

## CONSTITUTIONAL COURT IN PUBLIC ADMINISTRATION SYSTEM IN MOLDOVA AND RUSSIA

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### Abstract

**Purpose:** The article considers the place and the role of the Constitutional Court of Moldova in the system of government.

**Methodology:** The study was based on the dialectic approach to the disclosure of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and particular scientific methods.

**Result:** They studied the range of issues related to its activities. They noted the problems that lead to the imbalance of authorities, including dangerous trends of constitutional court use by political groups to solve their problems and achieve political goals. They showed the positive experience of the constitutional and legal mechanism to develop a body of constitutional jurisdiction of Russia, through which they provide the stability of this state body, impartiality, and independence in decision-making, and the impossibility of turning the body of constitutional control into an object of political manipulation.

**Applications:** This research can be used for universities, teachers, and students.

**Novelty/Originality:** In this research, the model of Constitutional Court in Public Administration System in Moldova and Russia is presented in a comprehensive and complete manner.

**Keywords:** *Constitutional Court, Powers, President, State Body, Political Influence.*

### INTRODUCTION

State control determines the constitutional court place and role to its main powers in the system of government, which, as a rule, are regulated by the basic law of the state. It is intended to be implemented independently through constitutional legal proceedings. The conformity assessment between the constitution and other legal norms is carried out under the conditions of public authority restriction ([Makogon, et al. 2018](#)) and the objective interaction of all its bodies ([Markhgeym, et al. 2018](#)).

The modern practice of constitutionalism testifies to the unceasing attempts to use the Constitutional Court for certain task solution by political groups and for political goal achievement. The implementation mechanisms are different. They include the use of political influence on the Constitutional Court development by the appointment of its judges, the submissions to the Constitutional Court, which relate to the issues not expressly stated in the Constitution, and political pressure. The consequences of shifting away from the main constitutional principles are destructive for statehood.

The events of recent years point to this tendency of the Constitutional Court used by the political establishment of Moldova.

### METHODS

The study was based on the dialectic approach to the disclosure of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and particular scientific methods. Among the private-scientific methods, they used formal legal and comparative legal methods to study the texts of constitutional norms governing the creation and the activities of the Constitutional Courts of two post-Soviet republics in order to identify the features reflecting their place and role in the system of state power. Legal comparative studies, as a fundamental basis for legal research conduct, allowed to use the comparative legal instruments to fill in the theoretical and practical gaps in the legal regulation of modern constitutionalism institutions. The methods of normative and functional comparison allowed us to single out the mechanisms laid down in the constitutional norms of the studied states, by the means of which it is possible to influence the system of government, its institutions, and the interventions in the system of checks and balances, disrupting the balance of power.

### RESULTS AND ITS DISCUSSION

The study revealed that the constitutional and legal norms governing the development and the activities of the Constitutional Court in the Republic of Moldova contain the mechanisms that allow the use of this body of constitutional jurisdiction to solve the political tasks of individual political forces with representation in government bodies. The existing constitutional and legal norms in Moldova allow for intervention, the consequences of which can be the change in the government form, the management system, the imbalance of the system of checks and balances, the imbalance of

authorities, the instability of state institutions, which undermines the foundations of statehood and can lead to the loss of sovereignty.

The Constitutional Court is the only body of constitutional jurisdiction in Moldova. It is independent of any other public authority and is subject only to the Constitution ([Konstytucionnom sude, 2019](#)).

The tasks of the Constitutional Court of Moldova as a specialized body of constitutional jurisdiction are defined by the Art. 135 of the Constitutional Court Law of the Republic of Moldova) ([Kodeks, 1995](#)). Among them, along with the constitutionality implementation control in respect of law, the resolutions of the Parliament, the decrees of the President of the Republic of Moldova, the resolutions and the ordinances of the Government, as well as international treaties, one of the parties of which is the Republic of Moldova, is the statement of circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova from the office or the temporary fulfillment of his duties, as well as the impossibility for the President of the Republic of Moldova to fulfill his duties for more than 60 days. At that, the Constitutional Court conducts its activities on the initiative of the subjects stipulated by the Law on the Constitutional Court and the Code of Constitutional Jurisdiction of the Republic of Moldova ([Mnenie, 2019](#)).

