Republic of Moldova

CONSTITUTIONAL COURT

Unofficial translation

JUDGMENT

ON CONSTITUTIONAL REVIEW

of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova
(modality of electing the President)

(*Complaint no. 48b/2015*)

CHIŞINĂU

4 March 2016

In the name of the Republic of Moldova,
The Constitutional Court, sitting in the following composition:
Mr Alexandru TĂNASE, *President*,
Mr Aurel BĂIEȘU,
Mr Igor DOLEA,
Mr Victor POPA, *judges*,
With the participation of Mrs Ludmila Chihai, *registrar*,

Considering the complaint submitted on 12 November 2015
and registered on the same date,
Having examined the complaint in a public plenary hearing,
Considering the acts and files of the case,
Having deliberated in a private sitting,

Delivers the following judgment:

PROCEDURE

1. The case originated with the complaint submitted to the Constitutional Court on 12 November 2015, according to Article 25 let. h) of the Law on the Constitutional Court and Article 38 para. (1) let. h) of the Code of Constitutional Jurisdiction, by 18 MPs of the parliamentary faction of the Liberal Democratic Party of Moldova: Valeriu Ghileţchi, Tudor Deliu, Liliana Palihovici, Angel Agache, Maria Ciobanu, Vladimir Hotineanu, Chiril Lucinschi, Grigore Cobzac, Vadim Pistrinciuc, Iurie Ţap, Ion Balan, Nae-Simion Pleşca, Ştefan Creangă, Octavian Grama, Gheorghe Mocanu, Mihaela Spatari, Aliona Goţa, and Victor Roşca, on the constitutionality of **section 2 in its entirety** and the **phrase** *„except the case provided for in Article 78 para.(5)"* in **section 5 of Article I** of Law no.1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova, that have modified the manner of electing the President of the Republic of Moldova.

2. The authors of the complaint in the present case requested verification of the compliance of certain provisions of the Law no. 1115/2000 referring to the amendments operated in Articles 78 and 85 para. (4) of the Constitution, taking into account the procedure of adoption thereof, with Article 135 para. (1) let. c) and Article 142 para. (1) of the Constitution, as well as with the constitutional principle of rule of law enshrined in the Preamble and in Article 1 para. (3) of the Constitution.

3. In the public hearing the author of the complaint fleshed out the subject of the complaint, specifying that only the control of constitutionality of the amendments referring to the mechanism of electing of the President of the Republic of Moldova by a vote of **3/5** of the total number of MPs has been requested. The author does not challenge other amendments, which did not essentially alter the content of the original draft law upon which the

Constitutional Court had delivered its opinion and which did not affect the unity and balance of the constitutional matter.

4. In the same context, the authors of the complaint requested the Court, following an interpretation of Article 135 para. (1) let. c) in conjunction with Article 141 para. (2) of the Constitution, to explain:

> „1) Whether it is necessary and/or mandatory for a repeated Opinion of the Constitutional Court to be delivered on the amendments advanced by MPs and accepted by the Parliament in the second reading of a draft law revising the Constitution, following the submission into the Parliament of the draft law along with the Opinion of the Constitutional Court?
>
> 2) Whether the procedure of adopting a draft constitutional law that has been amended substantially and conceptually by MPs during the second reading without the delivery of a repeated Opinion of the Constitutional Court, has been violated?
>
> 3) In case the Constitutional Court delivers a repeated Opinion on a draft law revising the Constitution that has been substantially amended during the second reading in Parliament, shall this draft law be subjected to all the procedures provided in Article 143 para.(1) of the Constitution?"

5. By the Decision of the Constitutional Court of 7 December 2015, the complaint was declared admissible, without prejudicing the merits of the case.

6. In the process of examination of the complaint, the Court requested the opinions of the Parliament, President of the Republic of Moldova and of the Government.

7. In the public hearing of the Court, the complaint was presented by Mr Valeriu Ghileţchi, Member of Parliament and one of the authors of the complaint. The Government was represented by Mr Eduard Serbenco, Deputy Minister of Justice. The Parliament submitted its written opinion and did not delegate a representative to participate in the public hearing.

THE FACTS

8. On 23 May 1999 within the republican consultative referendum, in which 58.33% of voters took part, 55.33% answered positively the question „*Would you be in favour of amending the Constitution with the view to establish a presidential system of government in the Republic of Moldova where the President of the Republic would form and lead the government, as well as would bear responsibility for the results of the country's government?*". This question has been answered negatively by 30.85% of voters.

9. By the Judgment no. 32 of 15 June 1999 the Constitutional Court confirmed the results of the republican consultative referendum, however the Court decided that it „*is of consultative nature and the results thereof have no legal effects*".

10. Contrary to the opinion expressed by the voters in the consultative referendum, by the Law 1115-XIV of 5 July 2000 the Parliament had revised the Constitution of the Republic of Moldova, amending, *inter alia*, Article 78. As a consequence, if until that date the President was directly elected by citizens, following the constitutional revision the Parliament was vested with the right to elect the President of the Republic of Moldova by the vote of 3/5 of the MPs (61 MPs).

11. Immediately after the constitutional revision, the Parliament failed to elect the President of the Republic of Moldova in two ballots (on 4 and, respectively, on 6 December 2000), since none of the candidates has obtained the necessary number of votes in order to be elected as Head of the state. The Parliament had also failed to elect the President of the Republic of Moldova within the second attempt of repeated elections (on 21 December 2000) due to the lack of the required number of MPs. As a result, by the Presidential Decree no. 1843 of 31 December 2000, the Parliament was dissolved and early parliamentary elections have been organized.

12. On 4 April 2001 the newly-elected Parliament voted to elect the President of the Republic of Moldova, pursuant to Article 78 of the Constitution, in the first ballot.

13. On 4 April 2005, the Parliament elected the President of the Republic of Moldova, pursuant to Article 78 of the Constitution, in the first ballot.

14. On 20 May 2009, the Parliament carried out regular procedures to elect the President of the Republic of Moldova; however none of the candidates obtained the necessary number of votes. The Parliament failed to elect the President of the Republic also within the repeated elections of 3 June 2009, as none of the candidates obtained the necessary number of votes. As a consequence, by the Presidential Decree no. 2243 of 15 June 2009, the Parliament was dissolved and early parliamentary elections took place.

15. Following the resignation of the acting President on 11 September 2009, the interim office was taken over by the Speaker of the Parliament.

16. On 10 November 2009, within the ordinary procedure of election of the President only one person ran for the office of the President of the Republic of Moldova; however the necessary number of votes were not cumulated. Within the repeated elections that took place on 7 December 2009 the same candidate was proposed for the office of the President of the Republic of Moldova and again failed to obtain the necessary number of 61 votes.

17. On 5 September 2010 there was an attempt to amend the Constitution by way of referendum on the introduction of direct elections of the President by the citizens. However, the referendum has been invalidated due to a low turnout.

18. In this context, by the Presidential Decree no. 563 of 28 September 2010 the Parliament was dissolved.

19. The interim office of the President was ensured by the President of the Parliament elected in this office on 30 December 2010 and appointed as Interim President by Parliament Decision no. 6 of 30 December 2010.

20. On 16 March 2012 within repeated elections the Parliament elected the President of the Republic of Moldova according to Article 78 of the Constitution, thus bringing to an end a period of nearly 3 years of interim office.

RELEVANT LAW

21. Relevant provisions of the Constitution (Official Gazette of the Republic of Moldova of 1994, no. 1) are as follows:

Preamble

„[...] CONSIDERING **rule of law**, civic peace, democracy, human dignity, fundamental human rights and freedoms, the free development of human personality, justice and political pluralism as supreme values [...]"

Article 1
The State of the Republic of Moldova

„[...]

(3) Governed by the rule of law, the Republic of Moldova is a democratic State in which the dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed."

Article 134
Statute [of the Constitutional Court]

„(1) The Constitutional court is **the sole authority of constitutional jurisdiction in the Republic of Moldova.**

[…]

(3) The Constitutional Court **guarantees the supremacy of the Constitution, ascertains the enforcement of the principle of separation of the State powers into the legislative, executive and judiciary, and it guarantees the responsibility of the State towards the citizen and of the citizen towards the State.**"

Article 135
Powers

„(1) The Constitutional Court:

a) exercises, upon appeal, the review of constitutionality of **laws** and decisions of the Parliament, decrees of the President, decisions and ordinances of the Government, as well as over international treaties to which the Republic of Moldova is a party;

b) gives the interpretation of the Constitution;

c) **formulates its position on initiatives aimed at revising the Constitution**; […]"

Article 140
Judgments of the Constitutional Court

„(1) Laws and other normative acts or parts thereof become null and void from the moment of adopting by the Constitutional Court of the appropriate judgment to that effect.

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

Article 141
Initiatives for revision

„(1) The revision of the Constitution may be initiated by:

[…]

b) a number of at least one third of the members of Parliament;

[…]

(2) Draft Constitutional laws shall be submitted to Parliament **only alongside with the advisory opinion of the Constitutional Court** adopted by a vote of at least 4 judges."

Article 142
Limits of revision

„(1) The provisions regarding the sovereignty, independence and unity of the state, as well as those regarding the permanent neutrality of the State may be revised only by referendum with the vote of the majority of the registered citizens with voting rights.

(2) No revision shall be performed if it implies the infringement of fundamental rights and freedoms of citizens or their guarantees.

(3) The Constitution may not be revised under a state of national emergency, martial law or war."

Article 143
The Law amending the Constitution

„(1) Parliament is entitled to pass a law on amending the Constitution following at least 6 months from the date when the corresponding initiative has been submitted. The law shall be adopted by a vote of two-thirds of the members of Parliament.

(2) If, within a year from the date when the initiative amending the Constitution has been submitted, the Parliament din not pass the appropriate constitutional law, the proposal shall be deemed null and void."

22. Relevant provisions of Rules of the Parliament, adopted by the Law no. 797-XIV of 2 April 1996 (republished on 7 April 2007), are as follows:

Article 81
Transmitting the draft constitutional law to
the special committee or to the leading standing committee

„(1) Following the approval of the draft constitutional law in the first reading, the Speaker of the Parliament asks for the opinion of the MPs on the submission for immediate voting of the draft law in **the second reading** or sending it to the special committee or the leading standing committee to examine **the amendments** and to prepare the draft law for debates in the second reading.

(2) In case at least **25 MPs** request to send the draft constitutional law to the special committee or to the leading standing committee, the Speaker shall order this request. Otherwise the draft law shall be voted in the second and final reading."

Article 82
Debating and voting the amendments

„(1) In case the draft constitutional law is sent to the special committee or to the leading standing committee, the **MPs** shall prepare and send the **amendments** to the respective committee within 15 days following the adoption of the draft law in the first reading. This term can be extended, at the proposal of the Speaker of the Parliament, by the vote of the majority of present MPs.

(2) Only the **amendments** submitted in written and signed by at least **5 MPs** shall be debated and voted in the second reading. The amendments shall not contain elements that lack from the draft law on which the Constitutional Court issued its Opinion and shall refer only to the following:

a) text editing;

b) modifications that do not affect the essence of the provisions proposed by the author;

c) omission of certain articles or parts of articles, in case it doesn't affect the essence of the draft law.

(3) The special committee or the leading standing committee shall debate and **vote on each amendment** separately. Afterwards, it shall draw up a report in order to present the constitutional draft law for debates in the second reading, in which shall present its position in regard to each article."

