



Republic of Moldova

CONSTITUTIONAL COURT

JUDGMENT

**ON THE INTERPRETATION
of Article 11 of the Constitution**

(permanent neutrality)

(Complaint no. 37b/2014)

CHIȘINĂU

2 May 2017

Translated into English by the Constitutional Court.

JUDGMENT
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(PERMANENT NEUTRALITY)

In the name of the Republic of Moldova,
The Constitutional Court, sitting in the following composition:

Mr Alexandru TĂNASE, *President*,
Mr Aurel BĂIEȘU,
Mr Igor DOLEA,
Mr Tudor PANȚÎRU,
Mr Victor POPA,
Mr Veaceslav ZAPOROJAN, *judges*,
With the participation of Ms Ludmila Chihai, *registrar*,

Considering the complaint lodged with the Court on 26 May 2014 and registered at the same date,
Having examined the aforementioned complaint in private,
Considering the materials of the case file and the proceedings,

Delivers the following judgment:

PROCEDURE

1. The case originated in the complaint lodged with the Constitutional Court on 26 May 2014 under Article 135 para.(1) p.b) of the Constitution, Article 4 para.(1) p.b), Article 25 p.g) of the Law on the Constitutional Court and Article 4 para.(1) p.b), Article 38 para.(1) p.g) of the Code of Constitutional Jurisdiction by the MPs Mihai Ghimpu, Valeriu Munteanu, Gheorghe Brega and Corina Fusu on the interpretation of Article 11 of the Constitution, which reads as follows:

”(1) The Republic of Moldova proclaims its permanent neutrality.

(2) The Republic of Moldova does not admit the stationing of any foreign military troops on its territory.”

2. The author of the complaint asked the Constitutional Court to interpret Article 11 of the Constitution and thereby to explain whether:

”1. The provisions of Art. 11 of the Constitution is applicable, considering that following the adoption and entering into force of the Constitution, on the territory of the Republic of Moldova there were deployed military troops of another state, these provisions thus being deemed null and void *ab initio*?

2. Considering the *raison d'être* of the state the Republic of Moldova, is it admissible any derogation from the principle of permanent neutrality enshrined in Article 11 of the Constitution, in case the perpetuation of neutrality may lead to the state being dismantled or even to its disappearance?

3. The deployment on the territory of the Republic of Moldova of military troops of a group of states or under an international warrant is in breach of Article 11 of the Constitution?”

3. By the Decision of the Constitutional Court of 10 September 2014, the complaint was declared admissible, without prejudicing the merits of the case.

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4. While examining the complaint, the Constitutional Court requested the opinions of the Parliament, of the Presidency, of the Government, as well as other information from the Ministry of Foreign Affairs and European Integration.

CONTEXT

5. The Court considers applicable for this case the following facts, as they were ascertained by the European Court of Human Rights in its well-established case law, based on documentary evidence, observations of the parties and statements of witnesses interviewed in Chişinău and Tiraspol [the case of *Ilaşcu and Others v. Moldova and Russia*, judgment of the Grand Chamber of the European Court of Human Rights (hereinafter "ECtHR") of 8 July 2004; *Ivanțoc and Other v. Moldova and Russia*, judgment of 15 November 2011, *Catan and Others v. Moldova and Russia*, judgment of the Grand Chamber of the ECtHR of 19 October 2012], which may be summarised as follows.

A. Dissolution of the USSR and the conflict over the break-away of Transnistria

1. Dissolution of the USSR, the break-away of Transnistria and independence of the Republic of Moldova

6. The Moldavian Soviet Socialist Republic (MSSR), which was set up by a decision of the Supreme Soviet of the USSR on 2 August 1940, was formed from a part of Bessarabia taken from Romania on 28 June 1940 following the Molotov-Ribbentrop Pact between the USSR and Nazi Germany and a strip of land on the left bank of the Nistru in Ukraine (USSR), named Transnistria. Russian became the official language of the newly Soviet republic. Immediately following the establishment of the MSSR, the Soviet authorities ordered the change of the Latin alphabet with the Cyrillic alphabet.

7. In August and September 1989 the Moldavian Supreme Soviet enacted two laws introducing the Latin alphabet for written Romanian (Moldavian) and established this language as the country's first official language, instead of Russian language.

8. On 27 April 1990 the Supreme Soviet adopted a new tricolour flag (red, yellow and blue) with the Moldavian Coat of Arms and a national anthem. In June 1990, based on the movements aimed at gaining autonomy and independence within the Soviet Union, the Moldavian Soviet Socialist Republic changed its name into Soviet Socialist Republic of Moldova.

9. On 23 May 1991 the Soviet Socialist Republic of Moldova changed its name to the Republic of Moldova.

10. On 2 September 1990 the "Moldavian Republic of Transnistria" (the "MRT") was proclaimed. On 25 August 1991 the "Supreme Council of MRT" adopted the declaration of independence of the "MRT".

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11. Until the present moment, the “MRT” has not been recognised by the international community.

12. On 27 August 1991 the Parliament of the Republic of Moldova adopted the Declaration of Independence of the Republic of Moldova, which also refers to the territory of Transnistria. At that time, the Republic of Moldova did not have its own army as the Armed Forces of the Republic of Moldova were established by the Decree of the president of the Republic of Moldova no. 193 of 3 September 1991. The Parliament of the Republic of Moldova asked the Government of the USSR “to start negotiations with the Government of the Republic of Moldova to stop illegal occupation of the Republic of Moldova and to withdraw Soviet troops from the territory of the Republic of Moldova”.