Let's consider the decision adopted by the Constitutional Court on the recommendation of the Government regarding the candidacy of the Minister of Defense which was rejected twice by the President.

The Constitution of the Republic of Moldova (p. 1. 2, the Article 87 "Powers in the field of defense") determined that the President of the Republic of Moldova is the commander-in-chief of the armed forces and, with the prior consent of the Parliament, he can declare partial or general mobilization, and also can take other measures aimed at national security and public order provision, within the law and in accordance with it. [Gorton, M. \(2001\)](#)

And this means that the appointment of the Minister of Defense, although it takes place at the suggestion of the Prime Minister, should be made by taking into account the opinion of the President, as the responsible Commander-in-Chief. The element of checks and balances laid down in the legislation of Moldova has significant drawbacks since the ambiguity of this norm is not regulated by law and the conditions for power balance achieving are not expected to be met. [Gorton, M. \(2001\)](#)

The Constitution of Moldova (p. 6, Article 98) has no indications of actions in case of this candidacy rejection. There is the norm according to which "If there is the need for reshuffling or there is some post vacancy in the Government, the President of the Republic of Moldova, on the proposal of the Prime Minister, dismisses and appoints certain members of the Government". [Gorton, M. \(2001\)](#)

The Constitution does not contain any norms that interpret the President's impeachment for any reason other than a serious crime and thereby the Constitution provision violation (Article 89). In accordance with the law, the trial is within the competence of the Supreme Court of Justice. [Gorton, M. \(2001\)](#)

In accordance with constitutional norms, the Constitutional Court may decide on the temporary fulfillment of the President's duties only if this position becomes vacant. The constitutional article 90 states: "The position of the President of the Republic of Moldova becomes vacant in case of office term expiration, resignation, removal from office, final inability to fulfill his duties or death. The application for the resignation of the Republic of Moldova President is submitted to the Parliament, which expresses its attitude towards this. The impossibility of the head of state to fulfill his duties for more than 60 days is confirmed by the Constitutional Court within 30 days after a corresponding claim receipt". [Quinlan, P. D. \(2004\)](#)

In this regard, the application of the Article 91 "Temporary performance of the President duties" is disputable from the point of view of legality, according to which "If the position of the Republic of Moldova President becomes vacant or if the President is dismissed or temporarily unable to fulfill his duties, the temporary fulfillment of his duties is assigned on the Parliament Chairman of the Prime Minister in the specified sequence", if there are no grounds specified in the article [Quinlan, P. D. \(2004\)](#).

It should be noted that one of the most important principles of constitutional justice is aimed at the unity and consistency of the Constitutional Court decisions, which serve as a kind of guideline for constitutional norm interpretation in legislative and law enforcement practice - the presumption of the Constitutional Court legal position truth. The basis for a case consideration is the revealed uncertainty about the correspondence of a normative act or a contract complies with the Constitution. The term "uncertainty" in this case means the applicant's conviction that the legal provisions of the Constitution do not conform with legal regulations disputed by him. The basis for a case consideration is the contradiction between the applicant's position on the issue of constitutional norm content and the position of the highest bodies of state power. [Gorton, M. \(2001\)](#) The reason for the consideration of some case in the Constitutional Court may be the contradiction in the positions of the parties regarding the ownership of powers in the disputes about competence. In this case, we see the application of the article (3) "The impossibility for the President of the Republic of Moldova to fulfill his duties during more than 60 days is confirmed by the Constitutional Court within 30 days after the claim receipt". But the reason for the impossibility of duty performance by the President has not been established by the court.

The highest body of constitutional jurisdiction of Moldova, consisting of 6 people, with two candidates submitted by the President, the Parliament and the Superior Council of Magistrates, decided to remove the President of Moldova from the office temporarily who did not appoint the presented candidate of the Minister of Defense twice at the absence of such a provision in the Constitution. Although the President is the Commander-in-Chief, which means that the position of the Minister of Defense must be agreed [Quinlan, P. D. \(2004\)](#).

