



Rule of Law and the Republic of Moldova's Aspiration to Become an EU Member State

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Abstract. The Constitution of the Republic of Moldova upholds the rule of law as a fundamental value. The Constitutional Court of the Republic of Moldova consistently uses the rule of law standard to justify its rulings and refers on a regular basis to the Venice Commission's Report on the rule of law. The Constitutional Court analyses, when giving its solutions, the main acts of international organizations and relevant European case-law regarding the issues subject to interpretation, which reveals at least the existence of a European consensus. It considers them, based on Article 4 of the Constitution, because the Republic of Moldova has a general obligation to increase its political legitimacy and contribute to the consolidation of a European consensus. In 2022, the Republic of Moldova applied to join the European Union (EU), and the European Council decided to grant it the status of candidate country. The European Commission recommended to the Council that it open accession negotiations with Moldova. After the opening of accession negotiations, the Council approved a general negotiating framework that incorporates the revised enlargement methodology, which provides for an even stronger focus on the fundamental reforms in the accession negotiations. Moldova will need, therefore, to fully embrace and continue to implement reforms, including in the area of rule of law and fundamental rights. Progress in this area will determine the overall pace of negotiations. Since the negotiations are aimed at Moldova fully adopting the EU *acquis* and ensuring its full implementation and enforcement, taking into account the references to the Venice Commission opinions in the European Commission's reports and in the declarations of EU officials, the main sources for the Republic of Moldova for defining a rule of law standard during the accession negotiations are the EU *acquis* and the Venice Commission opinions regarding the Republic of Moldova.

Keywords: rule of law, EU accession, ECtHR, Venice Commission, fundamental rights

1. Introductory Aspects

The Moldovan Soviet Socialist Republic, which was set up by a decision of the Supreme Soviet of the Union of Soviet Socialist Republics (USSR) on 2 August 1940, changed its name to the Republic of Moldova on 23 May 1991 and declared its independence on 27 August 1991. The Parliament of the new state adopted the Constitution of the Republic of Moldova on 29 July 1994. This act represents the main legal instrument that marked the definitive separation from the totalitarian regime. In 2024, the Constitution was amended with an article that establishes, *inter alia*, that after accession to the EU, the provisions of the founding treaties of the EU, as well as other binding legal acts thereof, shall take precedence over any contrary provisions in domestic laws, subject to the provisions of the act of accession.

The Constitution of the Republic of Moldova establishes in Article 1 para. (3) that the Republic of Moldova is a democratic state governed by the rule of law in which human dignity, rights and freedoms, free development of the human personality, justice, and political pluralism represent supreme values and are guaranteed. Article 4 of the Constitution requires that the constitutional provisions on human rights and freedoms be interpreted and applied in accordance with the Universal Declaration of Human Rights and the treaties to which the Republic of Moldova is a party. If there are inconsistencies between the treaties regarding fundamental human rights to which the Republic of Moldova is a party and its internal laws, international regulations take precedence.

2. Constitutional Court Case-Law Sources

2.1. The Venice Commission

The Constitutional Court of the Republic of Moldova consistently refers to the rule of law as a standard to justify its solutions.

For instance, a case in 2018¹ challenged an article of the Criminal Code² that prohibited the manufacture, possession, sale, or use of false official documents but granted rights or released from obligations the manufacture or sale of false prints, stamps, or seals of some enterprises, institutions, organizations, regardless of the type of ownership and legal form of the organization. The article established as an aggravating circumstance the performance of these actions regarding documents of *particular importance*. The Court began its analysis by saying that ‘in general, the requirements of the rule of law presuppose, *inter alia*,

1 JCC No. 12 of 14 May 2018, § 30.

2 Article 131 para. (2) letter c).

the assurance of legality and legal certainty'. To support this assertion, the Court then referred to the Report on the Rule of Law adopted by the Venice Commission at its 86th Plenary Session, 2011, § 41.

The Court applied the principle of the legality of the incrimination and the criminal punishment (*nullum crimen, nulla poena sine lege*), taking into account also the case-law of the European Court of Human Rights regarding Article 7 of the European Convention on Human Rights.³ In its case-law, the European Court of Human Rights established that Article 7 of the Convention must be interpreted and applied in such a way as to ensure effective protection against criminal prosecution, conviction, and arbitrary sanction of the person.⁴

The Court noted that there is no normative text that would define the notion of 'documents of particular importance' used in the Criminal Code. In relation to the scope and content of a 'document of particular importance', the Court held that there is a state of uncertainty in the following respects: 1) What is the unit of measurement that characterizes the importance of a document? 2) Who has the right to determine the importance of a document? 3) Is the importance of the document for the state or for the perpetrator considered? 4) What are the temporal and spatial dimensions of a document's importance?

Since the Criminal Code did not provide answers to any of these questions, the Court concluded there were no objective criteria that would delimit the special importance or low importance of a document and there was a risk that this limit would be established based on arbitrary criteria and discretion by those empowered to enforce the criminal law.

It noted that the litigant is deprived of the possibility to predict, in a reasonable way, under which conditions he would be liable based on Article 361, para. (1) of the Criminal Code when he makes, owns, sells, or uses a *false official document*, which grants rights or releases him from obligations, and under what conditions he would be liable based on Article 361, para. (2) lit. c) of the Criminal Code if the same actions are carried out regarding a *document of particular importance*.

