

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:
THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND
NATIONAL CATALOGUES IN THE 21ST CENTURY**

QUESTIONNAIRE FOR THE XVIIIth CONGRESS
OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

**CONSTITUTIONAL COURT
OF THE REPUBLIC OF MOLDOVA**

**I. GENERAL PART: CATALOGUES OF INTERNATIONAL
FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

I.I. The Republic of Moldova undertook to ensure that the European Convention on Human Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are observed.

- Article 4 of the Constitution of the Republic of Moldova safeguards the priority of international law in what regards fundamental human rights and freedoms. Paragraph (2) of this Article provides that wherever inconsistencies arise between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.
- The Law no. 595 of 24 September 1999 on international treaties of the Republic of Moldova regulates the entry into force and the enforcement of international treaties in the internal legal order. Article 20 (“Application of the treaties”) provides that the provisions of international treaties which by their wording are applicable to legal relations without adopting special normative acts shall be subject to implementation and direct application in the legal and justice system of the Republic of Moldova. Normative acts shall be adopted aiming at implementing other provisions of the treaties. In this respect, the Judgment of the Constitutional Court no. 55 of 14 October 1999 delivered an interpretation of Article 4 of the Constitution holding the following: (i) Article 4 of the Constitution safeguards not only the observance of fundamental human rights and freedoms enshrined in the Constitution, but also that of unanimously recognised principles and provisions of the international law of general and universal nature; (ii) the unanimously recognised principles and provisions of the international law shall be understood as the principles and provisions of international law of general and universal nature; (iii) the phrase “*and other treaties to which the Republic of Moldova is a party*” from Article 4 para. (1) of the Constitution shall signify the international treaties ratified by the Republic of Moldova, including the treaties joined by the Republic of Moldova and which are binding for the Republic of Moldova; (iv) the unanimously recognised principles and norms of international law, the ratified international treaties and those the Republic of Moldova is a party to are an integral part of the legal framework of the Republic of Moldova and become provisions of its

internal legal order; (v) should there inconsistencies arise between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, under Article 4 para. (2) of the Constitution, the authorities must apply international regulations.

- The direct application of international regulations is ensured by the courts. The criminal and civil procedure codes require the courts of law to ensure that international law is respected in the cases before it. This obligation is provided by Article 2 para. (3) of the Civil Procedure Code and Article 2 para. (2) of the Criminal Procedure Code.

I.II. The Republic of Moldova is not a member state of the EU, therefore it is not formally bound by the Charter of Fundamental Rights of the European Union.

- The Charter of Fundamental Rights of the European Union is not applicable in performing constitutional reviews of laws or that of legality review of public authorities' decisions. However, given the aspirations of the Republic of Moldova to join the European Union and taking into account the obligations assumed by signing on 27 June 2014 the Association Agreement with the European Union and the European Atomic Energy Community and their member states, the Constitutional Court considers in its rulings the European Union law and the interpretations given by the Court of Justice of the European Union, in matters of fundamental rights.
- The domestic courts settle the cases before them under national law based on the international treaties the Republic of Moldova joined. They only apply these sources of law. However, the Constitutional Court takes into account European Union law and interpretations given by the Court of Justice of the European Union as well.

I.III. The list of fundamental rights and freedoms safeguarded by the Constitution

- Title II of the Constitution of the Republic of Moldova ("Fundamental Rights, Freedoms and Duties") lists the fundamental rights and freedoms safeguarded by the Constitution. This title comprises three chapters. For purposes of this questionnaire, the first two chapters are relevant – Chapter I. GENERAL PROVISIONS covering Articles 15-23 and Chapter II – FUNDAMENTAL RIGHTS AND DUTIES covering Articles 24-54. Notwithstanding the title of this latter chapter, it does not provide for an exhaustive list of all fundamental human rights and freedoms. Some of these rights are covered by the first chapter (*e.g.* Article 20 – free access to justice, Article 21 – presumption of innocence etc).
- The Constitution of the Republic of Moldova was adopted on 27 July 1994. When drafted, the provisions of the European Convention on Human Rights were taken into consideration.
- Meanwhile, the Constitution has been amended several times. Nevertheless, the amendments did not affect the list of fundamental human rights safeguarded by the Constitution. Article 142 para. (2) ("Limits of revision") of the Constitution provides safeguards in this respect. Thus, no revision shall be performed if it leads to the suppression of fundamental rights and freedoms of citizens or their guarantees. Therefore, provided this condition is complied with, as regards the amendment

procedure, the Constitution lists in Article 141 the possibilities to undertake it. The first one provides for a number of at least 200,000 citizens with voting rights who can initiate the revision of the Constitution, subject to certain conditions. The second possibility is that of a number of at least one third of MPs. And the third entitled subject to initiate a revision of the Constitution is the Government. The final stage of the procedure enshrined in the Constitution provides that the 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.