Article 83
Debating the draft constitutional laws in the second reading

„(1) Debating the draft constitutional law in the second reading consists of:

a) presenting each amendment by its authors;

b) hearing of the opinions of parliamentary factions, presented by two speakers at most on behalf of each faction, and by independent MPs;

c) hearing of the opinion of the special committee or the leading standing committee in regard to each amendment;

d) voting on each amendment separately.

(2 The amendments to the draft constitutional law are approved by the majority vote of the present MPs.

(3) If the amendment doesn't obtain the necessary number of votes, the provision voted upon in the first reading shall be considered as adopted."

IN LAW

23. Having examined the complaint, the Court notes that it is focused essentially on the possibility of the Parliament to amend the draft law revising the Constitution upon which the Constitutional Court delivered its Opinion.

24. The complaint thus refers to a set of elements and principles having interconnected constitutional value, i.e. the principles of the supremacy of the Constitution, the stability of the Constitution, consistency of provisions and balance of the values enshrined in the Supreme Law, as well as the power of the Constitutional Court to deliver opinions on the initiatives to amend the Constitution within the shared competence of the Parliament and of the Court in the process of amending the Constitution.

A. ADMISIBILITY

25. According to its Decision of 7 December 2015 (see §4 *supra*), the Court held that according to Article 135 para. (1) let. b) of the Constitution, Article 4 para. (1) let. b) of the Law on Constitutional Court and Article 4 para. (1) let. b) of the Code of Constitutional Jurisdiction, the Constitutional Court is competent to examine the complaint on the interpretation of the Constitution.

26. The Court also holds that, according to Article 135 para. (1) let. a) the Constitution empowers the Constitutional Court with the competence to review the constitutionality of all laws adopted by the Parliament, without any distinctions.

27. Article 25 let. h) of the Law on Constitutional Court and Article 38 para. (1) let. h) of the Code of Constitutional Jurisdiction grant parliamentary factions with the right to lodge complaints with the Constitutional Court.

28. The Court notes that the issues challenged by the authors of the complaint have not been previously interpreted by the instance of constitutional jurisdiction. Moreover, the Court has never ruled previously on the challenged provisions, the process of review of constitutionality of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova being ceased by Constitutional Court Decision no. 5 of 18 May 2001 where the Court had declined its competence any *ratione materiae*.

29. In this context the Court recalls that the acts of the Constitutional Court are final and cannot be appealed. However, in terms of their effects it is necessary to distinguish between different types of delivered acts.

30. The decisions of the Constitutional Court on the admissibility on the merits of the complaints produce *erga omnes* effects only for the future, without affecting the legal certainty that citizens are entitled to expect from a law that is applicable towards them.

31. On the contrary, the decisions dismissing a complaint, including the case when the process is ceased, are applicable only *inter partes litigantes*, which proves that the constitutional jurisdiction path is still open due to a possible development of the state of constitutionality, which later may impose a solution admitting a complaint that was initially rejected.

32. Therefore, due to the fact that the state of constitutionality evolves along with the transformation of socio-economic, political and moral circumstances within the society, the reasons that have justified the initial rejection of a complaint may no longer exist, whereas new circumstances can determine its future admissibility.

33. Reassessment of the practice of a constitutional court is therefore a natural consequence of the evolution in a society and implicitly of the manner in which it assimilates the values enshrined in the Basic Law. In this regard when initiating the constitutional review the Court examines also the impact of certain legal provisions upon the society.

34. The Court notes that in the case under consideration the challenged provisions, being applied in practice, proved to be a source of instability and institutional deadlocks. Given this reason the aforementioned provisions were the subject of repeated complaints of unconstitutionality, and in the Court's opinion, this fact represents a novelty and allows re-examination both of the previously adopted solution, as well as of the arguments on which it is grounded and, consequently, reassessment of the relevant case law. Moreover, the Court holds that the challenged provisions have not been amended since their adoption in 2000, and thus have never been validated by a successive modification.

35. Given the newly invoked arguments, as well as the evolution of the state of constitutionality from the moment of adoption of the challenged provisions until present, the Court considers it necessary to distance itself from the previously adopted approach and to reconsider its position referring to the review of constitutionality of laws amending the Constitution.

36. Taking into account the competence assigned to the Constitutional Court to review the constitutionality of laws [Article 135 para. (1) let. a)] and to deliver its opinion upon the initiatives to amend the Constitution [Article 135 para. (1) let. c], the Court holds that it is competent to examine the constitutionality of a law amending the Constitution.

37. The Court underscores that **every time when a constitutional review of legal acts concurrently with an interpretation of constitutional provisions is requested, the constitutional review includes implicitly the interpretation of those provisions.**

38. Under these conditions and pursuant to Article 6 para. (2) of the Code of Constitutional Jurisdiction, the Court holds that in the present case, the request to review the constitutionality absorbs the request to interpret the constitutional provisions.

39. The Court finds that the complaint cannot be dismissed as inadmissible and there are no other grounds for the process to be ceased

under the provisions of Article 60 of the Code of Constitutional Jurisdiction. The Court notes that it has been notified according to the law and is competent to rule on the interpretation of Article 135 para. (1) let. c) in conjunction with Article 141 para. (2) and 143 para. (1) of the Constitution, as well as on the constitutionality of the challenged provisions of the Law no. 1115/2000. Therefore, the Court will proceed to the examination of the merits of this case.

40. In order to elucidate the aspects challenged in this complaint, the Court will operate, particularly, with the provisions of Articles 1 para. (3), 135 para. (1) let. c), 141, 142 para. (2) and 143 para. (1) of the Constitution, with its case law, as well as with international law principles employing all the methods of legal interpretation.

B. MERITS OF THE CASE

ALLEGED VIOLATION OF ARTICLE 141 PARA. (2) IN CONJUNCTION WITH ARTICLES 135 PARA. (1) LET. C), 142 PARA. (2) AND 143 PARA. (1) OF THE CONSTITUTION

41. According to the authors of the complaint, the challenged provisions in terms of the adoption procedure have been adopted in violation of Article 141 para. (2) of the Constitution, which provides the following:

> „(2) Draft constitutional laws shall be submitted to Parliament **only alongside with the advisory opinion of the Constitutional Court** […]."

42. Moreover, the challenged provisions infringe upon the competence of the Constitutional Court stipulated in Article 135 para. (1) let. c) of the Constitution, providing that:

> „(1) The Constitutional Court:
>
> […]
>
> c) **formulates its position on initiatives aimed at revising the Constitution**; […]"

43. In the same context, the procedure expressly provided by Article 143 para. (1) of the Constitution regulating the adoption of constitutional amendments, has been eluded:

> „(1) Parliament is entitled to adopt a law amending the Constitution following at least 6 months from the date when the corresponding initiative has been submitted. […]"

44. According to the authors of the complaint, the adoption of the challenged amendments in absence of the Constitutional Court's Opinion generated deadlocks and institutional imbalances and negatively influenced

the balance of the constitutional matter, contrary to the limits of revision provided in Article 142 para. (2) of the Constitution:

> „(2) No revision shall be performed if it implies the infringement of fundamental rights and freedoms of citizens or their guarantees."

1. Arguments of the authors

45. According to the authors of the complaint, on 5 July 2000 the Members of Parliament deliberately adopted the amendments to the Constitution that had not been submitted to the Constitutional Court for an opinion, contrary to the revision procedure expressly provided in the Constitution.

46. Failure to repeatedly request the Opinion of the Constitutional Court on the amendments introduced in the initial draft law generated deadlocks and institutional imbalances.

47. In this context, **according to the authors of the complaint the challenged provisions are unconstitutional both intrinsically, since they have negatively influenced the balance of the constitutional matter**, and extrinsically, being adopted in violation of the procedure provided in the Constitution.

2. Arguments of the authorities

48. In the written opinion of the President of the Republic of Moldova it is noted that the adoption of a draft constitutional law that has been conceptually and substantially amended by MPs in the second reading, by definition should be regarded as an infringement of the adoption procedure, which is an inadmissible fact. In fact, according to the Rules of the Parliament, such amendments cannot refer to the introduction of certain elements that are not present in the draft law on which the Constitutional Court delivered its Opinion and may be resumed only to: *editing of the text; modifications that do not alter the essence of the provisions proposed by the author; omission of certain articles or parts thereof, in case this omission does not influence the essence of the draft law.*

49. In his opinion the President admits that the Constitutional Court is entitled, under Article. 135 par. (1) let. a) of the Constitution, to exercise the constitutionality review of the procedure to adopt the law amending the Constitution. This assertion is based both on the Court's duty provided in Article 134 par. (3) of the Constitution, to counter any abuse of the Parliament, including in its capacity of constituent assembly, and the general legal principle of nullity of the act adopted in breach of provided procedures.

50. Concurrently, the President of the Republic of Moldova argues that examination of constitutionality of the Law no.1115/2000 amending the Constitution of the Republic of Moldova does not fall within the competence of the Constitutional Court, as this is a component of the

legislative process. Substantial and conceptual amendment of a draft constitutional law in the second reading constitutes a violation of this legislative act.

51. The Parliament in its written opinion noted that pursuant to the Basic Law, the mere existence of the Opinion of the Constitutional Court is a necessary and mandatory requirement, while the jurisdictional aspect of the Opinion refers to all the legal issues regarding the draft constitutional law.

52. Therefore, according to the Parliament, despite the fact that the Court so far has never subjected a law amending the Constitution to constitutional review, the issues addressed in the complaint are multidimensional and shall be examined with respect to the dimension of applicability of constitutional provisions and the limits of ensuring the functionality of state authorities.

53. According to the Government, any modification of certain norms of the Constitution, circumventing the provisions of Articles 141, 142 and 143 of the Constitution, would constitute its implicit review, regardless of the reasons alleged and the process employed, and this would be an infringement upon the Constitution. The amendments to the draft constitutional laws shall be of such nature as to be in line with the Opinion of the Constitutional Court, so that a repeated Opinion of the Court is not necessary.

54. Having reiterated the case law of the Constitutional Court, the Government pointed out that following the delivery of the Opinion by the Constitutional Court, no interventions are admitted in the text of the draft law revising the Constitution, and any disregard or exceeding of these limits may be regarded as grounds for the nullity of any such modifications.

55. Nevertheless, the Government has not presented its view on the third question raised by the authors of the complaint regarding the procedures necessary to be followed in case of a repeated Opinion on the draft law amending the Constitution, leaving this issue to the discretion of the Court.

3. Court's Assessment

56. The authors of the complaint doubt the constitutionality of certain provisions of the Law amending the Constitution in view of the procedure for their approval. Therefore, in order to resolve the present case it is necessary to define the content of the regulations clearly and implicitly provided in the Constitution on the revision thereof.

3.1. General principles

57. The constitutional provisions referring to the revision of the Constitution are determined by the **notion, nature and goal** of the Constitution itself.

3.1.1. Principle of supremacy of the Constitution

58. The Constitution is the Supreme Law. The Constitution has its roots in the national community, in the civic nation itself. The Constitution is the reflection of the social contract – a duty democratically accepted by all citizens of the Republic of Moldova towards all present and future generations, to live pursuant to the fundamental provisions enshrined in the Constitution and to observe them, in order to ensure the legitimacy of the governing authority, the legitimacy of its decisions, as well as to ensure human rights and fundamental freedoms to ensure a harmonic society (JCC no. 36 of 5 December 2013, JCC no. 9 of 14 February 2014).