The Court also highlighted the existence of court decisions with diametrically opposed interpretations of the contested notion in the case-law of the Supreme Court of Justice of the Republic of Moldova. The case-law on this matter had not developed a meaning for the criticized notion that may constitute an objective benchmark according to which its content can be assessed. The judges themselves were in a difficult situation of having to choose between several possible options, in the absence of a clear rendering of the norm and, implicitly, of the applicable sanctioning regime.

³ See § 31 of JCC No. 12 of 14 May 2018.

⁴ *Del Rio Prada v Spain* [GC], 21 October 2013, § 77; *Rohlena v the Czech Republic*, 27 January 2015, § 50; *Vasiliauskas v Lithuania*, 20 October 2015, § 153; *Koprivnikar v Slovenia*, 24 January 2017, § 45.

These were the main reasons why the Constitutional Court declared the contested norm unconstitutional.

2.2. The European Court of Human Rights

In another case in 2019,⁵ the Constitutional Court stated that when giving its solutions, it analysed the main acts of international organizations and the relevant European case-law regarding the issues subject to interpretation and that reveal at least the existence of a European consensus. It considered them, based on Article 4 of the Constitution, because the state of the Republic of Moldova has a general obligation to increase its political legitimacy and to contribute to the consolidation of a European consensus.⁶ Later, despite the soft law character of the Venice Commission's opinions, the Court advised Parliament, in a 2020 decision,⁷ to adopt laws in electoral matters considering the general obligation of the Republic of Moldova to increase its political legitimacy and contribute to the consolidation of an outlined European consensus and the need to respect the standards of the European electoral heritage and the recommendations of the Venice Commission.⁸

From the perspective of implementing the standards of the European Convention on Human Rights – implicitly the rule of law standard –, the importance of which is suggested in the Preamble of this international treaty,⁹ some of the considerations of the Constitutional Court expressed in a judgment of 2020¹⁰ are interesting. The decision concerns the guarantees of foreign citizens in the event of expulsion from the Republic of Moldova.

First, the Court announced that it interpreted the relevant articles of the Constitution in the light of Article 1 of Protocol No. 7 to the European Convention on Human Rights, from the perspective of the procedural guarantees for foreigners facing expulsion. The Court emphasized that one of the functions of the European Court of Human Rights, the authentic interpreter of the European Convention, is to establish a minimum level of protection of fundamental rights that must be guaranteed in all Contracting States. The European Court explained the consequences of this function in *Soering v the United Kingdom*, 7 July 1989, § 87:

5 JCC No. 11 of 26 April 2019.

6 See § 28 of JCC No. 11 of 26 April 2019.

7 DCC No. 11 of 7 May 2020.

8 See § 42 of DCC No. 11 of 7 May 2020.

9 From the Preamble of the European Convention on Human Rights: 'Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration'.

10 JCC No. 27 of 13 November 2020.

[...] the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective [...] In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with 'the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society'.¹¹

Second, the Court highlighted that the reasonings of the European Court in the Grand Chamber cases *Muhammad and Muhammad v Romania*, 15 October 2020, and *F.G. v Sweden*, 23 March 2016, have a *res interpretata* effect on the case it adjudicates. These cases establish a minimum level of protection in terms of procedural guarantees when foreigners are expelled, as well as protection of the right to life and the right not to be subjected to ill-treatment under their procedural aspects. They are relevant and applicable in all similar cases. Moreover, the European Court itself requires domestic authorities to ensure that domestic law complies with the Convention. This fact imposes on state authorities the obligation to ensure the full effect of the standards of the Convention in accordance with their constitutional order and considering the principle of legal certainty, as the standards are interpreted by the European Court (see *Fabris v France* [GC], 7 February 2013, § 72 and § 75).¹²

2.3. Points of Tension between the Venice Commission's Opinions and the Judgements of the European Court of Human Rights (ECtHR)

Sometimes, the Court must choose between the considerations of the Venice Commission and those of the European Court of Human Rights if they cannot be harmonized.

Judicial reform in the Republic of Moldova started in 2020. The Government of the Republic of Moldova prepared the ground, proposing in January of that year the amendment of the Constitution. At that time, the Constitution provided that the Superior Council of Magistracy was made up of judges and tenured university professors elected for a four-year term, without determining their number. The Chief Justice of the Supreme Court, the Minister of Justice, and the Attorney General were *ex officio* members of the Council.¹³ The government

¹¹ See § 37 of JCC No. 27 of 13 November 2020.

¹² See § 38 of JCC No. 27 of 13 November 2020.

¹³ Article 122 of the Constitution, in the version in force until 1 April 2022: '(1) The Superior Council of the Magistracy is made up of judges and tenured professors elected for a period of 4 years. (2) In the Superior Council of the Magistracy, the following are members de jure: the President [Chief Justice] of the Supreme Court of Justice, the Minister of Justice and the Prosecutor General'.

wanted more precision. It proposed 12 members (six judges and six non-judges of high professional reputation and personal integrity, with experience in the field of law or other relevant field) and excluded the Chief Justice of the Supreme Court, the Minister of Justice, and the General Prosecutor from the Council.¹⁴

