

# COUNTRY REPORT

## MOLDOVA



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## Introduction<sup>1</sup>

During three decades of the Moldovan society independence, the peaceful and efficient transition from the totalitarianism system to democratic system, from the unipartite to multiparty and pluralism of opinions was ensured by the Constitution. Thanks to the implementation of constitutional rules, today we have a governing legal system capable to ensure the state powers separation: the legislative, executive, judiciary, basic human rights protection. However, the exigencies of the rule of law, human rights, public freedoms, the organization, separation and balance of powers, ideas clearly expressed in the Constitution aren't still fully perceived by the constitutional law subjects such that the person feels that lives in a free society where the general human values are appreciated.

### Constitution-making - 29 years since the adoption of the Constitution

The adoption of the Declaration of Sovereignty on 23 June 1990 and the proclamation of Independence on 27 August 1991 imposed the imperative of drafting the Constitution of the new state, the Republic of Moldova, which arose following the dismantling of the Soviet empire. The adoption of the new Constitution was a natural step dictated by the grandiose transformations that took place in the ex-Soviet space and, in particular, in the Republic of Moldova: the transition from a totalitarian state to a democratic state; from a hyper-centralized economy to a market economy with social orientation; from a single party with a single ideology to multi-parties and pluralism of opinion; the transition from collective to private property and many other problems that needed to be solved and regulated without delay in the Constitution..

The Constitution of the Soviet Socialist Republic of Moldova (RSSM) of 15 April 1978 did not have the potential necessary for such transformations. But the Republic of Moldova was not in a hurry to adopt a new Constitution, but prepared the premises for the development of society, premises that had started as early as the late 1980s, early 1990s, proclaiming the most sacred values of the nation: language, alphabet, history, ensuring the national sovereignty of the people and imperatives: freedom of the media, independence of the judiciary, protection of fundamental human rights and freedoms, etc.

First of all, it was necessary to determine the ideal to which our society tended: the ideal of Western states, called capitalists, and the ideal of socialist states or the ideal of communist states. What kind of constitutional model could be proposed for our country? The architects of the new state formation, broadly speaking - the deputies of "Parliament 90", were of the opinion that the elaboration and adoption of the Constitution should be subordinated to the concrete desiderates of the state, and not the other way around. It was the Constitution that had to provide for the model of

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organization and activity of state power bodies and the rules of conduct in relations between natural and legal persons.

Compared to the Soviet constitutions, which reflected the past and the present, the new Constitution of the Republic of Moldova had to be forward-looking. To this end, the engineers of the new Constitution studied the normative content of more than 60 constitutions of the world's most progressive states and a number of historical documents from medieval Moldova have also been investigated.

The Constitution, as the supreme law of the state, was supposed to mark a new stage of the evolution of society, proposing for the future a program for the development of social relations, representing a manifesto of the victories and fulfillments of the people. The supreme character of the Constitution had to be inferred not only from its place in the hierarchy of normative acts, but also from the fact that it is in the service of the whole people. This politico-legal act had to rule out how to organize and exercise power and, according to its authority and legal force, to subordinate any decision taken by the politico governors.

However, the Constitution is conceived in a broader vision, which goes beyond the legal, being an act attesting to a political and state reality that identifies with society. In any democratic country the Constitution is the basis on which the entire system of law is based. In the event of cracks in this base, the entire system of law can be ruined and a vacuum of legality in society may arise, which imminently generates instability. The new Constitution would become a mirror of modern constitutionalism, the philosophical basis of which is the liberal doctrine supported on three pillars: the autonomous development of the person, the recognition by the person of his own dignity and the limitation of the state's interference in the life and activity of the person.

In their opinion, the Republic of Moldova had neither the Constitution nor constitutional laws. Such an opinion is also presented in the Decision of the Constitutional Court of 05.12.2013, according to which: “Given that the Republic of Moldova, as a sovereign and independent state, did not yet have a Constitution, the Declaration of Independence (27.08.1991) was the only document that kept the constitutional order of the Republic of Moldova on the basis of which the political, economic and legal system of the Republic of Moldova was established”. We cannot agree with such statements, because the Republic of Moldova had both the Constitution and the constitutional laws. We consider that we will not be wrong to say that the foundation of the state was laid by the first constitutional act - the Declaration of Sovereignty of June 23, 1990.