59. Being an act of supreme legal force and a social contract, the Constitution is founded on universal and undeniable values such as sovereignty belonging to the people, democracy, recognition and observance of human rights and fundamental freedoms, observance of laws and the principle of the rule of law, the system of checks and balances, the duty of state authorities to serve the people and their liability before the society, public spirit, justice, the goal towards an open, fair and harmonious civil society and of the rule of law (Opinion of the Constitutional Court no. 1 of 24.07.2015).

60. Upon adoption of the Constitution - the legal act of supreme legal force - the State was enshrined as a common good of the entire society. One of the most important duties of a democratic state that id grounded on law and justice is to respect, defend and protect the values and human rights and freedoms that underpin the Constitution itself, and the effective establishment, defence and protection thereof constitutes the *raison d'être* of the State itself. Otherwise, it would not be possible for the State to be considered as a common good of the entire society.

3.1.2. Stability of the Constitution

61. As set out by the Constitutional Court in its judgment no. 57 of 3 November 1999, the stability of the Constitution represents a major constitutional value. The stability of the Constitution is one of the preconditions ensuring the continuity of the State and observance of the constitutional order and legislation, as well as granting the implementation of the objectives stated in the Constitution that underpin the Constitution itself.

62. The stability of the Constitution is a characteristic which, along with other characteristics (*inter alia* and, first of all, with the special legal and supreme force of the Constitution), establishes a difference between the constitutional legal provision and the (ordinary) legal provision provided in legal documents with inferior legal force.

63. For this purpose, by providing a certain degree of **rigidity** of the Constitution, **technical means of protecting its stability** are enshrined in fundamental laws. This is a basic characteristic of all written constitutions (as different from ordinary laws), which contain provisions allowing its own review. In almost all states is more difficult to revise the Constitution than

the ordinary legislation, and usually this requires either a qualified parliamentary majority, multiple decisions, a calendar and particular time periods or a combination of these factors [see the Report on Constitutional Amendment (CDL-AD(2010)001 of 19 January 2010), the European Commission for Democracy through Law, hereinafter - *the Venice Commission*].

64. To the same effect, the Venice Commission, in the Report on Constitutional Amendment (CDL-AD(2010)001 of 19 January 2010) states the following:

> „[H]aving **stronger procedures** for constitutional amendment **is an important principle of democratic constitutionalism, fostering political stability, legitimacy, efficiency and quality of decision-making and the protection of non-majority rights and interests.** [...]"

65. In this context, the Court notes that the imperative of stability of the Constitution would be ignored when there are interventions in the text every time certain social relationships that are supposed to regulated in the legal order undergo modifications (e.g. technological possibilities of certain types of activities extend to a degree that perhaps were impossible to be foreseen at the moment of drafting of the constitutional text).

66. Similarly, the Court emphasizes that the formation and development of the official constitutional case law, *inter alia*, jurisprudential reinterpretation of the official constitutional provisions and also reinterpretation determined by the modification of the constitutional case law, allows the revelation of the remarkably high potential of the Constitution without modifying its text and in this regard, adapting the Constitution to the changes in the social life and to the continuous transformation of living conditions of the society and of the State, as well as ensures the viability of the Constitution as the foundation of the society and of the State (JCC no. 9 of 14 February 2014, JCC no. 32 of 29 December 2015). The formation and development of the constitutional case law is one of the functions of the constitutional justice. There should not be any interventions in the text of the Constitution if such a modification is not necessary from a legal perspective and thus contributes to the stability of the text of the Constitution and of the constitutional order.

3.1.3. Unity of matter and the balance of constitutional values

67. Any law amending the Constitution modifies the content of its provisions and the relationship between these provisions and could also alter the balance of the values enshrined in the Constitution.

68. In case certain provisions of the Constitution are modified, these provisions might also influence the content of other constitutional provisions, as well as the entirety of legal constitutional regulations.

69. Therefore, when amending the Constitution it is necessary to take into account that **it is an integral act, all the provisions of the Constitution being interconnected to the extent that the content of**

certain provisions of the Constitution determine the content of other provisions thereof. The provisions of the Constitution make up a harmonious system, so that none of the constitutional provisions may be contrary to others. Both the nature of the Constitution as an act with supreme legal force and the idea of constitutionality implies that there are not any and cannot exist any lacks or internal contradictions in the Constitution (Opinion no.1 of 22 September 2014).

70. In this respect, no amendment to the Constitution can lead to a collision of constitutional provisions or values enshrined in constitutional provision. No amendment to the Constitution may create a new constitutional regulation which would serve as grounds for a new provision of the Constitution that would annul or be in contradiction with another provision of the Constitution, so that it would be impossible to deem the respective provisions being in harmony. Therefore, no amendment to the Constitution that would affect the harmony of constitutional provisions or the harmony of the values enshrined therein may be adopted.

71. The notion, nature and goal of the Constitution, the aforementioned stability of the Constitution as a constitutional value and the imperative of harmony of constitutional provisions imply certain substantial and procedural limitations regarding the amendment of the Constitution.

3.1.4. Substantial and procedural limitations of the constitutional amendment

72. Substantial limitations of constitutional amendments are enshrined in the Constitution and refer to the adoption of constitutional amendments having certain content; procedural limitations of constitutional amendments refer to the special procedure of amending the Constitution provided therein.

73. Procedural limitations of constitutional amendments stem from the whole set of constitutional regulations and are intended to protect the universal values underpinning the Constitution as the supreme law of the country and as the social contract, as well as the State as common good of the entire society, and to maintain the harmony of these values and the harmony of constitutional provisions.

a) Substantial limitations

74. Article 1 of the Constitution enshrines the fundamental constitutional values – independence of the State, democracy and the republic as form of government, as well as the rule of law, dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism. These are inseparably interlinked and form the foundation of the state - the Republic of Moldova as the common good of the entire society, enshrined in the Constitution. Therefore, these values shall not be denied under any circumstances.

75. In this context, the imperative that no amendment of the Constitution shall disturb the harmony of the Constitution or the harmony of values enshrined in it, prevents adoption of amendments which are contrary to at least one of the constitutional values underpinning the State as the common good of the entire society enshrined in the Constitution – independence of the State, democracy, the republic as form of government and the intrinsic character of human rights and fundamental freedoms, unless when Article 1 of the Constitution is amended in the manner provided in Article 142 para. (1) of the Constitution.

b) Peculiarities of the procedure of adopting constitutional amendments

76. According to the aforementioned ascertaining, procedural limitations of constitutional amendments are related to the special amendment procedures provided in the Constitution. This procedure is regulated in Title VI "Revision of the Constitution."

77. Stability of the Constitution is a feature thereof, which along with other of its characteristics, *inter alia* and foremost in conjunction with the special legal and supreme force of the Constitution, differentiates the constitutional legal regulation from the (ordinary) regulation provided by legal acts with inferior legal force. Stability of the Constitution never opposes to the possibility to amend the Constitution when this is needed, however the procedure regulating constitutional amendment is more difficult and complex compared to the amendment procedure of organic and ordinary laws.

78. The Court holds that paragraphs (1)-(4) of Article 72 of the Constitution provide for separate competences of Parliament to adopt amendments to the Constitution and to adopt laws.

79. In this context, the Court emphasizes that adoption of laws, *inter alia*, adoption of constitutional laws, is regulated by Articles 72-74 of the Constitution, whilst the amendment of the Constitution is regulated separately in Title VI "Revision of the Constitution" (Articles 141-143).

80. The provisions of Title VI "Revision of the Constitution" enjoy a wider protection. Thus, according to Article 142 para.(1) of the Constitution, the aforementioned provisions may only be amended following an approval within the referendum with the vote of the majority of citizens include in the electoral lists, whilst the provisions of Articles 72-74 of the Constitution may be amended by the Parliament.

81. The Constitution thus provides for different procedures to amend constitutional laws and organic or ordinary laws. The special procedure to amend the Constitution may not be identified with the procedure for adopting laws. In order to ensure the stability of constitutional provisions, there was provided a special amendment procedure aimed at ensuring that an amendment to the Constitution may be operated only when this is necessary and at preventing any impetuous amendment to the Constitution.

82. The special procedure of amending the Constitution, provided for by the Constitution, includes, *inter alia*, the following special requirements:

(1) According to Article 142 para.(3) of the Constitution, the Constitution may not be amended under a state of national emergency, martial law or war. There was not provided for such a prohibition regarding the adoption of laws.

(2) According to Article 142 para.(1) and 142 para.(2) of the Constitution, the competence of the Parliament to amend the Constitution is limited: provisions of Article 1 may only be amended following an approval within referendum, with the vote of the majority of registered citizens with voting rights, while the provisions resulting in the infringement of fundamental rights and freedoms of the citizens or the guarantees thereof cannot be adopted.

(3) Article 141 para.(1) of the Constitution provides for subjects who are entitled to initiate an amendment or supplement to the Constitution: a number of at least 200,000 citizens of the Republic of Moldova with voting rights, covering at least a half of the territorial-administrative units of second level; a number of at least one third of the members of Parliament; the Government. The aforementioned subjects are different that those entitled to legislative initiative indicated in Article 73 of the Constitution, namely Members of Parliament, President of the Republic of Moldova, the Government, and the People's Assembly of the autonomous territorial-unit of Găgăuzia.

(4) Article 143 para.(1) of the Constitution provides for a special procedure for the adoption of amendments to the Constitution by the Parliament: the amendments may be examined and voted by the Parliament following at least 6 months from the date when the corresponding initiative has been submitted. The Constitution fails to provide for such a requirement referring to the period of prohibition with regards to examination and voting in the process of adoption of laws.

(5) Article 143 para.(1) of the Constitution provides for the requirement on a qualified majority of the MPs to adopt a law amending the Constitution: a draft law on amending the Constitution is deemed adopted by the Parliament if at least 2/3 of all the MPs voted for it. There is no such requirement of a qualified majority when adopting laws: according to Article 74 of the Constitution, an ordinary law is deemed adopted if the majority of MPs present at the sitting voted for it (paragraph 2), and an organic law is adopted if more than a half the elected MPs have voted in its favour (paragraph 1).

83. Article 143 para.(2) of the Constitution provides for a special limitation referring to the submitting for re-examination by the Parliament of a constitutional amendment which has not been adopted: it may be submitted again following at least one year. The Constitution does not provide for such a limitation for the adoption of laws.

84. Article 141 para.(2) of the Constitution provides for the draft constitutional laws to be submitted to the Parliament **only together the**

Opinion of the Constitutional Court approved with the vote of at least 4 judges. The Constitution does not provide for such a limitation with regards to the adoption of laws.

85. Constitutional provisions implying that certain limitations concerning the revision bear legal value and may not be eluded are stemming from the principles and wills of the original framers of the Constitution, which are mandatory to the subsequent constitutional power.

86. The Court notes that observance of the amendment procedures offering the necessary time for public and institutional debates, can significantly contribute to the legitimacy and acceptance of the Constitution, as well as to the development and fostering of democratic constitutional traditions. On the other hand, in case the provisions and procedures for the constitutional amendments are subject to interpretation and controversy, or in case these are applied too hastily or in absence of democratic debates, this may undermine political stability and, ultimately, the legitimacy of the Constitution itself.