The draft amendment to the Constitution was submitted to the Constitutional Court for review. One of its provisions stated that the mandate of the tenured professors who are members of the Council shall end on the date of entry into force of the law and that tenured professors shall exercise their mandate until the appointment of new members of the Superior Council of Magistracy. Examining this matter, the Constitutional Court observed that it affected the security of tenure of tenured professors, who were elected to office for a period of four years, as provided by the Constitution itself. The Constitutional Court noted that, on the date they were appointed as members of the Superior Council of Magistracy, the law professors met the requirements imposed by the Constitution and the law. The fact that the Government proposed to change the conditions for electing candidates for this position should not automatically imply that the current members of the Council, elected from among people other than judges, should be dismissed. The Constitutional Court also referred to an opinion of the Venice Commission issued at the request of the Georgian authorities. In that opinion, the Venice Commission held that, when Parliament uses its legislative power to design the future organization and functioning of the judicial system, it must refrain from adopting measures that would jeopardize the continuity of the mandates of the Judicial Council's members. The premature removal of all members would set a precedent whereby any new Government or Parliament that does not approve of the composition of the Council or its members can terminate its existence early and replace it with a new Council. In many circumstances, such a change, especially in the short term, would raise the suspicion that the

14 Article 122 of the Constitution, in the version proposed by the draft law to amend the Constitution of the Republic of Moldova, approved by Government Decision No. 33 of 22 January 2020: '(1) The Superior Council of the Magistracy consists of 12 members: six judges elected by the General Assembly of Judges, representing all levels of the courts, and six people who enjoy a high professional reputation and personal integrity, with experience in the field of law or in another relevant field, who do not work within the bodies of the legislative, executive or judicial power and are not politically affiliated. (2) The procedure and conditions for the election, appointment and termination of the mandate of the members of the Superior Council of Magistracy are established by law. The members of the Superior Council of Magistracy can be revoked, according to the law. (3) Candidates for the position of member of the Superior Council of the Magistracy who are not among the judges are selected through competition, based on a transparent procedure, on the basis of merit, and are appointed by the Parliament with the vote of three fifths of the elected deputies. (4) If the appointment of candidates who are not judges to the position of member of the Superior Council of Magistracy under the conditions of paragraph (3) has failed, the procedure and conditions for their appointment are established by law. (5) The members of the Superior Council of the Magistracy are elected or appointed for a 6-year mandate, without the possibility of holding two mandates.'

ulterior motive is to influence the pending cases of the Council. The conclusion of the Constitutional Court emphasized the disproportionate nature of the measure of legally terminating the mandates of law professors who are members of the Council, by amending the Constitution. In other words, the opinion of the Constitutional Court was negative.¹⁵

Shortly after the Court delivered the negative opinion, the Government presented a new draft amendment to the Constitution in which it repeated the provisions regarding the legal termination of the mandate of tenured professors on the date of entry into force of the amending law, adding that their mandate is to be confirmed for a period of six years in total, with the vote of three fifths of the elected deputies. In other words, professors were left at the mercy of the deputies. Some representatives of the Venice Commission also participated in the discussions regarding the elaboration of the draft amendment to the Constitution. The *ex lege* termination of the mandate of members who do not have the capacity of judges of the Council was one of the conditions of the memorandum of understanding between the Republic of Moldova and the EU regarding macro-financial assistance for the Republic of Moldova. For this reason, before issuing the new opinion, the Constitutional Court asked the Venice Commission to answer specific questions. One of the questions suggested the possibility that the premature termination of the mandate of the Council's law professors through the effect of an *ad hominem* law would disproportionately interfere with their right to respect for private life.

The Venice Commission replied that the proposed amendment was not aimed at a specific person but at the members in office in the context of the transition, regardless of the particular person. The amendment did not refer to a reason related to a specific person. Therefore, in the opinion of the Venice Commission, the 'intimate circle' of their private lives – their ability to establish and maintain relationships, including professional relationships, and their interaction with society – was not affected.¹⁶ The Venice Commission also held that the law professors did not give up their university activities on the date of their election to office and that, if they were not reconfirmed by Parliament, their 'inner circle' would not be affected in a way that would have serious material consequences incidental to their right to respect for private life. About their professional reputation, the Venice Commission noted that losing their positions on the Council could be a step backwards for law professors but that this fact would have no implications for their reputation or integrity, since they would retain their professional careers as lawyers and academics. Regardless of how important or prestigious their position

15 Opinion of the Constitutional Court No. 1 of 22 September 2020, published on 9 October 2020 in the Official Gazette No. 259–266.

16 Council of Europe, European Commission for Democracy through Law (Venice Commission), 2020, paras. 36 and 37.

in the legal community was, and regardless of how they perceived their position, the main scope of their professional activity would not be affected.¹⁷

The opinion of the Venice Commission has all the characteristics of an abstract analysis. It did not imagine the individual situations of the law professors whose mandates as members of the Council were to be terminated by the amendment of the Constitution. The Venice Commission considered the professors were a homogeneous group. It did not raise the issue of their access to a court in connection with their right to respect for private life or their interest in fulfilling their mandate, an interest that constitutes a civil right within the context of Article 6 of the European Convention on Human Rights. Ordinary courts would have considered that they cannot judge complaints in which the state would oppose the amendment of the Constitution. The eventual petitioners would not have been able to obtain a substantive decision that would balance their right to respect for private life, once its applicability was established, with the competing state interests.