According to the Declaration, the people are the source and bearer of sovereignty, exercised through its representatives. The Republic of Moldova has been declared a unitary and indivisible state, open to collaboration with other states, aiming for accession to the international structures, basing its work on the principles of separation of powers in the state and protection of human rights. This Declaration laid the foundations for constitutional reform, stipulating in the last paragraph that the

principles set out in the Declaration will serve as a benchmark in the drafting of the new Constitution.

On July 27, 1990, the second act of constitutional level was adopted - the Decree on State Power. This act substantiated the principles of power, depoliticization of work and education groups and separation of powers in the state.

Already on 26 July 1990, on the basis of the Declaration of Sovereignty, Parliament adopted Law No. 194, amending Article 74 of the 1978 Constitution and legislating that, further, the acts adopted by the state power bodies of the USSR will act on the territory of Moldova only after they have been ratified by the supreme legislative body.

Please note that most of the changes were made in the Constitution until Independence was declared. Parallel, a number of laws with a certain degree of constitutional importance were adopted: on the adoption of the new Flag and the State Foundation, the change of the name of the state, the replacement of forms of socialist and cooperative-colonic property with public and private property, the reorganization of the union-republican public authorities in the republican, the formation of the national army, the establishment of the citizenship of the Republic of Moldova, privatization and ownership with land, etc. These provisions have acquired the necessary constitutional garment.

Thus, to deny the existence of a constitutional development between 1990 and 1994 is to distort reality and manifest bad faith. The Constitution of the Republic of Moldova, adopted on 29 July 1994, established a fully democratic regime, based on the priority of fundamental rights and freedoms, oriented for the good of citizens and society. Unlike other states, in the Republic of Moldova the Constitution was not necessarily a lifeline for the new democracy, because most constitutional principles and norms were implemented until the adoption of the supreme act, and during five years of government, under the conditions of the new democracy, their validity was confirmed by time and society. One of the main tasks of the 1994 Constitution was to highlight the already accumulated political and social potential.

### **Deliberative democracy**

Thus, the Constitution of the Republic of Moldova legitimized the fundamental social relations already established, serving as the basis for their further development. Once, however, with the foundation of existing constitutional relations, the Supreme Law established new political relations and institutions, the primary role of which lies in the formation of an appropriate mechanism of the social contract for stabilizing the democratic regime of governance, promoting and effectively defending constitutional rights and freedoms.

The Constitution proclaimed the Republic of Moldova as a sovereign state, independent and neutral, a rule of law, based on the principles of the supremacy of the Constitution, separation and collaboration of powers, legality, priority and protection of human rights, political pluralism - principles capable of annihilating any attempt to

restore dictatorship and totalitarianism, to impose an official ideology. The Constitution has ruled the way of formation, the powers and the relations between the most important institutions characteristic of the rule of law: Parliament, Government, President of the country and judicial authority.

The Basic Law instituted the attributes of the state. Proclaiming the principle of the supremacy of the Supreme Law, the Constitution established the hierarchy of legislative acts adopted by Parliament, delineated competences between the supreme political institutions of the state and specified the areas governed by normative acts adopted by the Government.

The Constitution enshrined the fundamental rights and freedoms of the citizen, proclaimed by the Universal Declaration of Human Rights and international covenants on civil, political, economic, social and cultural rights, and devoted a separate chapter to the principles applicable to fundamental rights and freedoms. The Universal Declaration of Human Rights, although in its original form is not binding on the Republic of Moldova, according to its legal value has been raised to the rank of a constitutional norm. The Constitution has established an effective human rights protection mechanism that meets international standards in the field.

Reviewing the relations between the citizen and the state, the Constitution has established the principle of the state's responsibility to the citizen, guarantor of respect for which the Constitutional Court is, together with the branches of power: legislative, executive and judicial. In the Constitution of the Republic of Moldova passes as a red thread the idea stated in the French Declaration "Freedom consists in being able to do everything that does not harm the other: thus, the exercise of the natural rights of each man knows only those limits that are necessary for other members of society to enjoy the same rights".

The authors of the new Constitution abandoned the old principle, which was the basis of the Soviet constitutions: "Do what the law allows," adopting the principle "Do not do only what the law forbids," admitting free development. In a new vision, the Constitution regulated the correlation between domestic law and international law. The international principles on the law of treaties have been applied not only in relation to the Universal Declaration of Human Rights, but also in relation to the human rights pacts and treaties to which the Republic of Moldova is a party.