87. With regards to the need to check the procedures on Constitution's amendment, the Venice Commission mentioned the following:

> „237. [...] the Venice Commission would strongly support all systems that allow for effective and democratic supervision of the way in which the **constitutional amendment procedures have been respected and followed.** And if there is reason to believe that the amendments have been passed in breach of the constitutional requirements, then this is an issue which **may suitably be tried before a court."**
>
> [*Report on Constitutional Amendment* (CDL-AD(2010)001 of 19 January 2010)]

88. Therefore, in the realm of protecting constitutional order and safeguarding the supremacy of the fundamental law **constitutional justice** is the intervenient force. Introduction of the practice of constitutional review marks a deep change in the constitutional logic of state power, thus transiting from the supremacy of political forces – and of the rule of the deciding majority – at the beginning of 20th century to the principle of limited rule, starting with the period post-1945 and, subsequently, after the fall of communism starting with the period post-1989.

89. The rationale of involving constitutional review by an authority that is independent from the Parliament stems in **the perception that if the Parliament itself is the judge of its own legislations, it may be easily tempted to resolve any doubt in its favour.**

90. **In other words, constitutional review by guaranteeing the supremacy of the Constitution concurrently stabilises and limits the democracy.**

91. In this context, lack of sanctions would bring forward the efficiency of provisions introducing the limits of revision. The efficiency of the constitutional provision limiting the revision depends upon the possibility of the those who ignored this provision to assume the responsibility.

92. In this regard, even if the ignoring of the limits of constitutional amendment are confirmed by the vote of the Parliament, **such a vote may not cover the fraud against the Constitution.**

93. In this context, the Court emphasizes that a substantially amended draft law amending the Constitution shall be considered as a new draft law – a new proposal for amending or supplementing the Constitution, which may only be initiated in compliance with Articles 141-143 of the Constitution.

94. Therefore, within the meaning of Article 135 para.(1) let.c) in conjunction with Article 141 para.(2) of the Constitution, following the delivery of the Opinion of the Constitutional Court there may not be admitted any interventions in the text of the draft law amending the Constitution and **ignoring or exceeding of shall lead to the invalidity of such operated amendments.**

95. In case the amendments advanced by MPs are accepted by the Parliament in the second reading of the draft law amending the Constitution, a repeated Opinion of the Constitutional Court shall be mandatory.

96. If the Constitutional Court repeatedly delivers its opinion upon a draft law amending the Constitution which has been substantially amended in the second reading in the Parliament, this draft law shall undergo all the procedures provided for by Article 143para (1) of the Constitution.

97. A different interpretation of the constitutional text which would attribute to the Constitutional Court a **mere formal role** within this procedure, specifically the delivery of opinions on draft constitutional amendments which later may be substantially modified in the Parliament would deprive of any content this competence of the Court. This competence has been conferred by the framers of the Constitution specifically to ascertain the role and the position of the Constitutional Court in the political and legal system of the society, allowing **performing an impartial analysis of the amendments apart from the temptations of political actors to take conjectural decisions.**

3.2. Experience of other states

98. The procedure of mandatory and systematic opinions delivered by the Constitutional Court prior to voting of a constitutional amendment by the Parliament is a procedural mechanism applied also by other states.

99. Apart from the *a priori* review by the Constitutional Court of the proposed amendments, there is *a posteriori* review on the observance of the correct procedures of constitutional amendment, which is more popular.

100. The European states that have adopted constitutional review on the merits of the proposed constitutional amendments, the most well-known model is the German one. According to Article 79.3 [“the eternity clause”] of the German Constitution, amendments are inadmissible in case they affect the federal structure, legislative powers of the states or the “principles

provided for by Articles 1 and 20." This is considered to be a subject for review by the Federal Constitutional Court (Bundesverfassungsgericht), as was examined on several occasions: BVerfGE 1, 14 – South-West State (1951); BVerfGE 3, 225 – Equality of rights (1953); BVerfGE 4, 157 - Saar State (1955); BVerfGE 30, 1 - Wiretapping (1970); BVerfGE 34, 9 – Standardisation of remuneration (1972); BVerfGE 84, 90 - Expropriations prior to 1949 (1991); BVerfGE 87, 181 – Radio broadcasting (1992); BVerfGE 89, 155 - Maastricht Treaty (1993); BVerfGE 94, 12 – Exclusion of restitution (1996); BVerfGE 94, 49 – Safe third country (1996); BVerfGE 95, 48 – Restitution and dodging of transactions (1996); BVerfGE 102, 370 – Jehova's Witnesses (2000); BVerfGE 109, 279 – Acoustic surveillance (2004); BVerfGE 113, 273 – European arrest warrant Act (2005); Neue Juristische Wochenschrift (NJW) 2009, BVerfGE 2267 – Lisbon Treaty (2009).

101. Examples of other constitutional courts that have invalidated constitutional amendments may be found in other states, among which is **Austria** [see Decision of Constitutional Court no. G12/00 and others of 11 October 2001 (Bulletin 2001/1, AUT-2001-1-003)] and **Bulgaria** [Decision of Constitutional Court no.03/04 of 5 July 2004 (Bulletin 2004/2, BUL-2004-2-001] and the Decision 06/06 of 13 September 2006 (Bulletin 2006/3, BUL-2006-3-002)]. Another relevant example in this regard is **South Africa.**

102. In its judgment of January 2014, the Constitutional Court of **Lithuania** invalidated constitutional amendments adopted in 2006 on the competences of the Central Bank of Lithuania, based on the fact that they were adopted in violation of the procedure, as the draft law was amended in an unconstitutional manner in the Parliament.

103. Another state applying jurisdictional review of constitutional amendments is **Turkey.** In its judgment of 5 June 2008, the Court undertook a review on the merits of an adopted constitutional amendment, which allowed headscarves in universities, holding that this is in breach of the unamendable provision on the laic state provided in Article 2 of the Constitution.

3.3. Application of the aforementioned principles to the present case

104. The Court notes that stemming from the arguments presented by the authors of the complaint it clearly results their point of view that **when adopting the challenged provisions the Parliament failed to respect the procedure of delivery of the opinion by the Constitutional Court on the initiative to amend the Constitution,** provided for by Article 135 para.(1) let.c) and Article 141 para.(2) of the Constitution.

105. The doubts expressed by complainants on the constitutionality of the challenged provisions are based on the fact that when examining them, the Special Committee and the MPs have essentially amended the content

of the draft law amending the Constitution which was advanced by a group of 38 MPs.

106. Therefore the circumstances in which the Law amending Article 78 of the Constitution was adopted are important for this case.

3.3.1. The circumstances in which the law amending the Constitution was adopted

107. Prior to the enactment of the challenged law, on 28 July 2000 Article 78 provided the following:

"(1) The President of the Republic of Moldova is elected by freely-expressed, universal, equal, direct, and secret ballot.

(2) Any citizen of the Republic of Moldova over 35 years of age that has been living in the country for at least 10 years and speaks the State language can run for the office of President of the Republic of Moldova. The appropriate organic law shall determine the manner of selecting the candidates aspiring to this office.

(3) The candidate obtaining at least half the votes cast in the presidential election shall be proclaimed as the new President.

(4) If no candidate will have obtained the above mentioned majority, a second ballot shall be held to choose from the first-placed two candidates, in the order of the number of votes cast for them in the first ballot. On condition that the number of the votes cast for him be bigger than the number of the votes cast against him, the candidate obtaining most of the votes cast in the second ballot shall be proclaimed as the new President.

(5) The office of the President of the Republic of Moldova may be held by the same person for not more than two consecutive terms."

108. Thus, Article 78 of the Constitution provided for the election of the President of the Republic of Moldova by popular vote.

109. Correspondingly, Article 89 of the Constitution provided for the President to be removed from office by a popular vote, too:

„(1) In the event of committing serious offenses infringing upon constitutional provisions, the President of the Republic of Moldova may be suspended from office by Parliament with the vote of two - thirds of MPs.

(2) The motion requesting the suspension from office may be initiated by at least one third of the MPs, and it must be brought to the knowledge of the President of the Republic of Moldova without delay. The President may give explanations before Parliament on the actions for which he is being censured.

(3) If the motion requesting suspension from office is approved, a national referendum shall be organized within 30 days to remove the President from office."

110. On 2 August 1999, a group of MPs (38) submitted to the Constitutional Court a draft law amending the Constitution. The draft law was proposing modifications and supplements to a number of articles of the Constitution, some of them were given a new wording: **Article 78** ("Presidential Elections"), Article 80 ("Office of the President"), **Article 85** ("Dissolution of the Parliament"), Article 89 ("Removal of the President"), Article 90 ("Vacancy of the office"), Article 91 ("Interim office"), Article 98 ("Investiture"), Article 101 ("The Prime Minister"), Article 102 ("Acts of the Government"), Article 102/1 ("Legislative delegation"), Article 135 ("Powers of the Constitutional Court"), Article 136 ("Structure of the Constitutional Court"), Article 141 ("Initiative on amending the Constitution"). The brief note to this draft law points to the fact that its goal was to institute a parliamentary form of governance, along with changing the modality of electing the President of the Republic of Moldova, replacing the popular vote with the vote of the Parliament.

111. The legislative proposal provided a new wording for Article 78 of the Constitution, as follows:

> „(1) The President of the Republic of Moldova is elected by secret ballot.
>
> (2) Any citizen of the Republic of Moldova enjoying the right to vote, being over 35 years of age, who has been living permanently in the country for 10 years and speaks the State language can run for the office of President of the Republic of Moldova.
>
> (3) The candidate obtaining the majority of votes of the elected MPs. If no candidate obtains this majority, a second round of elections is conducted, between the first two candidates determined in the order of the number of votes obtained in the first round."

112. The draft law proposed a new wording of Article 89 of the Constitution, with regards to the dismissal of the President:

> „(1) In the event the President of the Republic of Moldova commits serious offenses infringing upon the Constitution, he may be removed from office by the Parliament with the vote of two-thirds of MPs.
>
> (2) The motion on removal may be initiated by at least one third of MPs, and it must be brought to the knowledge of the President of Moldova without delay. The President may give explanations on the actions for which he is being censured before Parliament.
>
> (3) The Parliament Decision on the removal from office of the President is confirmed by the Constitutional Court."

113. On 16 November 1999, the Constitutional Court delivered a positive Opinion on the initiative to amend the Constitution (Opinion no. 6 of 16 November 1999).

114. The legislative proposal was registered in Parliament on 24 November 1999, with the registration number 4098 (hereinafter – *"draft no. 4098"*).

115. On 22 June 2000 there was formed the so-called *Special committee on the examination of draft laws amending the Constitution* (hereinafter – *"The Special Committee"*). This Committee had to examine three draft laws amending the Constitution, as in the Parliament there had already been registered 6 draft laws by that time.

116. Within the sitting on 5 July 2000, 12 days following the establishment of the Special Committee, the Parliament examined **3 draft laws** amending the Constitution:

(1) incoming registration no. 3346 of 26 October 1999 *(delegating certain powers to the Government)*, initiated by 39 MPs and endorsed by Constitutional Court's Opinion no. 9 of 19 October 1999;

(2) incoming registration no. 3389 of 28 October 1999 *(amendments on Prosecutor's Office)*, initiated by the Government and endorsed by Constitutional Court's Opinion no. 5 of 19 October 1999;

(3) incoming registration no. 4098 of 24 November 1999 *(election of the President of the State by Parliament)*, initiated by 38 MPs and endorsed by Constitutional Court's Opinion no. 6 of 16 November 1999.