Less than a year later, the European Court of Human Rights issued a judgment condemning the Belgian State for the lack of a judicial remedy to ensure the review of the suspension of a non-judge member of the High Judicial Council of Belgium.¹⁸ Almost two years later, the same European Court condemned Poland for the lack of a judicial review regarding the premature *ex lege* termination, after the legislative reform, of the mandate of a judge member of the National Council of the Judiciary.¹⁹

In *Polyakh and Others v Ukraine*, 17 October 2019, the European Court of Human Rights addressed the excessively wide scope and the restrictive nature of the ‘lustration’ measures that affected public officials of the Yanukovych regime and the communist regime from the perspective of the right to the protection of private life. The European Court analysed a law approved by the Venice Commission. According to the Venice Commission, the Law on Government Lustration pursued two legitimate purposes: (1) protecting society from persons who, because of past behaviour, could present a danger to the new democratic regime and (2) purifying the public administration from persons engaged in acts of widespread corruption.²⁰

The European Court held that, unlike the Venice Commission, it cannot limit its role to an evaluation *in abstracto*.²¹ Since the contested measures had a much broader purpose and were applied in a context different from that existing in other Central and Eastern European states, the European Court had doubts regarding

17 *Idem*, paras. 38 and 39.

18 *Loquifer v Belgium*, 20 July 2021.

19 *Grzęda v Poland*.

20 See *Polyakh and Others v Ukraine*, § 271.

21 See § 273 of the judgment.

the pursuit of legitimate goals in this case.²² The alleged danger presented by a wide category of persons falling under the measures of the Law on Government Lustration for the functioning of democratic institutions could not be equated with the danger presented by cases of collaboration with the totalitarian security services.²³ Unlike the latter, the applicants held positions in state institutions with a democratic constitutional basis (at least as a matter of principle). Their release from office seemed to be based on the collective liability of people employed by the state institutions during President Yanukovych's term of office, regardless of the precise functions they performed and their connection to the anti-democratic trends and developments that took place during that period. That the type of lustration could not be used as punishment, retribution, or revenge was a well-settled principle.²⁴ The same was true for the contested measures provided for by the Law on Government Lustration. The supposed objectives of restoring trust in public institutions and protecting democratic governance could be achieved by less intrusive means such as individual assessment, the removal of applicants from positions of authority, and their transfer to less sensitive positions. The extensive nature of the measures applied to the claimants, combined with the deeply accusatory language used in the Law on Government Lustration to describe the purposes of the law, raised the possibility that some of these measures were motivated, at least in part, by revenge against the associates of previous administrations.²⁵

That being the case, to ensure the rule of law, the Constitutional Court sometimes has to opt for one of the different solutions suggested by two institutions of the same international organization – the Council of Europe.

2.4. Other Rule of Law Aspects Regarding the Procedure of the Laws' Adoption, the Unconstitutionality of Political Parties, and the Independence of Constitutional Judges

In its Judgment No. 14 of 27 April 2021,²⁶ the Constitutional Court held that Parliament's sovereignty is not absolute, it being limited by the constitutional principles in this matter. In this respect, both in regulating parliamentary procedures and in their application, that is, in adopting normative acts, Parliament must ensure the right balance between the principle of parliamentary autonomy and the other principles incident to parliamentary procedures, which are expressly established or can be clearly deduced from the Constitution.

22 See § 274 of the judgment.

23 See § 275 of the judgment.

24 See § 276 of the judgment.

25 See § 277 of the judgment.

26 Published on 21 May 2021 in the *Official Gazette* No. 122–128.

In this judgment, the Court noted that approximately one minute elapsed between the presentation of the report of the Committee on Legal Affairs, Appointments and Immunities on the contested law in the plenary session and the vote on it in two readings. It was obvious that in such a short period the parliamentary opposition's members did not have the opportunity to submit the contested law to debate by formulating questions and discussing it, although their disagreement with the adoption of the contested law was known from the beginning of the plenary session. In this context, the Court noted that voting on the contested law in this accelerated manner, without ensuring the parliamentary opposition the opportunity to ask questions or to speak on the subject under examination, exceeded the Parliament's margin of discretion in the field of organizing parliamentary procedures. Even if the parliamentary procedures were accompanied by protests from the parliamentary opposition, this fact could not justify the adoption of the contested law in a procedure devoid of debate. To reconcile the conflicting principles, the parliamentary majority could have considered alternative procedures such as postponing the plenary session and organizing consultations with the parliamentary opposition on the subjects on which there are differences. Consequently, the Court declared the contested law unconstitutional. It is worth mentioning that prior to delivering its judgment, the Constitutional Court requested the Venice Commission to issue an opinion on the competence of the Constitutional Court to review the constitutionality of a law in the light of criticisms regarding the flawed procedure for its adoption. On 23 March 2021, the Venice Commission adopted the *Amicus Curiae Opinion No. 1020/2021* for the Constitutional Court of the Republic of Moldova on three questions regarding the review of the constitutionality of the procedures for adopting laws in Parliament, CDL-AD(2021)016).²⁷

Judgment No. 10 of 19 June 2023²⁸ represents the only case in which the Court reviewed the constitutionality of a political party (the 'Șor' Party). According to the Court, constitutional democracy presupposes the existence of a democratic electoral system, within which periodic, free, and fair elections are organized and losers cede power to the winners. Constitutional democracy also presupposes the guarantee of the rights to freedom of expression and freedom of association, which essentially is democracy in action, that is, practical democracy. At the same time, constitutional democracy presupposes the stability, predictability, and integrity of the law and of the institutions for the application of the law, that is, the rule of law, which are functionally necessary to make democratic involvement or commitment possible, without fear or coercion. The Court underlined that constitutional order requires a system in which political parties

27 Council of Europe, European Commission for Democracy through Law (Venice Commission), 2021.

28 Published on 26 July 2023 in the *Official Gazette* No. 267–270.

adhere to and respect the rules of the democratic game. Given the recent political history of the Republic of Moldova, a history characterized by cases of non-transparent financing of political parties and voter corruption, the Court held that the rule of law and political pluralism could be affected if the illegal financing of the 'Șor' Political Party is of a systematic, continuous nature and of significant proportions.²⁹