According to constitutional rules, international treaties that contravene the Constitution enter into force only after the revision of the Constitution. Under these rules, the Republic of Moldova and has revised its relations with the international community on the law of treaties. A distinct place in the Constitution is occupied by the provisions on local public administration, according to which public administration in administrative-territorial units is based on the principles of local autonomy, decentralization of public services, eligibility of local public administration and consultation of citizens on local issues of special interest.

For the first time in the history of our state, the procedure of the popular initiative to revise the Constitution was established, in a separate title regulating the

procedure and the limits of the revision of the Constitution under the rigorous control of the Constitutional Court. The Constitution, as a stabilizing factor in society Through the value and coherence of its norms, the Constitution fulfills one of the most important missions - as a stabilizing factor in society.

It cannot be overlooked that in the Republic of Moldova the Constitution has ensured the peaceful and effective transition from totalitarianism to the democratic system of governance, from one party to pluralism of opinions and multi-parties. In order to understand the role of the Constitution in society it is necessary to carry out a review of the achievements achieved under its auspices.

Thanks to the implementation of constitutional rules, the Republic of Moldova currently has a legal system of governance based not only on the rigid separation of state powers, but also on their effective collaboration. The adoption of the Constitution has spurred the implementation and deepening of reforms in the fields of health, education, banking, finance, etc.

In order and to optimize the exercise and defense of human rights and to ensure the exercise of the principle of free access to justice, the judicial system has been reformed. The path to the European Court of Human Rights has been opened. The adoption of the Constitution has spurred the development of private property, entrepreneurship activity and the formation of the market economy as a whole. To a large extent, the encouragement of entrepreneurial activity and the creation of a framework favorable to the exploitation of all factors of production, principles enshrined in the Basic Law, depends on the success of the economic development of the country. Guaranteeing the sovereignty and independence of our state, the Constitution gave the representatives of the people the opportunity to solve the nation's problems without external intervention. On the basis of this, the Republic of Moldova has become a full member of the prestigious international and regional structures - the UN, the OSCE, the Council of Europe and so on.

### **Transition of the Republic of Moldova to be part of the European Union**

Also, on the basis of the Constitution, since 2009 the Republic of Moldova, for the purpose of European integration, accepts to be part of the Eastern Partnership. On 29 November 2013, in Vilnius, the Republic of Moldova initialed the Association Agreement with the European Union, which also includes is the Agreements on the creation of a free trade area, as well as is visa liberalization, which has also occurred is since 28 April 2014. Recently, on 27 June 2014, the Republic of Moldova signed the Association Agreement with the European Union. 20 years since the adoption of the Constitution, which Moldovan society marked on 29 July 2014, demonstrated its viability as the Supreme Law.

All the provisions of the Constitution are of equal importance, being a manifesto of achievements and desires to be transposed into life. We understand, however, very well that even and in the states with the most advanced democracy and the richest constitutional traditions, there are no ideal rules of law. Even the U.S. Constitution, is

the first written constitution, adopted on September 17, 1787, considered the most stable constitution in the world, opened the door for 27 amendments.

The Constitution of the Republic of Moldova is not excluded either, and eight revision laws have been adopted so far. As a result, almost a third of the constitutional rules have been reviewed. Of course, some changes were caused by objective realities, related to the orientation of the Republic of Moldova towards the implementation of European constitutionalism, and namely: the abolition of the death penalty, the issuance of the arrest warrant by the court and not by the prosecutor's office, the concrete restriction of the exercise of some rights and freedoms, the increase of the independence of judges, the constitutional regulation of the institution of citizenship and others. In our view, however, some changes were unmotivated. However, we believe that the Republic of Moldova has a good Constitution, which can respond to all situations, provided that its rules will be interpreted in good faith.

But with a progressive Constitution, we must, however, recognize that we have a deplorable constitutional reality. In the 29 years of application of the Constitution it has been found that reality contradicts constitutional principles, being violated equality before the law, pluralism (economic and political), separation of powers and periodicity of the choice of power. It is not understood that the Constitution is the link between legal and political. It has two facets: one signifies the legal side, the other - the political side. The content of constitutionalism is not aware.

The requirements of the rule of law and democracy, human rights, public freedoms, organization, functioning, separation and balance of powers - ideas clearly expressed in the Constitution compulsorily - must be received in the mass unconditionally by the subjects of law, so that man feels that he lives in a free society, in which general-human values prevail. The law has two hypostases: the formulation of regulations and their application in life. Constitutionalism also is having two aspects: The Constitution is the body, its letter, and the application of the content of constitutional norms is the soul. One without the other cannot exist, being inseparable.

