstitutionality is invoked, and the CCM, called to resolve the exception of unconstitutionality. The exception constitutes a constitutional guarantee of the rights and freedoms conferred on citizens for their defence against possible deviations of the legislator by establishing norms contrary to the Constitution. The CCM, as the guarantor of the supremacy of the Constitution, becomes the guarantor of these rights and freedoms.

Hence, by the Decision No. 2 of the CCM of 9 February 2016, for the interpretation of Article 135 paragraph (1) lit. a) to lit. g) of the Constitution, the method of application of the institution of the exception of unconstitutionality was explained.¹⁰⁷ The CCM acknowledged the possibility of limited *ex ante* constitutional review under certain circumstances. Although it generally exercises review after the adoption of legal acts, it may intervene before their entry into force, provided a timely challenge is filed and it issues a suspension to prevent unconstitutional effects. This protective mechanism was exemplified in the 2020 ruling on the loan agreement with Russia.¹⁰⁸

■ 2.4. *Role of the Supreme Court and Ordinary Courts in Fundamental Rights Protection*

In the Republic of Moldova, the SCJ and other ordinary courts do not have the authority to review norms or rule on constitutional complaints. This jurisdiction is exclusively vested in the CCM. However, the CCM may be seized with an exception of unconstitutionality by judges/panels of judges from the SCJ, the courts of appeal and the courts of first instance. Thus, while ordinary courts do not directly rule on constitutional complaints, they play a crucial role in identifying potential constitutional issues and referring them to the CCM.

107 Curtea Constituțională a Republicii Moldova, 2016.

108 Constitutional Court Decision No. 12 of 7 May 2020.

Under the provisions of the Law on the SCJ, adopted on 30 March 2023, the court has the following responsibilities: a) Examines, as the first instance, the categories of cases established by law; b) Examines, as an appellate court, cases of social and legal importance, and those that reveal particularly serious violations of the law and human rights; c) Examines requests for revision in cases established by law; d) Raises exceptions of unconstitutionality of normative acts to be applied in the resolution of a specific case; e) Resolves other types of requests and legal issues provided by law.

■ 2.5. *Exercise of Powers by the Constitutional Court and Other Bodies: Annual Statistics*

The statistical data presented by the CCM shows that 293 referrals were recorded in 2021, 234 in 2022 and 282 in 2023. In 2024, the CCM received 331 referrals. Additionally, 77 referrals were carried over from 2023 and 180 referrals were transferred to be reviewed in 2025. Most of the referrals submitted in 2024 originated from the courts of law (296 referrals), followed by members of Parliament and parliamentary factions (20 referrals). In the same year, the CCM issued 26 decisions, including 1 decision on the interpretation of constitutional provisions, 8 decisions on the constitutional review of normative acts, 7 decisions concerning exceptions of unconstitutionality, 7 decisions on the validation of parliamentary mandates, 1 decision confirming the results of the republican constitutional referendum, 1 decision confirming the results of the presidential election and validating the President's mandate and 1 decision approving the Court's annual report.

In the majority of the 2024 rulings, the Court declared the contested normative provisions unconstitutional. A comparative dynamic analysis of the Court's activity shows that, as in previous years, exceptions of unconstitutionality prevailed among the submitted referrals. In 2024, they accounted for 89% of the total referrals. By subject matter, most referrals submitted in 2024 concerned normative provisions related to political rights, followed by administrative, civil and criminal law, and social, economic and cultural rights. Furthermore, the number of referrals submitted to the CCM in 2024 was higher than the previous year. While 282 referrals were registered in 2023, 331 were registered in 2024.¹⁰⁹

In 2024, the CCM adopted 26 judgments, 1 advisory opinion, 9 decisions rejecting requests to suspend the application of certain provisions, 160 inadmissibility decisions, 1 decision admitting a request for suspension and 1 decision to discontinue proceedings. Overall, this activity reflects the CCM's continued focus on constitutional review and the filtering of unsubstantiated claims.

109 Constitutional Court Decision on the Approval of the Report Regarding the Exercise of Constitutional Jurisdiction in 2024.

■ 2.6. *Role of the President of the Constitutional Court of Moldova*

Regarding the Court's judicial activity, the duties of the President of the CCM include, among others, convening and presiding over the sessions of the Court and assigning referrals for examination. The decision to suspend the application of a contested act is adopted by the plenary of the CCM, with the majority vote of the judges present. If convening the plenary is not possible, the suspension decision may be issued by an order of the President of the CCM, subject to mandatory subsequent confirmation by the plenary. In other cases, within the context of the CCM's judicial activity, there are no provisions establishing a dominant role for the CCM President in the event of a tie vote.

■ 2.7. *Role of the Rapporteur Judge and Advisory Staff*

After the CCM decides to accept a referral for examination and includes it on the agenda, its President designates a judge as the rapporteur, sets the deadline for examining the referral and presenting the report. The rapporteur judge examines the submitted referral and drafts a decision about its (in)admissibility. In examining the referral, the rapporteur judge may be assisted by other CCM staff members. The draft decision on (in)admissibility is sent via the CCM's official email to the constitutional judges for examination in the plenary.