Another judgment that was based on a Venice Commission Opinion is Judgment No. 9 of 26 March 2020³⁰ on the criminal liability of the constitutional judges. Here the Court held that in a state governed by the rule of law, the principle of judicial independence is accompanied by several guarantees that are vital for institutional and individual judicial independence and without which the effective and impartial functioning of the courts would be impossible. It is essential to ensure that judges can properly exercise their functions, without their independence being compromised by the fear of criminal prosecution or civil action by the injured party, including the authorities of the state. In this case, the Court was called to interpret Article 137 of the Constitution, which states that the judges of the Constitutional Court are irremovable during their term of office, independent, and subject only to the Constitution. According to the Court, for the purposes of Article 137 of the Constitution:

- The judges of the Constitutional Court enjoy functional immunity, which means that constitutional judges cannot be held legally liable for the votes and opinions expressed in the exercise of their functions;

29 See § 108 of the judgment. In this respect, the Court accepted the thesis expressed by the Venice Commission in its Opinion No. 1115/2022 of 19 December 2022 for the Constitutional Court of the Republic of Moldova on the declaration of the unconstitutionality of a political party, Council of Europe, European Commission for Democracy through Law (Venice Commission), 2022, paras. 54 and 55. According to the Venice Commission, in principle, the establishment and functioning of any political party, whether it is a large or small party, whether it is accepted or not by (some of) the other parties and by a large or small part of the electorate, contributes to political pluralism. When a State invokes the activity of a party as justification for its dissolution, clear links must be established, with the legitimate objectives indicated in the second paragraph of Article 11 of the European Convention on Human Rights. The Venice Commission stated that a political party may commit crimes, such as fraud, breach of trust, and money laundering, with the aim of undermining political pluralism and democratic values. The Venice Commission also noted that the general situation in the country is clearly an important factor in assessing whether a party has used improper or even illegal means to divert voters from other parties or even used resources to undermine the fairness or integrity of political competition, leading to distortions of the electoral process through unfair advantage, supported by unauthorized foreign funding.

30 Published on 29 May 2020 in the *Official Gazette* No. 126–130. See also Venice Commission's *amicus curiae* Opinion no. 967/2019 on the criminal liability of judges of the Constitutional Court, Council of Europe, European Commission for Democracy through Law (Venice Commission), 2019.

- The judges of the Constitutional Court may be held criminally liable for offences committed in cases not related to the administration of constitutional justice;
- The initiation of criminal proceedings against a judge of the Constitutional Court requires the prior consent of the plenary of the Constitutional Court;
- A judge of the Constitutional Court may not be searched, except in cases of flagrant offence, detained, arrested, sent to criminal or minor offence trial without the prior approval of the plenary session of the Constitutional Court; and
- Judges of the Constitutional Court enjoy functional immunity for votes and opinions expressed even after the expiration of their mandate.

3. EU Rule of Law Standards during the Accession Negotiations

After the Republic of Moldova applied to join the EU on 3 March 2022, the Council of the EU invited the European Commission to submit its Opinion on the application. EU heads of state and government endorsed this decision at an informal leaders' meeting in Versailles on 11 March 2022.³¹ Moldova received two questionnaires on the political and economic criteria on 11 April 2022 and one on the EU *acquis* chapters on 19 April 2022. Moldova submitted its responses on 22 April and 12 May respectively. On 17 June 2022, the European Commission delivered an Opinion on the Republic of Moldova's application for membership of the EU,³² in which it recommended to the European Council that Moldova should be given the opportunity to become member of the EU and to be granted candidate status on the understanding that specific steps are taken.³³

On 23 June 2022, the European Council granted the status of candidate country to Ukraine and the Republic of Moldova. The European Commission was invited to report to the Council on the fulfilment of the conditions specified in the Commission's opinion on Moldova's membership application as part of its regular enlargement package.³⁴

31 Council of the European Union, 2022b.

32 European Commission, 2023c.

33 One of them is to complete the essential steps of the recently launched comprehensive justice system reform across all institutions in the justice and prosecution chains to ensure their independence, integrity, efficiency, accountability, and transparency, including through efficient use of asset verification and effective democratic oversight; in particular, fill all the remaining vacancies of the Supreme Council Magistracy and in its specialized bodies. Across all these areas, the Republic of Moldova must address shortcomings identified by the OSCE Office for Democratic Institutions and Human Rights and the Council of Europe / the Venice Commission.

34 Council of the European Union, 2022a.

The European Commission monitored Moldova's progress in fulfilling these steps and reported on them, together with a detailed assessment of the country. Its Analytical Report of 1 February 2023³⁵ is a structural assessment based on the criteria set by the European Council in Copenhagen in 1993 and subsequent European Council conclusions. It builds on the knowledge and experience gained from the EU's longstanding close cooperation with Moldova and Moldova's responses to the detailed questionnaires it received on 11 and 19 April 2022.