117. The aforementioned three draft constitutional laws were voted by the Parliament in the first reading, with no amendments (Parliament Decisions no. 1111, 1112 and 1113 of 5 July 2000).

118. Concurrently, the Special Committee was entitled *"to improve"* the above mentioned draft laws *"taking into consideration the objections and proposals that were made by the MPs"* in order to submit them before the Parliament for the second reading.

119. Within the same sitting, the Parliament decided *"to merge into a single draft law"* the three draft constitutional laws adopted in the first reading (Parliament Decision no. 1114 of 5 July 2000), in order to be examined for the second reading.

120. As a result, there was submitted for examination in the second reading a single draft constitutional law. According to the records of Parliament's sitting, including following the merger of the aforementioned draft laws, when debating it in the second reading the MPs presented within the sitting a number of amendments which were accepted.

121. Referring to Article 78 of the Constitution, on 5 July 2000 member of the Parliament Vladimir Voronin registered the proposal to expose it in the following wording:

> „[...]
>
> Mr Eugen Rusu (Chairman of the Special Committee):
>
> «Concerning Article 78 of the Constitution proposed within the *draft law no. 4098* in a new wording, amendments were advanced by a group of MPs proposing to modify in paragraph 2 the figure 35 with the figure 40. Another proposal is to supplement the article with 3 new paragraphs, the amendments advanced by the MPs have been distributed to you. The Committee had examined them. They are accepted partially and proposes to adopt the following modifications and supplements in Art. 78: paragraph 1 to be accepted in the wording of the authors. Paragraph 2 to be accepted in the wording of the authors,

substituting the figure 35 with 40. Paragraph 3 shall have the following wording: There shall be elected the candidate who has obtained the vote of 3/5 of the elected MPs. In the event no candidate is given this number of votes, a second ballot takes place between the first two candidates established in the order of votes obtained in the first ballot.»

[…]

Mr Victor Stepaniuc (Communists' Party Faction)

«I would like to draw the attention of the MPs to the fact that there are states where the President is not elected even during the period of half of a year. The question is submitted for the vote and end with a failure, is postponed for the next week, different ballots take place. In this case there are certain problems, however we elect the Head of State and he shall enjoy the protection of a considerable majority of the MPs. In this case, I believe, 3/5 is fine, with 3 ballots, 3/5 and only following a third ballot the Parliament may be dissolved. This thing seems reasonable to me – three ballots with 3/5».

[…]

Mr Victor Stepaniuc (Communists' Party Faction)

«Actually, we can see that already in the first ballot the candidates did not obtain the needed number of votes, Vădim Nicolaevici. Had they obtained, one of them would have been elected. Therefore, they pass to the second ballot and if we do no elect him, we leave, we are dissolved. And now people will make up their minds and vote for someone if they wish to.»

[…]

Mr Eugen Rusu:
«Yes, this is a proposal which may actually be put up for discussion, we exclude the third ballot and stop at 3/5. If no one is elected in the second ballot with 3/5, repeated elections shall be called».

[…]

Mr Dumitru Todoroglo:

«That is why no less than 3/5, and 100 times, if 3/5 were not found, let the President dismantle them if those from the room are not smart enough, that is why, no less than 3/5. Let it be 2 or 3 or even 20 ballots (translation from Russian).»

[…]

MP Vladimir Voronin stated:

«We are now specifically talking about the President of the State, if we want to raise to another level the status of the President of the State, he shall be sure that he is supported by a greater majority then that of 50 plus 1. This majority allows him to enjoy more independence in order to be more autonomous in his work as President. We, the faction, insist to remove these two words, meaning a ballot

where to elect with 50 plus 1 and to repeat the number of ballots as much as we need until we elect a decent President».

Eugen Rusu, Chairman of the Special Committee:

«The formula is clear. There shall be excluded the paragraph providing for the third ballot, with the majority of the MPs.»

[…]

Chairman of the sitting, MP Dumitru Diacov:

«Please cast your votes concerning Article 78, with the amendment proposed by Mr Voronin and accepted by the Committee. Who is for it, please vote. Thank you. Who is against? No one is against. Accepted.»

[Parliament's recordings of the sitting of 5 July 2000, pages 41(40)-45(46)]

122. With regards to Article 89 of the Constitution on the removal of the President, proposed within the draft law no. 4098 in a new wording, a group of MPs has advanced amendments to the Special Committee proposing to substitute the phrase *"shall be confirmed by the Constitutional Court"* with the following phrase: *"may only be dissolved with a preliminary opinion of the Constitutional Court."* The Special Committee examined these amendments and recommended to accept the proposed wording of Article 89 of the draft law except paragraph (3) suggesting the opportunity to include these provisions in Article 135 of the Constitution regulating the powers of the Constitutional Court. Concurrently, the Special Committee proposed to substitute the words "of the MPs" with the phrase "of the elected MPs" at the end of paragraph (1) of this Article as advanced within the drat no. 4098. These proposals were accepted by the MPs [Parliament's recordings of the sitting of 5 July 2000, pages 41(40)-45(46)].

123. The Special Committee also proposed to supplement Article 85 with a new paragraph with the following content, which is actually paragraph (4): "The Parliament may not be dissolved within the last 6 months of the term of office of the President of the Republic of Moldova, except for the case provided for by Article 78 para.(5), nor during a state of emergency, martial law or war." According to the recordings of Parliament's sitting, this amendment derives from the amendment operated to Article 78 of the Constitution (pages 53-54).

124. On the same day, on 5 July 2000, the Parliament adopted the Law no. 1115-XIV amending and supplementing the Constitution of the Republic of Moldova.

125. In the adopted text, the articles regulating the modality of electing and removing the President of the Republic of Moldova were laid down in the following wording (Art. I):

„*Article 78*
Election of the President

(1) The President of the Republic of Moldova shall be elected by the Parliament by a secret ballot.

(2) Any citizen of the Republic of Moldova may run for the office of President of the Republic of Moldova, provided that he enjoys the right to vote and is over 40 years of age, had lived or has been living permanently on the territory of the Republic of Moldova for no less than 10 years and speaks the official state language.

(3) The candidate who obtained the vote of three-fifths of the elected MPs shall be elected as President. If no candidate has obtained the necessary number of votes, a second ballot shall be conducted to choose between the first-placed two candidates, established according to the decreasing number of the votes obtained in the first ballot.

(4) If in the second ballot no candidate obtained the necessary number of votes, there shall be conducted repeated elections.

(5) If, following repeated elections, the President of the Republic of Moldova was not elected, the acting President shall dissolve the Parliament and shall organize elections of a new Parliament.

(6) The procedure regulating the election of the President of the Republic of Moldova shall be provided for by organic law."

"Article 89
Removal

(1) In the event the President of the Republic of Moldova commits certain deeds infringing upon the provisions of the Constitution, he may be removed from office by the Parliament with the vote of a majority of two thirds of its elected Members.

(2) The motion requesting the removal from office shall be initiated by at least one third of the MPs and shall be acknowledged to the President of the Republic of Moldova without delay. The President may provide the Parliament and the Constitutional Court with explanations on the deeds he is censured."

126. Also, Article 85 para. (4) was laid down in a different wording:

„*(4) The Parliament may not be dissolved within the last 6 months of the term of office of the President of the Republic of Moldova,* ***except for the case provided for by Article 78 para.(5),*** *nor during a state of emergency, martial law or war."*

127. The content of the challenged provisions, as laid down in the wording of the Law no. 1115 of 5 July 2000, was amended as follows, compared to the text of the draft endorsed by the Constitutional Court:

- in Art. 78 para.(2), the figure "35" was substituted with the figure "40" and was added the phrase "or lives;"

- in Art. 78para.(3), the phrase *"vote of the majority of the elected MPs"* was replaced with the phrase *"vote of three-fifths of the elected MPs;"*

- Art. 78 was supplemented with 3 new paragraphs (4)-(6) on repeated elections and dissolution of Parliament;

- Art. 85 para.(4) was supplemented with the phrase *"except for the case provided for by Art. 78 para.(5)."*

128. On 28 July 2000, the Law no. 1115-XIV of 5 July 2000 ammending and supplementing the Constitution of the Republic of Moldova was published in the Official Journal, thus being enacted.

3.3.2. The provisions of the Rules of the Parliament regulating the special procedure of adoption of laws amending the Constitution

129. The provisions of the Rules of the Parliament regulating the submission of draft laws amending the Constitution, as well as their examination and adoption by the Parliament are also important for the case under consideration.

130. When the Parliament was examining the draft law no. 4098 and the draft law prior to the second reading (hereinafter – "draft law no. 1115"), the following provisions of the Rules of the Parliament relevant in the context of this case, *inter alia*, were in force.

131. Article 74/2 (the wording in force until 5 July 2000) of the Rules of the Parliament (the wording republished on 18 may 2000) provided that the draft laws amending the Constitution had to be debated at least in two readings (para.(2)). In order to examine the draft law amending the Constitution the Parliament had to appoint a special committee where representatives of all parliamentary factions could take part or to designate a parliamentary leading standing committee competent to examine the corresponding draft law (para.(3)).

132. In order to debate the draft constitutional laws it was necessary, on mandatory bases, to have the opinions of all standing committees, the opinion of the Legal Directorate of the Parliaments' Apparatus, as well as the opinion of the Government, unless the draft law was initiated by the latter. Based on the above-mentioned opinions the special committee or the designated leading standing committee had to draw a report on the draft constitutional law and to submit it to the Permanent Bureau within 15 days following the expiry of the 6 month term since the presentation of the draft law, together with the opinion of the Constitutional Court. The report should have provided a conclusion on the appropriateness of the modifications proposed, as well as prospected consequences thereof (Art. 74/3).

133. When debating the draft constitutional law in the first reading there cannot be made any amendments (Art. 74/4). Upon closure of the debates the Parliament could adopt one of the following decisions:

a) to approve the draft law in the first reading;

b) to send the draft law to the special committee or to the leading standing committee.

134. The decision-making process regarding the draft constitutional law debated in the first reading had to finalize with the adoption of a Parliament decision by the vote of the majority of present MPs.

135. In case several draft constitutional laws referring to the same issue were submitted for debates, at the proposal of the special committee or of the leading standing committee, the Parliament could decide which of these draft laws could have been adopted as the basic draft law, the other draft laws being considered as alternative draft laws (Art. 74/5).

136. Following the approval in the first reading of the draft constitutional law the Speaker of the Parliament had to request the opinion of MPs regarding the immediate submission of the draft law for the second reading or the transmission thereof to the special committee or the leading standing committee to examine the amendments and to prepare the draft constitutional law for debates in the second reading. At least **25 MPs** could transmit the draft constitutional law to the special committee or the leading standing committee. Otherwise the draft law had to be proposed for the second and final reading (Art. 74/6).

137. If the draft constitutional law was transmitted to the special committee or the leading standing committee, within 15 days following the adoption of the draft law in the first reading the MPs could prepare and transmit their amendments to the corresponding committee. During the second reading only those amendments that were presented in written and signed by at least **5 MPs** could have been examined.