I. IV. Application of various fundamental human rights and freedoms protection instruments and the relations between them in light of the case-law of the Constitutional Court

- In instances where human rights issues are brought before the Court, it makes particular use of the interpretations rendered by the European Court of Human Rights. One of the most recent cases are the Judgment no. 31 of 29 November 2018 (*the access of victims and their representatives to the criminal case files*) and Judgment no. 32 of 29 November 2018 (*nullity of the notice of violation in administrative offences*). The Court found in these cases violations of the procedural obligations set out in Articles 24 and 28 of the Constitution, correspondingly Articles 3 and 8 of the European Convention on Human Rights.
- The Constitutional Court of the Republic of Moldova observes the *res interpretata* principle as regards the interpretations delivered by the European Court of Human Rights and recognises its case-law as part of national law. Therefore, the constitutional provisions on fundamental human rights are interpreted by the Constitutional Court in light of the case-law of the European Court.
- There is no formal hierarchy in the catalogue of human rights or freedoms. However, when called to resolve human rights issues, the Constitutional Court applies the provisions that grant the highest degree of protection of fundamental rights or freedoms, through optimisation of values. The Constitutional Court provided for the applicability of constitutional guarantees in cases where they granted a higher level of protection of fundamental rights and freedoms. On the other hand, where the level of protection provided by the Constitution was lower than that of the European Convention on Human Rights, the Constitutional Court acknowledged the applicability of the latter.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

- Article 24 of the Constitution of the Republic of Moldova reads as follows:

“(1) The State guarantees every individual the right to life, and to physical and mental integrity.

(2) No one may be subject to torture or to any cruel, inhuman or degrading punishment or treatment.

(3) The capital punishment is abolished. No one may be sentenced to such a punishment, nor executed.”

- Article 54 of the Constitution (“Restrictions on the exercise of certain rights or freedoms”) regulates the conditions to be met by the interference with the rights and freedoms safeguarded by the Constitution. Paragraph (2) of this article provides that exercise of the rights and freedoms may not be subdued to other restrictions unless for those provided by the law, which are in compliance with the unanimously recognised norms of international law and are needed in the interests of national security, territorial integrity, economic welfare of the country, public order, aiming at preventing mass riots and crimes, protection of the rights, freedoms and dignity of other persons, preventing the disclosure of confidential information or safeguarding the authority and impartiality of justice.
- The Constitutional Court has never been called to undertake an assessment of restrictions of the right to life or of the conditions governing it. It did not have the occasion to deliver on the level of protection or limits thereof. Therefore, no differences could be observed between the case-law of the Constitutional Court of the Republic of Moldova and that of the European Court of Human Rights.

II.II Freedom of expression

- Article 32 para. (1) (“Freedom of opinion and expression”) of the Constitution provides the following:

“(1) Every citizen shall be guaranteed the freedom of thought and opinion, as well as the freedom of expression in public by way of word, image or any other means possible.”

- Restrictions imposed on the freedom of expression are deemed in line with the Constitution in case the conditions laid down in para. (2) of Article 32 are complied with. Thus, when the exercise of freedom of expression may harm the honour, dignity or the right of another person to his own vision, it will not be deemed as complying with the Constitution. At the same time, para. (3) of this article provides that the law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, incitement to war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order. In any case of restrictions on the freedom of expression, there can be definitely applied a balancing exercise.
- The Constitutional Court observed in its case-law that the freedom of expression safeguarded by Article 32 of the Constitution is also provided by Article 10 of the European Convention on Human Rights. For this reason, the Constitutional Court takes into consideration the interpretations of the European Court when assessing any interference with this right.
- No difference is apparent as regards the level of protection of the freedom of expression in the case-law of the Constitutional Court of Moldova and that of the European Court of Human Rights.

II.III. Right to privacy/right to respect for private life/right to private life

- Article 28 of the Constitution provides: *“The State shall respect and protect the private and family life.”*
- As regards restrictions of this right and applicable conditions, please refer to paragraph 2 of section II.I from above.