The normative content of the Constitution should not depend on the interests of political forces, oligarchic powers, clans, groups, etc. Any amendment to the Constitution must correspond to the principles of constitutional engineering. In connection with this inference, we will ask one question: what was the need to change the political regime of government so many times? To date, the following regimes have been established in the Republic of Moldova: 1) 03. 09. 1990 – 27. 08. 1994 - Presidential regime; 2) 27. 08. 1994 – 05. 07. 2000 – semi-presidential regime; 3) 05. 07. 2000 – until 04.03.2018 – Parliamentary regime, 4) 04.03.2018 – so far, the President elected by the people but with limited functions and today it is not clear the regime. Isn't it too much that in such a short period of time four political regimes should be practiced?



**Law no. 111 of July 5, 2000.**

Most of the amendments were made by Law no. 111 of July 5, 2000, which, in our opinion, is an unconstitutional law, because the unity of the constitutional matter was brutally violated, thus causing a series of political and economic crises in the state. We will analyze only the procedure for electing the President of the Republic of Moldova by the Parliament. Initially, a draft law revising the Constitution was proposed, on which the Constitutional Court issued a positive opinion, according to which the President of the country can be elected by 50% + 1 of the elected deputies, but the Parliament violated this opinion and introduced in the Constitution a new version of art. 78, according to which the head of state is elected with 3/5 of the number of elected deputies, so with 61 votes out of 101.

Also, on the basis of this rule, the non-election of the President of the country follows the dissolution of Parliament. As a result, the Republic of Moldova was for more than 2 years without a president and we must recognize that this situation could cause new crises in the future. Law no.111/2000 has also caused a number of contradictions related to the duties of the President, the role of the Government in a Parliamentary republic and, in particular, the role of the Prime Minister.

The Constitutional Court overturned the notion of the supremacy of the Constitution. An important role in establishing and consolidating constitutionalism belongs to the Constitutional Court. It is the Constitutional Court's duty to ensure the supremacy of the Constitution. In its almost 20 years of activity, the Constitutional Court has issued a series of judgments that have had a strong resonance in society. Some decisions, which declared unconstitutional the presidential decree on the dismissal of the Minister of Defense, the political decision on the dismissal of the President of the Supreme Court of Justice, the non-recognition of the presidential elections, the interpretation of art. 78 of the Constitution on the election of the President of the Republic of Moldova, the declaration of the unconstitutionality of the early local elections and many others shook the political class and agitated the civil society. But these effects were positive. Not being accepted by some political forces or oligarchic groups, they were recognized and welcomed by specialists.

**Decision of Constitutional Court of March 4, 2016**

On March 4, 2016 the Constitutional Court issued the Decision on the control of the constitutionality of some provisions of Law no. 1115-XIV of July 5, 2000 on amending and supplementing the Constitution of the Republic of Moldova (election of the President).

*Circumstances of the case*

At the origin of the case is the notification submitted to the Constitutional Court on November 12, 2015 by 18 deputies of the parliamentary faction of the Liberal Democratic Party of Moldova regarding the control of the constitutionality of point 2 in its entirety and of the phrase “except as provided in art. 78 para. (5), "from point 5 of article I of Law no.1115-XIV of July 5, 2000 for the amendment and completion of

the Constitution of the Republic of Moldova, which changed the way of electing the President of the Republic of Moldova.

In essence, the authors of the complaint requested the Court that, by interpreting Article 135 para. (1) lit. c) in conjunction with the provisions of Article 141 paragraph (2) of the Constitution, to explain whether:

„1) Is it necessary and / or obligatory the repeated endorsement by the Constitutional Court of the amendments of the deputies accepted by the Parliament in the second reading to a draft law on the revision of the Constitution, after the presentation in the Parliament of the draft accompanied by the Constitutional Court?

2) Is the procedure for adopting a draft constitutional law violated, which was substantially and conceptually amended by the deputies in the second reading, without the repeated approval by the Constitutional Court?

3) If the Constitutional Court repeatedly approves a draft law revising the Constitution, substantially amended during the second reading in the Parliament, this draft is to go through all the procedures set out in art. 143 para. (1) of the Constitution?  
"

In the same context, the authors of the notification requested the verification of the conformity of some provisions of Law no. 1115/2000, in the part related to the amendment of articles 78 and 85 par. (4) of the Constitution, taking into account the procedure for their adoption, with articles 135 par. (1) lit. c) and 142 paras. (1) of the Constitution, as well as with the constitutional principle of the rule of law, enshrined in the Preamble of the Constitution and Article 1 para. (3) of the Constitution.