The rapporteur judge drafts the proposed constitutional jurisdiction act and submits it to the CCM's plenary. The examination of the case begins with a brief presentation of the essence of the referral by the rapporteur judge. The President gives the floor to the parties. The author of the referral is the first to present their position, followed by the representatives of the authorities present. The judges of the CCM deliberate in the deliberation room, which is kept a secret. After the deliberations are concluded, the President of the session puts the proposals of the rapporteur judge and those of the other judges to vote. Judges are not allowed to abstain from voting. The acts of the CCM are adopted by a majority vote of the judges.

From a legal sociology perspective, the advisory staff, particularly judicial advisors, in the CCM provide essential professional and technical support to judges, including the rapporteur judge. Their role is advisory, not binding; the rapporteur judge may be assisted by them in examining the case and drafting decisions; however, the judge retains full discretion in presenting and defending their proposals before the plenary. The advisory staff ensures high-quality reasoning, yet does not dictate judicial outcomes.

■ 2.8. *Relationship Between Ordinary Courts and the Constitutional Court*

The procedure of raising the exception of unconstitutionality allows ordinary courts, either at the initiative of the parties or on their own motion, to review the compatibility of a law or other normative act with constitutional principles. The process reflects a triangular relationship between the party involved in the

proceedings, the court hearing the case and the CCM, which is tasked with adjudicating the constitutionality of the challenged legal provision. In the CCM, the decision clarified the procedure for applying the exception of unconstitutionality. This decision provided important guidance on how ordinary courts should handle the review of laws or normative acts when their conformity with constitutional provisions was questioned, establishing a framework for invoking the exception of unconstitutionality within the legal system.¹¹⁰ Thus, in situations where there is uncertainty regarding the constitutionality of a normative act to be applied in the resolution of a case, the court may, of its own accord, or the parties involved in the proceedings, including their representatives whose rights and interests could be affected by the application of an unconstitutional rule, raise the issue of unconstitutionality. This allows for the legal scrutiny of the contested normative act, ensuring that any potentially unconstitutional provisions are addressed before the case is resolved.

The exception of unconstitutionality can be raised in the event of uncertainty regarding the constitutionality of laws, decisions of the Parliament, decrees of the President of the Republic of Moldova and decisions and ordinances of the Government, which are to be applied to the settlement of a case before the court. The exception of unconstitutionality can be raised by: a) The court *ex officio*, which, respecting the principle of the supremacy of the Constitution, is not entitled to apply a norm regarding which there are uncertainties of constitutionality; b) The parties in the process, including their representatives, whose rights and interests may be affected by the application of an unconstitutional rule.

The ordinary judge does not rule on the merits of the referral or the conformity with the Constitution of the contested norms, limiting themselves exclusively to verifying the meeting of the following conditions: a) The object of the exception falls under the category of the documents mentioned above; b) The exception is raised by one of the parties or its representative or indicates that it is raised by the court *ex officio*; c) The challenged provisions are to be applied to the settlement of the case; d) There is no previous decision of the Court regarding the contested provisions.

The verification of the constitutionality of contested norms is the exclusive competence of the CCM. Thus, the ordinary judges are not entitled to deny the parties the referral to the CCM, except in case of failure to meet the mentioned conditions for raising the exception of unconstitutionality. In case of uncertainty regarding the constitutionality of the rules, the court is obliged to refer the matter to the CCM. The referral regarding the control of the constitutionality of some rules to be applied to a case is submitted directly to the CCM by the judges/SCJ judgments, the appeal courts and the courts before which the case is pending.

110 Constitutional Court Decision No. 2 of February 9 2016.

The party that raised the exception of unconstitutionality cannot directly refer the matter to the CCM.

From the moment the court issues a conclusion regarding the lifting of the exception of unconstitutionality and until the adoption of the CCM's decision, the examination procedure of the case is suspended. For the broad examination of all the circumstances, the notification regarding the exception of unconstitutionality is presented to the CCM together with the case file, in which the exception was raised. The examination procedure goes through the following stages: a) Examination of the admissibility of the referral; b) Preparation of the case for examination in the public session of the Court; c) Examination of the case in the public session of the Court.

The referral is supported at the public meeting of the CCM by the judge who raised the exception of unconstitutionality when resolving a case pending before him and the party to the dispute (its representative) if there was an exception raised by the latter. If the exception of unconstitutionality is raised by a panel of judges, the referral will be supported at the public session of the CCM by a judge delegated from the panel. After examining the referral, the CCM declares the challenged norm (un)constitutional. Upon declaration of the unconstitutional norm, it becomes null and void from the moment of adoption of the decision.¹¹¹

■ 2.9. *The Impact of ECtHR Jurisprudence and Domestic Constraints on the Protection of Fundamental Rights*

On 9 July 2014, the Plenum of the SCJ adopted the Decision on the application by the courts of certain provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Decision explicitly states that, following the principle of subsidiarity, the primary responsibility for ensuring the respect of the fundamental rights and freedoms provided by the European Convention lies with the state. This principle presumes that, before resorting to the Convention's institutions, claimant must have brought the complaint to all national institutions that could provide an effective and adequate remedy, as the respondent State 'must first be given the opportunity to remedy the situation referred to by its own means and within the framework of the national legal system'.