That is, the political decision of the Government, insisting on the only candidate, was supported by the Constitutional Court in the absence of legal grounds, which actually leveled the institution of presidency and constitutional control, undermined the constitutional foundations of the state and created a dangerous precedent for constitutional norm leveling or a decision passing by the substitution of concepts, giving legitimacy to their decisions. [Gorton, M. \(2001\)](#)

During 2017-2018, the Constitutional Court of Moldova repeatedly removed from the office the lawfully popularly elected President in order to sign decrees and laws by third parties. The powers during the order implementation period were transferred either to the Chairman of the Parliament or to the Chairman of the Government, after that the Constitutional Court returned the powers to the President. This decision was documented in the form of Opinion. The Constitutional Court expressed its Opinion concerning the determination of circumstances justifying the temporary office of the President of the Republic of Moldova to fulfill the constitutional obligation of law promulgation or to appoint some members of the government (Note 176f / 2017). The essence of this Opinion was to manage: "To declare that the institution acts as the President of the Republic of Moldova and can fulfill the constitutional goal ..." ([Mnenie, 2018](#), O [Konstitucionnom, 2019](#)). But what about the constitutional powers of the current President of the Republic?

Thus, the separate opinion of individuals who have the right to express it in relation to the state power norm, mechanism and procedure execution levels all democratic procedures in the state, replacing the popularly elected President with a separate person with the right to administer but with the mandate from the people. What is the responsibility of such a person for a signed management decision? What is the responsibility of officials - the judges of the Constitutional Court for the decision made, expressed in the form of the Opinion? They do not bear any personal or collegial responsibility for the citizens of Moldova. The legitimate President, who is accountable to the voters, acts as the Guarantor of their rights and freedoms. And he is removed from office during the implementation of the legislative act signature. [Tudoroiu, T. \(2015\)](#)

The modern practice of constitutionalism testifies about the unceasing attempts to use the Constitutional Court to solve certain tasks by political groups and achieve political goals. They apply different implementation mechanisms, among which is the use of political influence on the Constitutional Court development by the appointment of its judges, the submitting of submissions to the Constitutional Court, which relate to the issues not expressly stated in the Constitution, and the exerting of political pressure. The consequences of departing from the main constitutional principles are destructive for statehood. [Gorton, M. \(2001\)](#)

The constitutional and legal mechanisms through which the Constitutional Court of Russia is formed, namely, the indefinite appointment of RF Constitutional Court judges by the Federation Council on the proposal of the President of Russia (the age limit for being a judge of the Constitutional Court of Russia makes 70 years, Chairman of the Court - 76 years), - allow to draw the conclusion about the sustainability of this state power institution and its independence from political processes. [Quinlan, P. D. \(2004\)](#)

The definite term of the Constitutional Court of Moldova judge office makes the judges dependent on the nominee, does not imply objectivity and impartiality, and does not exclude influence on their decision-making by the groups of organized interests and political pressure. [Tudoroiu, T. \(2015\)](#)

The Constitutional Court of Moldova consists of 6 judges, whose term of office is 6 years, without the right to re-occupy this position. Nominations are submitted by the President, the Parliament and the Superior Council of Magistracy - 2 people each. The constitution defines the age limit for a judge of the Constitutional Court of Moldova (65 years) and their professional experience should be 15 years. There is no indication of the minimum possible age for such an appointment. [Gorton, M. \(2001\)](#)

## CONCLUSION

The place of the Constitutional Court in the system of power function separation and its role in power function separation implementation and, in particular, such its structural element as constitutional jurisdiction, show that there is a real danger in the studied states that under certain conditions it cannot be the state institution that protects real democracy and the rule of law. There are no real constitutional barriers to political influence on it. [Crowther, W., & Josanu, Y. \(2004\)](#)

As practice has shown, it is possible to carry out any transformations, including unconstitutional ones, but it is impossible to restore the mono subjectivity of the supreme power in the country. Abuse of influence on the Higher body of constitutional jurisdiction, which is the Constitutional Court, leads to irreparable consequences for the state and society. This requires understanding and adoption of a consolidated decision by the political elites on the inadmissibility to interfere in the Constitutional Court activities and to exert political pressure on its decisions. [Gorton, M. \(2001\)](#)

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