On 8 November 2023, the European Commission communicated another report on the Republic of Moldova³⁶ in which it assessed the implementation of the nine steps specified in its 17 June 2022 Opinion. It expressed, among other things, its opinion regarding the comprehensive judicial system reforms recently launched across all Moldova's institutions in the justice and prosecution chains to ensure their independence, integrity, efficiency, accountability, and transparency through the efficient use of asset verification and effective democratic oversight. It reported that Moldova had reformed its judicial framework and consulted the Venice Commission on the most important laws, including those on reforming the Supreme Court of Justice, the external evaluation of judges and candidates to the Supreme Court of Justice, the Prosecutor's Office, the disciplinary liability of judges, and the external evaluation of judges and prosecutors. Moldova initiated the vetting of candidates to the Supreme Council of Magistrates, the Supreme Council of Prosecutors, as well as to the Supreme Court of Justice. It recommended that Moldova should ensure a transparent and merit-based process for appointments to the main judicial and prosecutorial governance bodies, including for the appointment of a new Prosecutor General.

Based on the analysis presented in this report, the Commission recommended to the Council that it initiate accession negotiations with Moldova. Furthermore, the Commission recommended that the Council adopts the negotiating framework if Moldova:

- continued making significant progress in appointing vetted Supreme Court Justice members of judicial and prosecutorial self-governance bodies and nominating a new Prosecutor General in a merit-based and transparent process;
- assigned adequate resources and structures to the Anti-corruption Prosecutor's office of Moldova; and
- implemented further steps on de-oligarchization, including relevant regulations on cash payments and financial flows.

35 European Commission, 2023a.

36 European Commission, 2023b.

It should also be mentioned that at the press conference at the end of his visit to the Republic of Moldova on 2 March 2023, Didier Reynders, the European Commissioner for Justice, encouraged Moldova's domestic authorities to implement all the Venice Commission's opinions they requested.³⁷

After the opening of the accession negotiations, the Council approved a general negotiating framework that incorporates the revised enlargement methodology, which provides for an even stronger focus on the fundamental reforms in the accession negotiations. Moldova will need, therefore, to fully embrace and continue to implement reforms including in the area of rule of law and fundamental rights. In particular, the progress in this area will determine the overall pace of the negotiations.³⁸ According to the framework, Moldova will be invited to prepare a roadmap for the rule of law chapters (Judiciary and fundamental rights, Justice, Freedom, and Security). This roadmap will be adopted by the authorities of Moldova based on guidance on the Commission's screening reports and after a transparent process of meaningful consultation with all the relevant stakeholders, including civil society. The roadmap should contain key reform priorities and guide the accession negotiations in these chapters and preparations for meeting the requirements for membership. Implementation of this roadmap will be constantly monitored and regularly addressed at the intergovernmental conferences throughout the process.

Since the negotiations are aimed at Moldova fully adopting the EU *acquis* and ensuring its full implementation and enforcement and considering the references to the Venice Commission opinions in the European Commission's reports and the declarations of the EU officials, the main sources for the Republic of Moldova for defining a rule of law standard during the accession negotiations are the EU *acquis* and the Venice Commission opinions regarding the Republic of Moldova.

4. The Domestic Scientific Standpoint to the EU's Interpretation of the Rule of Law

In a case of 2014,³⁹ the Constitutional Court of the Republic of Moldova was asked to review the constitutionality of the Association Agreement between the Republic of Moldova on the one hand and the EU and the European Atomic Energy Community and their member states on the other hand. The Court held that by ratifying and implementing the Association Agreement, the Republic

37 *Declarații de presă susținute de Ministra Justiției a Republicii Moldova, Veronica Mihailov-Moraru, și Comisarul European pentru Justiție, Didier Reynders*, 2023.

38 See Conference on Accession to the European Union – Republic of Moldova, 2024, p. 6.

39 JCC No. 24 of 9 October 2014, § 164, published on 7 November 2014 in the *Official Gazette* No. 333–338.

of Moldova and the Member States of the EU will share common values and principles such as democracy and the rule of law, observance for human rights, good governance, the market economy, and sustainable development.

The EU law is not a standard of reference in the Constitutional Court's case-law, although in many of its judgments the Constitutional Court refers to the case-law of the Court of Justice of the EU as a source of interpretive authority for the legal issues it adjudicated. For example:

– JCC No. 17 of 10 May 2017,⁴⁰ §§ 128 and 129 is a case regarding the ban imposed on debtors on receipt of civil status documents, identity documents, and driving licences. The Constitutional Court noted that, *inter alia*, Article 11 paragraph (4) of the European Parliament and Council Directive No. 2006/126/EC of 20 December 2006 regarding driving licences provides that a Member State may refuse to issue a driving licence to an applicant whose driving licence is subject to restriction, suspension, or withdrawal in another Member State. The Court of Justice of the EU also mentions that Member States are allowed, in certain circumstances and especially for reasons of road traffic safety, to apply their own national provisions regarding the limitation, suspension, withdrawal, and cancellation of the driving licence of any holder of a licence who has a habitual residence in their territory (judgment of 1 March 2012, *Akyüz*, C-467/10, § 43);

– JCC No. 38 of 14 December 2017,⁴¹ § 108 is a case regarding the refusal to grant the right of access to state secrets to a police officer. The Constitutional Court held that in the case of *ZZ v Secretary of State for the Home Department*, the Court of Justice of the EU mentioned that both in an administrative procedure and in a jurisdictional procedure it may prove necessary not to communicate certain information to the person concerned, considering in particular imperative considerations related to the security of the state (judgment of 4 June 2013, C 300/11, § 54);