138. According to Article 74/7 **the amendments could not refer to any supplementary elements that were not covered by the draft law upon which the Constitutional Court delivered its opinion** and could refer only to:

a) editing of the text;

b) modifications that do not alter the essence of the provisions advanced by the author;

c) omission of certain articles or parts of articles, if such omission do not alter the essence of the draft law.

139. The special committee or the leading standing committee further had to examine and to vote separately on each amendment. Following this exercise the committee had to elaborate a report on the submission of the draft constitutional law for debates in the second reading, where it had to present its position on each article.

140. Debating the draft constitutional law by the Parliament in the second reading consists of:

a) presentation of each proposed amendment by the author of the corresponding amendment;

b) hearing of parliamentary factions' opinions presented by two speakers at most on behalf of each faction, as well as hearing of the opinions of independent candidates;

c) hearing of the opinion of the special committee or the leading standing committee on each amendment;

d) separate voting of each amendment.

141. The amendments to the draft constitutional law had to be approved with the majority vote of the MPs present at the sitting. If the amendment failed to accumulate the necessary number of votes, the provision of the draft law voted in the first reading is deemed to be adopted (Art. 74/8).

142. Following the examination and separate voting of each article, the Speaker of the Parliament had to submit for voting the draft constitutional law in its entirety, which had to be adopted by the Parliament with the vote of two thirds of the elected MPs, otherwise the failure to accumulate the necessary number of voted the draft law was considered null and void (Art. 74/9).

143. In this context the Court recalls that, based on the principle of regulatory autonomy provided in Art. 64 para.(1) of the Constitution, the Parliament is entitled to rule on its own organization and the working procedures.

144. Regulatory autonomy represents the expression of the rule of law and of democratic principles; however it may operate exclusively **within the limits provided by the Fundamental Law.**

145. Therefore regulatory autonomy cannot be exercised in a discretionary, abusive manner, in violation of constitutional competences of the Parliament or of the **imperative norms regulating the parliamentary procedure** (see JCC no. 27 of 17 November 2015, §§ 35-37).

146. In this context the regulatory provisions represent legal instruments allowing parliamentary activities with a view to accomplish by the legislative of its constitutional functions and shall be interpreted and applied in good faith and loyalty to the Fundamental Law (see JCC no. 9 of 21 May 2013).

147. The court holds that according to the regulatory provisions of Art. 74/2 – 74/4 of the Rules of the Parliament (the wording republished on 18 may 2000), the Parliament had to examine the draft laws amending the Constitution, essentially, according to the same procedures as applied for other draft laws, with certain peculiarities provided in the aforementioned articles.

148. With a view to summarize the provisions of the Rules of the Parliament provided in Chapter 2/1 (the wording republished on 18 May 2000) the Court holds the following peculiarities:

- there were not provided any special requirements, *inter alia,* restrictions related to the decisions on the text of the draft laws amending the Constitution that could have been adopted by the committee;

- the same text of a draft law amending the Constitution had to be submitted for voting twice within the Parliament; however there were any clear restrictions referring to the submission of a text of a draft law amending the Constitution that would be different as compared to the text submitted by the subjects indicated in Art. 141 para.(1) of the Constitution entitled to propose amendments to the Constitution;

- following the examination of a draft law amending the Constitution in the first reading, groups of 5 MPs were entitled to propose the modification of the text, despite the fact that only 1/3 of the total number of MPs may initiate the revision of the Constitution, according to Art. 141 para.(1) let.b) of the Constitution.

149. Being applied in conjunction, the provisions of the Rules of the Parliament allowed the committee, *inter alia*, to adopt a decision on the approval of the amendments to a draft law and its ”improvement”, just as indicated in the Parliament Decisions no. 1111, 1112 and 1113 of 5 July 2000 on the approval of the aforementioned three draft laws revising the Constitution that finally were consolidated in a single draft law.

150. Clearly, the exclusive right to advance proposals to modify or to supplement the Constitution granted to the subjects indicated in Art. 141 para.(1) of the Constitution does not mean that while examining such a proposal, the aforementioned subjects cannot modify, in general, the text of a draft law amending the Constitution. However, modification of the text of a draft law revising the Constitution cannot repeal the exclusive right of the subjects indicated in Art. 141 para.(1) of the Constitution to advance a proposal modifying or supplementing the Constitution. The Parliament can neither examine nor vote a proposal to modify or supplement the Constitution even if it is be advanced by other subjects than those indicated in Art. 141 para.(1) of the Constitution.

151. Therefore, given the Constitutional provisions, when the Parliament is examining certain draft laws amending the Constitution that had been advanced by the persons indicated in Art. 141 para.(1) of the Constitution, **the legislative is entitled to modify these draft laws only to the extent these modifications do not essentially alter their contents,** specifically, modifications regarding the editing of the draft laws amending the Constitution proposed to improve the text in terms of language requirements and legislative techniques or other corrections to make the wording of the draft law more precise and more concrete, failing to introduce substantially different means to obtain the goals set by the corresponding proposed regulation or failing to propose the modification of another provision from the Constitution.

152. Referring to this aspect the Court holds that the provisions of the Constitution do not provide for any rights of the structural subunits of the Parliament, *inter alia*, to its committees, as well as to individual MPs to advance a draft law amending the Constitution **that would substantially differ from the draft law amending the Constitution submitted by the entitled subject.**

153. The structural subdivisions of the Parliament, *inter alia,* its committees, as well as MPs individually, are entitled to propose non-substantial amendments to the draft law that is examined by the Parliament, to propose the rejection of the draft law, as well as to propose that the subject having advanced the draft law under examination advances a new draft law amending the Constitution that would be substantially modified.

154. Therefore the provisions of the Rules of the Parliament opened the possibility, *inter alia,* to substantially alter the content of a draft law advanced by the persons (*inter alia*, a group of 1/3 of Members of Parliament), indicated in Article 141 para.(1) of the Constitution entitled to propose the modification of the Constitution. **Such a possibility is contrary to the provisions regulating the limits and the special procedure to revise the Constitution stipulated in Articles 135 para.(1) let.c), 141 and 143 para.(3) of the Constitution.**

155.The Court holds that, despite the fact that the legal regulation relevant for this case has been altered, its contents have not been substantially modified.

156. Articles 76-84 of Chapter 3 of the Rules of the Parliament (the wording of 7 April 2007) provide legislative solutions that are similar to those in force on 5 July 2000 referring to the procedure for adoption of modifications to the Constitution. Therefore Articles 82 and 83, to the extent they do not provide prohibition of substantial modifications, either by the Special committee, the leading standing parliamentary committee or by the MPs, to the draft law amending the Constitution, neither the prohibition to vote for the first time the substantially modified wording of a draft law amending the Constitution, are contrary to Article art. 135 para.(1) let.c) and Art. 141 para.(1) of the Constitution of the Republic of Moldova.

3.3.3. Weather the adopted provisions substantially differ from the initial legislative proposal

157. Following a comparison of the draft law no. 4098 with the draft law debated in the second reading in the Parliament, it clearly results that:

- The draft law, debated in the second reading, modified in Article 78 of the Constitution the number of votes necessary to elect the President, namely **3/5** of the votes of MPs while the draft law no. 4098 proposed the election of the President with **the majority of the elected MPs;**
- The draft law debated in the second reading supplemented Article 78 with three new paragraphs referring to the repeated elections and **the dissolution of the Parliament**, whereas the draft law no. 4098 never contained such provisions. Summing up the debates in the Parliament, it clearly results that **in this way there has been made an attempt to strengthen a mechanism of pressure** in order to impose the MPs to elect the President;
- The draft law debated in the second reading proposed to supplement paragraph (4) of Article 85 of the Constitution, referring to **the exception to the prohibition to dissolve** the Parliament within the last six months of the term of the President of the Republic of Moldova, despite the fact that the draft law no. 4098 did not contain any proposal to modify this article.

158. Therefore, despite the fact that both draft laws under discussion pursued the same objective, namely to amend the existent preliminary constitutional framework on the election of the President of the Republic of

Moldova by the Parliament, the scope of the regulations proposed by the draft law no. 4098 has been modified by the draft law debated in the second reading **advancing substantially different means to achieve the aforementioned objective as compared to the draft law** no. 4098 and contained, in addition to the provisions thereof, proposals to modify other provisions of the Constitution: number of votes necessary to elect the President, number of ballots and repeated elections, dissolution of the Parliament in case of failure to elect the President. As a consequence, in terms of their contents, the draft law no. 4098 and the draft law debated in the second reading are substantially different.

159. The Parliament thus has negated the right of a group of MPs of at least 1/3 of the total number of MPs to enact their initiative. **Specifically, a subject that is not indicated in Art. 141 para.(1) of the Constitution, as holder of the right to initiate the revision of the Constitution, has substantially altered the initial draft law on the revision of Art. 78 and 85 para.(4) of the Constitution.**

160. The Parliament can neither examine nor vote any proposal to modify and supplement the Constitution that is advanced by other persons than those indicated in Art. 141 para.(1) of the Constitution.

161. In case the Constitution was interpreted in a different way (*inter alia,* in sense that another person, that the subjects indicated in Art. 141 para.(1) of the Constitution entitled to propose modification of the Constitution, could advance in the Parliament for examination a new proposal to modify and supplement the Constitution – a new draft law amending the Constitution), this would negate the exclusive right to advance proposals to modify and supplement the Constitution provided in art. 141 para.(1) of the Constitution and would thus create preliminary conditions to adopt a constitutional amendment with a practically different wording, on the grounds of a proposal to modify or to supplement.

162. Moreover, this interpretation would be incompatible with the aforementioned objective of the special procedure on amending the Constitution – to limit the modification of the Constitution only to the most necessary situations and to prevent any rushed modification of the Constitution.

163. The Court holds that in this case it is necessary to verify also if the adopted provisions comply with the basic requirements referring to the limits of constitutional revision indicated in Art. 142 if the Constitution.

3.3.4. Harmony of operated modifications and the balance of constitutional matter

164. The provisions of the law revising the Constitution, that have been challenged in this case, mainly refer to the modification of Article 78 of the Constitution providing the modality to elect the President of the Republic of Moldova.

165. There are several other constitutional provisions related to Article 78 of the Constitution.

166. Article 85 para.(4) of the Constitution provides that the Parliament cannot be dissolved during the last 6 months of the term of office of the President of the Republic of Moldova, except for the case indicated in Article 78 para.(5).

167. Article 89 of the Constitution regulates the procedure to remove the President by the Parliament.

168. It has to be mentioned in this context that, according to the Constitution, when regulating the modality to elect the President, *inter alia*, at the moment of establishing the grounds and the procedure to remove the President, the legislator has to take into account the constitutional statute and the corresponding safeguards of the mandate, as an integral part of the institutional architecture of the state and, therefore, of the system of checks and balances.

169. To conclude, it has to be pointed out the aforementioned constitutional imperative regarding the unity of matter and the balance of values enshrined in the Constitution, as a constitutional value, also implies the constitutional duty not to adopt regulations that, *inter alia*, would create preliminary conditions for conflicts and deadlocks.

170. The Court notes that in the case when the Parliament proves to be incapable to elect the President of the country, the text of the Constitution not only allows, but also imposes the dissolution of the Parliament.

171. The solution accepted in the Republic of Moldova is not unique from the perspective of comparative constitutional law, nevertheless it has certain peculiarities.