- The Court held in its case-law that the right to private and family life enshrined in Article 28 of the Constitution is reflected in Article 8 of the European Convention of Human Rights providing for the right to respect for private and family life. For this reason, when issues arise on the protection of this fundamental right, the Constitutional Court of Moldova takes into consideration the interpretations of the European Court on the protection of this right.
- No difference is apparent with respect to level of protection of the right to private and family life in the case-law of the Constitutional Court and that of the European Court of Human Rights.

II.IV Freedom of religion

- Article 31 (“Freedom of conscience”) of the Constitution provides:
 - “(1) The freedom of conscience shall be guaranteed, and its manifestations should be in a spirit of tolerance and mutual respect.*
 - (2) The freedom of religious cults shall be guaranteed and they shall organise themselves according to their own statutes, under the law.*
 - (3) Any form of incitement to hatred in relationships between religious cults shall be forbidden.*
 - (4) Religious cults shall be autonomous, separated from the State and shall enjoy the support of the latter, here included any facilitation for the religious assistance in the army, hospitals, prisons, asylums and orphanages.”*
- As regards restrictions of this right and applicable conditions, please refer to paragraph 2 of section II.I from above.
- The protection afforded to this fundamental right in the case-law of the Constitutional Court is similar to that granted by the European Court to freedom of thought, conscience and religion. The case-law of the European Court in this field is binding for the Constitutional Court.
- No difference is apparent as regards the level of protection of the freedom of expression in the case-law of the Constitutional Court of Moldova and that of the European Court of Human Rights.

II.V Prohibition of discrimination

- Article 16 (“Equality”) of the Constitution reads:
 - “(1) The respect for and protection of the individual shall constitute the foremost duty of the State.*
 - (2) All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.”*
- Article 16 on equality is not an autonomous one. It complements other provisions of the Constitution. Therefore, in order to assess the conditions allowing for the exercise of the right to equality to be restricted, the Court must first establish whether the alleged discrimination questions the rights or freedoms guaranteed by the Constitution. Where the applicability of a constitutionally guaranteed right or freedom is found, the Court shall assess whether the alleged interference with the right to equality meets the conditions laid down in Article 54 of the Constitution. As regards restrictions of this right and applicable conditions, please refer to the explanations provided by paragraph

2 of section II.I from above. A finding on a violation of Article 16 of the Constitution does not necessarily imply a finding on a violation of a right or freedoms safeguarded by the Constitution.

- Upon assessing interferences with the right to prohibition of discrimination, the Constitutional Court has due regard to the case-law of the European Court in applying Article 14 of the European Convention on Human Rights.
- No difference is apparent as regards the level of protection of the right to equality in the case-law of the Constitutional Court of Moldova and the European Court of Human Rights. The Republic of Moldova did not ratify Protocol no. 12 to the European Convention on Human Rights.

II. VI Right to liberty

- Article 25 (“Individual freedom and security of the person”) of the Constitution provides:

“(1) Individual freedom and security of person are inviolable.

(2) Searching, detaining in custody or arresting a person shall be permitted only in cases and pursuant to the procedure established by the law.

(3) The period of detention in custody may not exceed 72 hours.

(4) The arrest shall be carried out under a warrant issued by a judge for a period of 30 days at the most. An appeal may be lodged against the validity of the warrant, under the law, before the hierarchically superior court of law. The term of the arrest may only be extended by the judge or by the court of law, under the law, to a period not exceeding 12 months.

(5) The person detained in custody or under arrest shall be immediately informed on the reasons of his detention or arrest, and shall be notified of the charges brought against him as soon as possible; the notification of the charges shall only be made in the presence of a lawyer, either chosen or appointed ex officio.

(6) If the reasons for detention in custody or arrest have ceased to exist, the release of the person concerned must follow without delay.”

- As regards restrictions of this right and applicable conditions, please refer to paragraph 2 of section II.I from above.
- The protection of the individual freedom and the security of the person is ensured by the Constitutional Court with due regard to standards set by the European Court in applying Article 5 of the European Convention. The Constitutional Court ensures the same level of protection to this right, except for the cases the domestic law ensures a higher degree of protection.
- No difference is apparent between the level of protection granted to the right to individual protection and security of the person in the case-law of the Constitutional Court and that of the European Court of Human Rights.