– JCC No. 4 of 20 February 2018,⁴² § 60 is a case regarding the jurisdiction of the National Anticorruption Centre to examine contraventional cases: the Constitutional Court held that in order for a judicial body to be qualified as a 'judicial body that has substantive jurisdiction', it must have the competence to analyse all factual and legal issues relevant to the litigation with which it is referred (judgment of 15 May 2012, *Nijs/Court of Accounts*, case T-184/11 P, §§85-86; judgment of 17 July 2012, *BG/European Ombudsman*, F-54/11, §117);

– JCC No. 8 of 26 April 2018,⁴³ § 31 is a case regarding judicial mediation. The Constitutional Court noted that in Case C-317/08, *Rosalba Alassini v Telecom Italia SpA, Filomena Califano v Wind SpA, Lucia Anna Giorgia Iacono v Telecom*

40 Published on 14 July 2017 in the *Official Gazette* No. 244–251.

41 Published on 9 March 2018 in the *Official Gazette* No. 77–83.

42 Published on 6 April 2018 in the *Official Gazette* No. 113–120.

43 Published on 25 May 2018 in the *Official Gazette* No. 167–175.

Italia SpA, and Multiservice Srl v Telecom Italia SpA [2010], the Court of Justice of the EU reviewed whether the establishment of a mandatory conciliation attempt procedure as a condition of admissibility of legal actions is compatible with the right to effective judicial protection. It held that fundamental rights do not constitute absolute prerogatives but can include restrictions provided they effectively respond to objectives of general interest pursued by the measure in question and do not involve, from the perspective of the pursued goal, a disproportionate and intolerable intervention, which would affect the very content of the rights thus guaranteed (see, in this sense, the judgment of 15 June 2006, *Dokter and others*, C-28/05, ECR, p. I-5431, p. 75, as well as the ECtHR's case *Fogarty v the United Kingdom*, 21 November 2001, § 33). First, it had to be found that the national provisions in question aim at a faster and less expensive resolution of disputes in the field of electronic communications, as well as a relief for the courts, and therefore pursue legitimate general interest objectives. The Court of Justice of the EU found that the imposition of an out-of-court settlement procedure, such as that provided for in the national regulation in question in the main action, is not, in relation to the precise methods of operation of the respective procedure, disproportionate in relation to the objectives pursued. Thus, on the one hand, there is no less binding alternative to the implementation of a mandatory procedure, the introduction of a purely optional out-of-court settlement procedure not constituting an equally effective reason to achieve the stated objectives. On the other hand, there is no obvious disproportion between these objectives and the possible inconveniences caused by the mandatory nature of the extrajudicial conciliation procedure;

– JCC No. 3 of 4 February 2020,⁴⁴ § 61 is a case regarding the compulsory consent of the trade union body to dismissal: the Constitutional Court held that neither Directive No. 2002/14/EC of the European Parliament nor that of the Council of 11 March 2002 establishing a general framework for information and consultation of workers in the European Community grants employee representatives additional guarantees in relation to other employees. Article 7 of this directive obliges Member States to ensure that ‘employee representatives, in the performance of their duties, benefit from sufficient protection and guarantees to enable them to properly fulfil the obligations entrusted to them’. The Court of Justice of the EU noted that Article 7 of Directive No. 2002/14/EC does not require worker representatives to be granted increased protection against dismissal but specifies that any measure taken to transpose the directive must comply with the minimum level of protection (judgment of 11 February 2010, *Ingeniørforeningen and Dansk Arbejdsgiverforening*, C-405/08).

44 Published on 28 February 2020 in the *Official Gazette* No. 63–68.

The Constitutional Court also invoked the Association Agreement in several rulings and decisions, affirming the need to respect it and harmonize the domestic regulatory framework with EU law.

In JCC No. 11 of 11 May 2016,⁴⁵ § 49, the Constitutional Court observed that the Republic of Moldova has committed itself, by signing the Association Agreement with the EU, to fulfil the following objectives related to the financial sector: (1) support the process of adapting the regulations regarding financial services to the needs of a free market economy; (2) ensure effective and adequate protection for investors and other consumers of financial services; (3) ensure the stability and integrity of the financial system of the Republic of Moldova as a whole; (4) promote cooperation between different actors of the financial system, including regulatory and control factors; and (5) ensure an independent and effective control (see the Association Agreement between the Republic of Moldova on the one hand and the EU and the European Atomic Energy Community and their member states on the other hand – articles 16, 18 , 58, 59, etc.).

In DCC No. 57 of 11 June 2018,⁴⁶ § 20, the Constitutional Court noted that the Republic of Moldova is committed to bringing its domestic legislation closer to the EU's normative acts. In this regard, the Court mentioned that, according to Article 88, para. (1) of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, EU Member States ensure that the management body [of the bank] defines, supervises, and is responsible for implementing governance principles that ensure efficient and prudent administration of the institution, including separation of responsibilities within the organization and prevention of conflicts of interest. According to Article 91, para. (1) of the same directive, the members of the management body [of the bank] must have a sufficiently good reputation and possess sufficient knowledge, skills, and experience to exercise their duties.

In DCC No. 149 of 29 November 2018,⁴⁷ § 18, the Constitutional Court noted that the Republic of Moldova has committed itself, by signing the Association Agreement with the EU, to maintaining cooperation in the field of culture, audiovisual policy, and mass media. In this sense, according to Annex XIV of the Agreement, the Republic of Moldova undertook to progressively harmonize its legislation with Directive 2007/65/EC of 11 December 2007, amending Directive 89/552/EEC on the coordination of certain legislative acts and administrative acts of the Member States regarding the conduct of broadcasting activities of television programmes.