172. In the largest majority of European countries the presidents are elected by people. There are much fewer countries that elect the President in the Parliament (Albania, Estonia, Greece, Hungary, Italy and Latvia). The states are inclined to modify the procedure to elect the President of the country in order to involve people directly, instead of electing the Head of the State in the Parliament, still keeping the parliamentary form of government (most recent examples are Czech Republic and Turkey).

173. In certain countries the President is elected by the absolute majority of MPs (Estonia and Latvia), whereas in other countries a qualified majority is needed [Albania (a majority of three fifth), Hungary, Greece and Italy (a majority of two thirds)]. Malta is the sole country where the relative majority in the first ballot is considered to be sufficient. As a rule the constitutions provide the regulations referring to the subsequent ballots of presidential elections in case the necessary quota has not been reached in the first ballot. In the Republic of Moldova the number of candidates is reduced to two in the subsequent ballot; however the requirement of three fifths is still present.

174. Similar solutions (maintaining the quota and providing for the dissolution of the Parliament in case the necessary majority has not been attained) can be found in Greece (Article 32 of the Greek Constitution).

175. The Constitutions generally provide certain restrictions referring to the dissolution of the Parliament. These are meant to prevent political instability and to fight against abuses of repeated dissolutions.

176. Referring to the dissolution following the failure to elect the President, Art. 78 para.(5) contains no restrictions regarding repeated dissolutions. Therefore the text of the Constitution not only permits, it rather imposes repeated dissolution of the Parliament when the legislative proves to be incapable of electing the President of the country. Theoretically it may be dissolved unlimitedly given the same reasons.

177. The situation of the Republic of Moldova is unique from this point of view and such a particularity is the result of modifications operated in Article 78 of the Constitution in 2000.

178. All other constitutions contain the necessary provisions to avoid the vicious circle of anticipated elections by diminishing the necessary number of votes. For instance, the President may be elected by an absolute majority (e.g. in Turkey, Article 102 para. 3 of the Constitution) or by a relative majority in the second or any subsequent ballot (e.g. in Italy, Article 83 para.3 of the Constitution; in Hungary, Article 29 B, para. 4 of the Constitution). Even the Greek Constitution that seems to be the closest to the constitutional law of the Republic of Moldova, allows for a single dissolution in case of failure to elect the President by a qualified majority (two thirds and then three fifths). Following this single dissolution the conditions for the majority of votes are gradually reduced until a relative majority is sufficient for the two candidates with the highest number of votes. These rules ensure that the president is effectively elected following the ballot (Articles 32.4 and 41.5 of the Greek Constitution).

179. In this context the Court recalls the Conclusions of the Venice Commission formulated in the *Amicus Curiae* Brief on the Interpretation of Articles 78.5 and 85.3 of the Constitution of Moldova (CDL-AD(2010)002):

> „27. In the light of the circumstances in Moldova, the Venice Commission is of the opinion that a constitutional reform is needed in order to prevent political stalemates from happening again in Moldova in the future. Frequent dissolutions of Parliament that follow one another at short intervals of only a few months each also create obstacles for political negotiations that are necessary for a successful constitutional reform. The Venice Commission recalls its Report on Constitutional Amendment (CDL-AD(2010)001) adopted in December 2009, where it emphasizes that constitutional amendments must follow the procedures set out in the Constitution in force."

180. The Court holds that almost all political and institutional stalemates in the Republic of Moldova are related to the modified provisions referring to the procedure to elect the President and the mechanism to dissolve the Parliament (Article 78). This opinion is supported also by the Venice Commission in the *Amicus Curiae* Brief on three questions related to Article 78 of the Constitution of the Republic of Moldova adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011):

„39. [...] Looking at the Constitution as a whole and the specific objective of Article 78, which is to ensure the effective functioning of constitutional bodies, there should be a limit to these repetitions in order to prevent abuses linked to repeated dissolutions and to provide the necessary guarantee of a political stability in the country."

181. Such a regulation outlines a contradiction that is present in the Constitution of the Republic of Moldova: while the constitutional provisions referring to the election of the president are supposed to secure the well-functioning of constitutional bodies, these provisions, on the other hand, allow unlimited repetition of elections and dissolutions which, in fact, prevent the efficient functioning thereof and provide opportunities for continuous constitutional crises. Moreover, the strict implementation of such provisions **leads to a cumulation of offices by the Speaker of the Parliament who is also entitled to exercise the office of Interim President for a period longer than the one indicated in the Constitution.**

182. Indeed, contrary to other constitutions providing similar mechanisms to elect the President, the Constitution of the Republic of Moldova fails to contain any rule that would permit avoidance of the vicious circle of elections and dissolutions, in case of lack of compromise between the main political parties, in order to secure both adequate functioning of state institutions and the stability of the constitutional system of the country.

183. The fact that these modifications had generated and continue to generate uncertainties regarding the election of the President and functioning of constitutional institutions is ascertained also by a great number of requests to interpret Article 78 of the Constitution (see JCC no. 5 of 16 March 2010, JCC no. 17 of 20 September 2011, JCC no. 1 of 12 January 2012, JCC no. 7 of 24 May 2012, Opinion no. 4 of 21 September 2010, Opinion no. 2 of 12 June 2009), as well as initiatives to review these modifications (see Opinion no. 2 of 4 May 2010, Opinion no.3 of 6 July 2010, Opinion no. 1 of 22 September 2014, Opinion no. 1 of 24 July 2015, Opinion no. 2 of 10 November 2015, Opinion no. 1 of 29 February 2016). Despite all these efforts this particular source of constitutional deadlocks has never been removed. In this context, the Court notes that no modification can be adopted based on an unconstitutional modification, and due to this fact it is necessary to resolve the issue of constitutionality of previous amendments to the Constitution before any further review thereof.

184. The interference in the constitutional wording, that took place in 2000, had created an unprecedented situation that lead to a rupture of the unity of constitutional norms.

185. For this particular reason the Constitution had regulated the necessity to issue the Opinion of the Constitutional Court in respect of a draft law amending the Constitution.

186. **The need to submit the draft law for a repeated Opinion is also supported by the Venice Commission** in the interpretation offered in the context of a constitutional reform in the Republic of Moldova in 2000, when

it was called to participate in the drafting of a compromise draft law revising the Constitution based on two existing draft laws:

> „196. [...] With the involvement of the Venice Commission it was possible to establish a joint parliamentary-presidential commission that was able to agree on a compromise text. However, partly because **the compromise proposal would have had to be sent back to the constitutional court for another round of review**, the parliamentary majority decided instead to adopt a text that had previously been cleared by the court. Thus the compromise in the joint committee was thwarted, and an amendment adopted against the will of the president, which later proved to be a source of considerable political instability."

187. In the *Amicus Curiae* Brief on three questions related to article 78 of the Constitution of the Republic of Moldova adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011) the Venice Commission *inter alia* has stated that:

> „39. [...] Due to the fact that the Constitution of Moldova fails to provide guidance on how to deal with the current exceptional circumstances in the country, the textual interpretation of Article 78 may bring unsatisfactory results. This is because it leads to repeating the same procedure for election of the President all over again, and thus at a vicious circle of elections and dissolutions. Having in mind the incapacity of the Parliament to elect a compromise candidate and thus avoid a continuation of the crisis, it may be appropriate to revert to a functional interpretation of the Constitution: Looking at the Constitution as a whole and the specific objective of Article 78, which is to ensure the effective functioning of constitutional bodies, there should be a limit to these repetitions in order to prevent abuses linked to repeated dissolutions and to provide the necessary guarantee of a political stability in the country."

188. The Court notes that the constitutional provisions all together form a unity of matter and have an indissoluble logical and legal connection. In this context the Constitution contains a tripartite division of the state functions that is a fundamental principle of the organization of the state. The constitutional text thus reflects the image of the state as a structure of bodies among which is the President. Therefore, taking the spirit of the Constitution as basis, it is necessary to ensure the functioning of all state institutions and compliance with the supreme principles and values which in fact would represent the test of effectiveness of the Constitution as the Supreme Law of the country.

189. Having regulated the fallible situations when the Parliament is unable to elect the President the legislative constituent provided in Article 78 of the Constitution the dissolution of the Parliament that appears both as a sanction for the incapacity and as a mechanism of institutional unblocking allowing to the newly elected Parliament the possibility to elect and to launch the functioning of the Presidential institution.

190. On the other hand the Court notes that the application of Article 78 of the Constitution has created an unprecedented situation when due to the infinite possibility to dissolve the Parliament, the office of the Interim President may be exercised for an unlimited period of time. As a matter of fact, within 2009 and 2012 the interim office of the President actually

consumed almost the entire term of office of a plenipotentiary President. The constitutional provision that regulates the limitation of a suchlike situation to a 2 months term, a period necessary to organize presidential elections, has thus been circumvented.

191. The structure of political options in the society that has crystallized in the period of recent years, as correlated with previous experience (see §§ 7 and 19 *supra*), as well as various sociological surveys, fail to offer sustainable grounds to believe that in the event of new early elections the proportion of powers in the future Parliament would not be likely to block, again, the election of the President, as well as the revision of the Constitution.

192. Therefore, the mechanism of Article 78 of the Constitution, meant to ensure the functioning of the state institutions, under the present day circumstances **has generated a rupture of this constitutional unity as it fails to secure the normal functioning of the Presidential institute.** In this way, given the Parliament's lack of capacity to elect a compromise candidate there had been created a situation of political and institutional deadlock that lead to a vicious circle of elections and dissolutions. Over the years, Article 78 of the Constitution, which originally was conceived as an exceptional mechanism, has been invoked more often than the ordinary mechanism, as there had been organized 3 early parliamentary elections, of which 2 were held in 2009-2010 – the period when the Parliament was not able to elect the Head of the State within 4 unsuccessful attempts.

193. Moreover, the interim office irrespective of its length does not disturb the interdiction for the person having exercised two consecutive presidential terms, prior to the moment when the interim office has intervened, to candidate for a new presidential term.

194. It is clear that the norms and the spirit of the Constitution aim at ensuring the perpetuation in exercising the state power by the state institutions created in accordance with the provisions of the Constitution, whereas provisory situations, like the interim office, meant to avoid the creation of a vacuum of power and to ensure the organization of elections of a new President, shall be removed at the earliest convenience.

195. The Court also states that the situation when the office of the Speaker of the Parliament, that is an exponent of the legislative power, actually merges with the office of the President of the country, practically a component of the executive power, for a period exceeding half of the ordinary term of office of a President of the state, **obviously exceeds the intention of the Constitution and is not compatible with the Constitutional principle of separation of state powers**, leading also to the misuse of competences which the Constitution has attributed to the leading state organs.

196. However, the Court notes that the aforementioned modifications create a dual premise for a constitutional deadlock and for certain tensions between the popular vote and the modern idea of representation. The ultimate effect is undeniably an extremely fragile constitutional democracy.

Moreover, it can be mentioned that the modified wording of Article 78 of the Constitution has no similarities with any constitutional text.

197. The Court thus is in a position to eliminate the mechanisms that are a source of unbalance for the constitutional institutions, in order to save the consistency of the Constitution.

198. The Court notes that the manner of electing the President cannot be a source of constitutional crisis.

199. In the same context, the Court holds that the challenged provisions have not been modified since their adoption in 2000, accordingly these regulations have never been validated by a subsequent modification which could have arisen the issue of legal certainty.

200. In light of the above, following the systemic coherence of the Constitution and with a view to ensure its functionality, the Constitutional Court finds the challenged provisions as unconstitutional.