During the public meeting, the author of the notification specified the object of the notification, specifying that he requests the verification of the constitutionality only of the amendments aiming at the mechanism of electing the President of the Republic of Moldova with the vote of 3/5 of the deputies. The author of the notification does not contest the other amendments that did not essentially change the content of the initial draft approved by the Constitutional Court and that does not affect the unity and balance of the constitutional matter.

According to the authors of the referral, on July 5, 2000, the deputies in the Parliament deliberately adopted amendments to the Constitution not approved by the Constitutional Court, contrary to the procedure expressly established by the Constitution and the Parliament's Regulation for its revision.

In the view of the complainants, the failure to repeatedly notify the Constitutional Court of changes in the original draft law and the adoption of contested amendments without its opinion generated sources of institutional blockages and imbalances, affecting the balance of constitutional matters, contrary to the review limits provided by Article 142 para. (2) of the Constitution.

### *Conclusions of the Constitutional Court*

In this regard, the Court noted that the form of election of the President cannot be a source of constitutional crisis.

The Court noted that the 2000 constitutional reform actually generated an imperfect system of government, with a potential for conflict between state authorities, which was a direct consequence of Parliament's disregard of the Constitutional Court's opinion.

In the light of the above, following the systemic coherence of the Constitution and in order to ensure its functionality, the Court found that the contested provisions were adopted in violation of the procedure for revising the Constitution, provided by Articles 135 paragraph (1) letter. c), 141, 142 paras. (2) and 143 paras. (1).

At the same time, the Court reiterated that the very nature of the Constitution as an act with supreme legal force and the idea of constitutionality implies that there can be no internal gaps or contradictions in the Constitution.

Thus, given the imperative to avoid a legislative vacuum, as well as taking into account the urgency of addressing the constitutional stalemate in the context of the imminent expiration of the current President's term, the Court ordered the invigoration of the legal mechanism prior to amending the Constitution.

In its jurisprudence, the Court complied with its powers and refrained from substituting other state bodies. Lately, however, the Constitutional Court has adopted some decisions which, in our opinion, contradict the constitutional attributions of this institution. Some judgments of the Constitutional Court could be cited as an example: 1. Judgment of 05. 12. 2013, by which the CC recognized that, in case of divergences between the text of the Declaration of Independence and the text of the Constitution, the primary constitutional text of the Declaration of Independence prevails over the Constitution.

### **Conclusion**

In our opinion, the CC has messed up the notion of the supremacy of the Constitution recognized by the national doctrine of law of the Republic of Moldova, but also by the law doctrines of all the states of the world. Until this judgment was pronounced, it was known and known that the Supreme Law of the State is the Constitution. By the mentioned judgment, the CC introduced the notion of "constitutional block": Declaration of Independence + Preamble of the Constitution + normative content of the Constitution.

However, as far as is known, the Constitutional Bloc must form the constituent legislature, but not the CC. Recognition of the preamble to the Declaration of Independence as a rule of law, in our opinion, is wrong. It seems to us that no scientific source appreciates the Declaration as the rule of law. Moreover, science confirms that the preamble to the Constitution, like is the preamble to any other legal act, does not include directions, rules of interpretation, legal norms and is not binding.

Thus, can be characterized the preamble of the Declaration of Independence. The legal significance of the Declaration of Independence lies in the proclamation of independence and so on. It is perplexed that the CC did not even notice that the Republic of Moldova, during the years 1990-1994, had the Constitution, which was repealed with the adoption of the new Constitution on 29 July 1994. Thus, by changing the notion of the supremacy of the Constitution through the constitutional bloc, the CC replaced Parliament. 2. The following shall be

However, the potential of the Constitution is inexhaustible. Frequent revision of constitutional norms carries several dangers, the most serious being social instability, non-recognition of the Constitution by members of society, the loss by the Constitution of the quality of stabilizer factor in society. For the Republic of Moldova these dangers are all the more serious because the state has not reached the necessary level of political and economic stability and has not recorded an advanced political and legal culture.

Any democratic country wants a viable Constitution, which, through the authority and power of its provisions, generates the legal system and maintains social stability. The Republic of Moldova is no exception to this rule.

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