45 Published on 24 June 2016 in the *Official Gazette* No. 169–183.

46 Published on 26 October 2018 in the *Official Gazette* No. 400–409.

47 Published on 8 March 2019 in the *Official Gazette* No. 86–92.

In DCC No. 103 of 24 September 2020,⁴⁸ § 29, the Constitutional Court observed that the financial remedial measures of insurers, including those regulated by the criticized provisions, are part of the obligations of the Republic of Moldova to transpose the legal framework of the EU in the field of insurance and reinsurance, assumed by the Association Agreement between the Republic of Moldova and the EU. Thus, Article 36 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the access to and pursuit of insurance and reinsurance activities establishes that:

Member States shall ensure that the supervisory authorities analyse and evaluate the strategies, the reporting processes and procedures established by insurance and reinsurance undertakings to comply with the legislative acts and administrative acts adopted pursuant to this directive. [...] Supervisory authorities have the necessary powers to require insurance and reinsurance undertakings to remedy weaknesses or deficiencies identified during the supervisory process.

The Constitutional Court also referred to the EU directives, basing its legal analyses on their considerations.⁴⁹

5. Changes in the EU's Requirement for the Respect of the Rule of Law since Moldova Applied for Membership. Concluding Remarks

Through the adoption of the 2023 Enlargement Package, the Commission recommended that the Council adopt the negotiating frameworks once Moldova has adopted certain key measures. The European Council decided on 14–15 December 2023 to open accession negotiations with Moldova. The Council approved the negotiating framework for the negotiations with Moldova on 21 June 2024, in accordance with the revised enlargement methodology.

Negotiations were opened on the basis that Moldova respects and is committed to promoting the values on which the EU is founded (Article 2 TEU) – namely, respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities.

⁴⁸ Published on 23 October 2020 in the *Official Gazette* No. 272–277.

⁴⁹ See JCC No. 30 of 23 December 2010, § 4; JCC No. 13 of 22 May 2014, §§ 57, 58, and 78; JCC No. 14 of 16 May 2016, § 91; JCC No. 17 of 10 May 2017, § 84; JCC No. 29 of 6 November 2017, § 65; JCC No. 40 of 21 December 2017, §§ 62–64; JCC No. 27 of 30 October 2018, § 79; JCC No. 20 of 26 September 2019, § 43; JCC No. 73 of 9 July 2018, § 14; DCC No. 3 of 14 January 2019, §§ 20, 22, and 27–29; DCC No. 14 of 29 January 2019, § 21; etc.

Compliance with those values is a condition for the enjoyment of all the rights deriving from EU membership.⁵⁰

The European Commission's report of 8 November 2023 on the Republic of Moldova⁵¹ enshrined, under a chapter regarding rule of law and fundamental rights in Moldova, that in 2024 the country should:

- Pursue the implementation of the justice reform strategy, in particular the pre-vetting and vetting processes in line with the Venice Commission recommendations and the subsequent appointment of the remaining members of the Superior Council of Magistracy (SCM), the Superior Council of Prosecutors (SCP), and the Supreme Court of Justice, also the members of the SCM and SCP colleges, and other judges and prosecutors, in an objective, transparent, and merit-based procedure, in line with European standards;
- Improve the functioning of the National Institute of Justice, develop human resource strategies for the judiciary and prosecution services, and finalize the new judicial map following a systematic approach in line with European standards and based on a comprehensive analysis of the state of play;
- Consolidate the capacity of the judicial system and its self-governing institutions, including improving the quality and efficiency of the work of the Superior Council of Magistracy and the Superior Council of Prosecutors.

Since the report was issued on 31 May 2024, the Superior Council of Prosecutors proposed a candidate for the post of Prosecutor General. The President of the Republic of Moldova appointed him the next day, fulfilling one of the key remaining conditions to be tasked to start the EU accession negotiations. The Superior Council of Prosecutors appointed the Prosecutor General's deputies on 12 June 2024.

The National Anticorruption Centre, which is tasked with both preventing and combating corruption, has been fully separated from the prosecution service. The Anti-Corruption Prosecutor's Office oversees the criminal investigations conducted by the investigators of the National Anticorruption Centre. It also has its own criminal investigations and is a completely autonomous entity within the prosecution service. It can submit its own budget proposals to Parliament and will have its own premises. The members of the Anti-Corruption Prosecutor's Office will be subjected to the vetting procedure. All the prosecutors concerned were given the option to either resign before 13 June 2024 or be subjected to the vetting procedure. Approximately 25% of the prosecutors concerned resigned.⁵²

50 Conference on Accession to the European Union – Republic of Moldova, 2024.

51 European Commission, 2023b, p. 22.

52 See Procuratura Anticorupție, 2024.

The vetting of the members of the Supreme Council of Magistrates and Supreme Prosecutor Council has been finalized. The vetting of Supreme Court judges is still in progress. None of the judges who were in office when the vetting began had passed it. The vetting of all key judge and prosecutor positions is ongoing. All these vetting processes are taking place simultaneously. The members of the vetting commissions underscored that they were benefitting from the vetting experiences of Albania and Ukraine, as well as the ECtHR jurisprudence that resulted from these two vetting procedures.⁵³

On 31 May 2024, the Parliament adopted a new judicial map for the country to provide for a streamlined and more efficient system of first instance and appeals courts. According to this new map, the appeals courts will be reorganized into three – Central, Northern, and Southern – Appeals Courts, with the latter having a seat in both Cahul and Comrat.

On 20 September 2024, the Parliament appointed two more members to the Superior Council of Magistracy.

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