201. At the same time, given the imperative of avoiding the legislative vacuum as well as taking into account the urgency in approaching the constitutional deadlock in the context of the forthcoming expiry of the term of office of the acting President, the Court ordered the revival of the legal mechanism in force prior to the modifications operated to the Constitution that would ensure the election of the President.

202. The Court notes that in order to implement the constitutional obligation referred to in Article 134 of the Constitution on the role of the Constitutional Court as guarantor of the Constitution, **one of the fundamental tasks of a constitutional court is securing the normative order created by the Constitution.**

203. Moreover, **the solution delivered by the Court should be "effective" and may not provide solely a mere position, appreciation, opinion, recommendation or request.** The Court cannot limit itself to a mere ascertaining of a violation by the Parliament of its opinion, especially given the fact that the modification introduced contrary to the opinion of the Court in this particular case has generated institutional instability, division of the state power in a non-transparent manner that caused undermining and discrediting of the idea of democracy.

204. In this context, **Opinions of the Court on the draft laws amending the Constitution aim at safeguarding the fundamental values of the Constitution from abusive practices of political, social and institutional actors**. Therefore, **ignoring or overstepping these opinions may constitute grounds for the nullity of such modifications.**

205. It should be emphasized that the legislator, when regulating the election of the President, *inter alia*, the procedure of dismissal thereof or dissolution of the Parliament, must abide by the Constitution.

206. In this context the Court holds that modification of the eligibility conditions of the President provided in Article 78 para. (2), *inter alia*, the age censor, the residing condition and requirement of knowledge of the state language, as well as the provisions of para.(6) of Article 78 of the Constitution, according to which the procedure of electing the President is

established by the organic law did, have not altered in a substantial manner the initial draft law upon which the Constitutional Court delivered its opinion and **do not affect the unity and balance of the constitutional matter**.

207. On the other hand, **the fact that the constitutional reform of 2000 in fact has generated an imperfect system of government, there existing premises for a potential conflict between the state authorities, has directly evolved from the Parliament ignoring the Opinion of the Constitutional Court.**

208. In light of the above mentioned, following the systemic coherence of the Constitution and with a view to secure its functioning, the Court stated that the challenged provisions have been adopted in violation of the procedure on the revision of the Constitution provided in Art.135 para.(1) let. c), Art.141, Art.142 para. (2) and Art.143 para.(1).

209. Concurrently the corresponding provisions that have modified Articles 85 and 89 of the Constitution, as well as the subsequent legal framework regulating the procedure of electing the President are found unconstitutional.

210. Taking into account the aforementioned arguments, the Constitutional Court finds that the challenged provisions are inconsistent with the constitutional principle of the rule of law, enshrined in the Preamble and in Article 1 para. (3) of the Constitution.

211. The Court notes that the very nature of the Constitution as the supreme legal act and constitutional idea itself implies that there cannot exist in a Constitution any gaps or internal contradictions.

212. In this regard, the Court recalls its Judgment no. 33 of 10 October 2013 where it stated that:

> „63. In this context, the Court held, as a principle, that **the legal provisions repealed by the legal text declared unconstitutional reenters the active fund of the law**, continuing to have legal effect before the entry into force of the new regulations, as this is a specific effect of the loss of constitutional legitimacy, the sanctions differ and much more serious than simply repealing a legislative text.
>
> 64. Thus, if unconstitutionality of some amending/repealing rules is declared, before the necessary modifications are made by the Parliament, the provisions that were in force before the amendment/repealing will apply, in a manner consistent with its considerations to the case deduced under its examination."

213. In this regard, taking into account the entire set of constitutional regulations, *namely the procedure to elect the President and to dissolve the Parliament*, the Court holds that upon recognizing the unconstitutionality of the provisions amending paragraphs (1), (3), (4) and (5) of Article 78 of the Constitution, the correspondent wording of the aforementioned paragraphs of Article 78 of the Constitution that was applicable prior to the entry into force of the challenged Law, shall become applicable again. The previous wording of the provision in paragraph (5) of Article 78 prior to modification shall not revive due to the fact that this wording has been identically reproduced in paragraph (4) of Article 80 of the Constitution, the text adopted by the Law no. 1115/2000.

214. In the context of the present case the Court points out that there are no reasons to dismiss the President before the expiry of the term of office. Thus, the President of the Republic of Moldova elected by the vote of the Parliament cast on 16 March 2012 shall remain in office until the expiry of the term for which he had been elected, according to the provisions of Article 80 para.(2) of the Constitution. Moreover, this Judgment does not represent basis to recognize the acts adopted by the President elected based on the provisions of Article 78 declared unconstitutional or by the person having exercised the interim office of the President as unconstitutional solely on these grounds.

For these reasons, according to Article 135 para. (1) let.a), b) and c) and Article 140 of the Constitution; Article 26 of the Law on Constitutional Court; Articles 6, 61, 62 let. a) and b) and Article 68 of the Code of Constitutional jurisdiction, the Constitutional Court

D E C I D E S:

1. *To admit* the complaint submitted by a group of 18 MPs of the parliamentary faction of the Liberal Democratic Party of Moldova, Valeriu Ghileţchi, Tudor Deliu, Liliana Palihovici, Angel Agache, Maria Ciobanu, Vladimir Hotineanu, Chiril Lucinschi, Grigore Cobzac, Vadim Pistrinciuc, Iurie Ţap, Ion Balan, Nae-Simion Pleşca, Ştefan Creangă, Octavian Grama, Gheorghe Mocanu, Mihaela Spatari, Aliona Goţa, Victor Roşca, on the control of constitutionality of section 2 in full and of the phrase „*except for the case indicated in art. 78 para. (5),*" of section 5, Article I of the Law no.1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova.

2. Within the meaning of article 135 para. (1) let. c), as corroborated with the provisions of Art. 141 para.(2) and 143 para.(1) of the Constitution:

a) Following the issue of the Opinion of the Constitutional Court, no interventions are admitted in the text of the draft law to revise the Constitution, and any **disregard or exceeding of its limits may be regarded as grounds for the nullity of any such modifications.**

b) If there are any amendments accepted by the MPs during the second reading of the draft law on the revision of the Constitution, a repeated Opinion of the Constitutional Court is needed.

c) If the Constitutional Court delivers a repeated Opinion over the draft law to revise the Constitution that has been substantially amended during the second reading in the Parliament, this draft law shall be subject to all the procedures provided in Art. 143 para.(1) of the Constitution.

3. *To declare unconstitutional:*

- the wording:

"(1) The President of the Republic of Moldova shall be elected by the Parliament by a secret ballot."

"(3) The candidate who obtained the vote of three-fifths of the elected MPs shall be elected as President. If no candidate has obtained the necessary number of votes, a second ballot shall be conducted to choose between the first-placed two candidates, established according to the decreasing number of the votes obtained in the first ballot."

"(4) If in the second ballot no candidate obtained the necessary number of votes, there shall be conducted repeated elections."

"(5) If, following repeated elections, the President of the Republic of Moldova was not elected, the acting President shall dissolve the Parliament and shall organize elections of a new Parliament."

in section 2;

- the phrase " , *except for the case provided for by Article 78 para.(5)"* in section 5;
- section 6

of Article I of the Law no. 1115—XIV of 5 July 2000 amending the Constitution as being contrary to the limits of constitutional revision imposed by the provisions of Article 142 para.(2), as well as of Article 135 para.(1) let.c) corroborated with the provisions of Article 141 para.(2) of the Constitution.

4. *To recognize as constitutional:*

- the wording:

"(2) Any citizen of the Republic of Moldova may run for the office of President of the Republic of Moldova, provided that he enjoys the right to vote and is over 40 years of age, had lived or has been living permanently on the territory of the Republic of Moldova for no less than 10 years and speaks the official state language."

"(6) The procedure regulating the election of the President of the Republic of Moldova shall be provided for by organic law."

in section 2 of Article I of the Law no. 1115—XIV of 5 July 2000 amending the Constitution.

5. *To declare as unconstitutional* the Law no. 1234-XIV of 22 September 2000 on the procedure of electing the President of the Republic of Moldova.

6. *To declare as unconstitutional* the Law no. 1227-XIV of 21 September 2000 on the modification of the Electoral Code and to order revival of the provisions that were subject to repeal.

7. *To declare as unconstitutional* articles 82 and 83 of the Rules of the Parliament approved by the Law no. 797-XIV of 2 April 1996, to the extent they do not provide prohibition of substantial modification of the draft laws amending the Constitution and to the extent they do not provide for prohibition to vote for the first time the wording of a substantially modified draft law amending the Constitution, as being contrary to Articles 135 para.(1) let.c), 141 para.(2) and 143 para.(1) of the Constitution of the Republic of Moldova.

8. In order to enforce this Judgment:

a) the provisions of paras. (1), (3) and (4) of Article 78 and the provisions of Article 89 of the Constitution, in force until the date of adoption of the Law no. 1115—XIV of 5 July 2000 amending the Constitution that made the subject of this constitutional review revive and return into the active legal fund starting with the date of this judgment.

b) As a consequence to the conclusions indicated in section 3 and section 8 p.a) of this Dispositive part, articles 78 and 89 of the Constitution shall read as follows:

"**Article 78**
Election of the President

(1) The President of the Republic of Moldova is elected by freely-expressed, universal, equal, direct, and secret ballot.

(2) Any citizen of the Republic of Moldova may run for the office of President of the Republic of Moldova, provided that he enjoys the right to vote and is over 40 years of age, had lived or has been living permanently on the territory of the Republic of Moldova for no less than 10 years and speaks the official state language.

(3) The candidate obtaining at least half the votes cast in the presidential election shall be proclaimed as the new President.

(4) If no candidate will have obtained the above mentioned majority, a second ballot shall be held to choose from the first-placed two

candidates, in the order of the number of votes cast for them in the first ballot. On condition that the number of the votes cast for him be bigger than the number of the votes cast against him, the candidate obtaining most of the votes cast in the second ballot shall be proclaimed as the new President.

(6) The procedure regulating the election of the President of the Republic of Moldova shall be provided for by organic law."

"Article 89
Suspension from Office

„(1) In the event of committing serious offenses infringing upon constitutional provisions, the President of the Republic of Moldova may be suspended from office by Parliament with the vote of two - thirds of MPs.

(2) The motion requesting the suspension from office may be initiated by at least one third of the MPs, and it must be brought to the knowledge of the President of the Republic of Moldova without delay. The President may give explanations before Parliament on the actions for which he is being censured.

(3) If the motion requesting suspension from office is approved, a national referendum shall be organized within 30 days to remove the President from office."

c) The Constitution shall be repeatedly published in the Official Gazette of the Republic of Moldova and the wording thereof shall correspond to the provisions of this dispositive part;

d) The Parliament shall adopt without delay the legislative framework regulating the election of the President by freely-expressed, universal, equal, direct, and secret ballot;

e) The effects of this decision shall not extend over the term of office of the President of the Republic of Moldova elected by the vote of the Parliament cast on 16 March 2012 shall remain in office until the expiry of the term for which he had been elected.

9. This judgment is final, cannot be subjected to any appeal, shall enter into force at the date of its enactment and shall be published in *the Official Gazette of the Republic of Moldova*.

President **Alexandru TĂNASE**

Chişinău, 4 March 2016
JCC nr.7
Case-file no. 48b/2015