Hence, the primary responsibility for applying the provisions of the European Convention rests with the national courts. Thus, when adjudicating cases, the courts must verify whether the law or act to be applied, providing for rights and freedoms proclaimed by the European Convention, is compatible with its provisions. In case of incompatibility, the courts shall directly apply the provisions of the European Convention, as noted in the operative part of the judicial decisions issued. Furthermore, the Decision indicates that the courts must take into account

111 Curtea Constituțională a Republicii Moldova, 2016.

that decisions, actions (or inactions) of state authorities, local public administration authorities, persons in positions of responsibility, judges, including criminal investigators and prosecutors, and state or municipal officials, must comply with the legislation of the Republic of Moldova and the universally recognised general principles, norms of international law and international treaties ratified by the Republic of Moldova, including the European Convention and its Protocols, as interpreted by the European Court of Human Rights.

In this field, we find it appropriate to express our views on a category of cases initiated at the ECtHR by applicants from the Republic of Moldova against the actions of the self-proclaimed authorities in the Transnistrian region. Starting with the first case examined by the ECtHR, we follow how the ECtHR admits the applications submitted against the governments of the Russian Federation and the Republic of Moldova, declaring them admissible, as they concern violations of the rights guaranteed by the Convention. Simultaneously, in establishing the jurisdiction of the Republic of Moldova under Article 1 of the Convention, the reasoning established in the case of *Ilaşco and Others v. Moldova and Russia*¹¹² is repeated, namely the Court considers that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority over part of its territory, which is under the effective control of the ‘Moldavian Republic of Transdnistria’. Hence, the Russian Federation was held responsible in the case of *Ilaşcu and Others* and the cases subsequently submitted to the ECtHR’s jurisdiction, where the applicants invoked violations on the left bank of the Dniester River of the right to education,¹¹³ illegal detention and inhuman and degrading treatment in coercive contexts within detention facilities in Transnistria,¹¹⁴ the right to life,¹¹⁵ protection of property,¹¹⁶ etc.

Regarding the execution of ECtHR judgments by the Republic of Moldova, in 2023, the Committee of Ministers received 29 cases against the Republic of Moldova from the ECtHR for supervision of their execution (compared to 37 in 2022 and 54 in 2021). The cases in which the Russian Federation was held responsible for human rights violations in the Transnistrian region (particularly, *Catan and Others*, *Mozer*) have not been executed by that state and the situation is being monitored by the Committee of Ministers of the CoE.

112 Case of *Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, Judgment 8 July 2004.

113 Case of *Catan and Others v. the Republic of Moldova and Russia*, Application Nos. 43370/04 and others, Judgement 19 October 2012.

114 Case of *Mozer v. the Republic of Moldova and Russia*, Application No. 11138/10, Judgment 23 February 2016.

115 Case of *Pisari v. the Republic of Moldova and Russia*, Application No. 42139/12, Judgment 21 April 2015.

116 Case of *Turturica and Casian v. Moldova and Russia*, Application Nos. 28648/06 and 18832/07, Judgment, 30 January 2017; Case of *Pădureţ v. Moldova and Russia*, Application No. 26626/11, Judgment 13 November 2017.

■ 2.10. *Legal Consequences of Constitutional Court Decisions in Moldova*

The *erga omnes* opposability of the decisions of the CCM implies the constitutional obligation of all authorities to apply the decisions of the Court to the situations in which the rules declared unconstitutional have incidence. The decisions are opposable to the parties *in concreto* in the process in which the exception of unconstitutionality was raised and the third parties *in abstracto*.¹¹⁷

3. Conclusion

The national human rights protection system essentially resides in the provisions of the international treaties ratified by the Republic of Moldova. Its Constitution enshrines the primacy of international law, particularly concerning fundamental human rights and freedoms, as outlined in the treaties to which the state is a party. Although the normative and institutional frameworks largely address the contemporary challenges in human rights, we cannot say the same about the process of implementing these normative provisions. Moreover, ‘access to justice’ continues to be a goal for a significant part of the state’s population due to poverty and the lack of effective government control in the Transnistrian region.

The recent completion of the screening process for accession to the European Union, reflected in the European Commission’s Report on the Republic of Moldova published in November 2025, highlights that, despite the reforms undertaken in the field of fundamental rights, significant shortcomings persist in the protection of children, persons with disabilities, women, and minorities. In this context, the European Commission put forward a series of targeted recommendations aimed at addressing these deficiencies. The Moldovan authorities have demonstrated a considerable degree of openness and responsiveness to these recommendations, which in turn reflects the State’s clear intention to align its national legal order with the high standards of human rights protection required by the European Union.

117 Curtea Constituțională a Republicii Moldova, 2016.

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