13. Following the adoption of the Declaration of Independence of the Republic of Moldova, the 14th Army of Odessa military district of the Ministry of Defence of the USSR (“the 14th Army”), whose headquarters had been situated in Chişinău since 1956, remained in Moldovan territory. Large-scale movements of equipment were nevertheless reported from 1990 onwards: among other transfers, large quantities of equipment began to be withdrawn from Moldovan territory.

15. In addition to the weaponry of the 14th Army, the DOSAAF, “The Voluntary Association for Assistance to the Army, Air Force and Navy” (in Russian: ДОСААФ – Добровольное Общество Содействия Армии Авиации и Флоту), a State organisation situated in Moldovan territory established in 1951 aimed at preparing the civilian population for war, possessed a stock of ammunition.

16. Following the proclamation of the independence of the Republic of Moldova, the DOSAAF equipment situated in that part of the national territory controlled by the Moldovan Government passed to the latter and the remainder – located in Transnistria – passed into the possession of Transnistrian separatists.

17. On 6 September 1991 the so-called “Supreme Soviet of the Moldavian Republic of Transnistria” issued an order placing all establishments, enterprises, organisations, militia units, public prosecutors' offices, judicial bodies, KGB units and other services in Transnistria, with the exception of military units belonging to the Soviet armed forces, under the jurisdiction of the “Republic of Transnistria”. Officers, non-commissioned officers, and other ranks of military units stationed in Transnistria were urged to “show civic solidarity and mobilise to defend the Republic of Transnistria alongside workers' representatives in the event of invasion of forces from the Republic of Moldova”.

18. On 18 September 1991 the “President of the Supreme Soviet of the Moldavian Soviet Socialist Republic of Transnistria” decided to place the units of the Soviet armed forces deployed in Transnistria under the jurisdiction of this “Republic”.

19. By the Decree no. 234 of 14 November 1991, the President of the Republic of Moldova, Mr Snegur, declared that ammunition, weapons, military transport, military bases and other property belonging to the military units of

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the Soviet armed forces stationed in Moldovan territory were the property of the Republic of Moldova.

20. On 8 December 1991 Belarus, the Russian Federation and Ukraine signed the Minsk Agreement, the document which set the end of the Soviet Union's existence.

21. On 21 December 1991 eleven member States of the USSR, including Moldova and Ukraine, signed the Alma-Ata Declaration, which confirmed and extended the Minsk Agreement setting up the CIS. The Alma-Ata Declaration also confirmed that, through the establishment of the CIS, the USSR had ceased to exist and that the CIS was neither a State nor a supra-State entity. A Council of the Heads of Government of the CIS has also been established which decided to support Russia as the successor to the USSR within the United Nations, including the Security Council, and in other international organisations.

22. On 30 January 1992 the Republic of Moldova became member of the Conference on Security and Cooperation in Europe (CSCE). On 2 March 1992 it was admitted to the United Nations. On the same day an undeclared war by the Russian Federation from the territory of Transnistria against the Republic of Moldova started by declaring the armed conflict in Dubăsari, following a diversion by the separatists.

23. On 8 April 1994 the Parliament of the Republic of Moldova ratified, with certain reservations, the treaty providing for Moldova's accession to the CIS, signed by the President of the Republic of Moldova at Alma-Ata on 21 December 1991.

2. The armed conflict (1991-1992)

24. From 1989 onwards, movements of resistance to the independence of the Republic of Moldova started in the southern (Gagauzia) and the eastern (Transnistria) parts of Moldova.

25. Armed clashes broke out on a limited scale between the Transnistrian separatists and the Moldovan police as early as November 1990 in eastern Moldova, at Dubăsari, on the left bank of the Dniester.

26. In the months that followed, the Transnistrian authorities created paramilitary units called "workers' detachments", on the basis of which a professional and fully equipped "Republican Guard" was formed in 1991.

27. On 1 December 1991 a presidential election, declared illegal by the Moldovan authorities, was organised in the districts (rayon) on the left bank of the Dniester (Transnistria). The citizen of the Russian Federation Igor Nicolaevici Smirnov (Игорь Николаевич Смирнов) was elected "President of the MRT".

28. By a decree of 5 December 1991 Igor Smirnov decided to place "the military units deployed in the Moldavian Republic of Transnistria, attached for the most part to Odessa military district, under the command of the head of the National Defence and Security Department of the Moldavian Republic of Transnistria". The head of that department, Ghennady I. Iakovlev, who was

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also the commander of the 14th Army, was ordered to take all necessary measures to stop the transfers and handovers of weaponry, equipment and other property of the Soviet army to the possession of the military units deployed in Transnistria. The declared aim of that measure was to preserve the weapons, equipment and assets of the Soviet army in Transnistria for the benefit of the Transnistrian separatist regime.

29. At the end of 1991 and the beginning of 1992 there took place violent clashes between the Transnistrian separatist forces and the Moldovan security forces, claiming the lives of several hundred people.

30. On 6 December 1991, in an appeal to the international community and the United Nations Security Council, the President of the Republic of Moldova Mircea Snegur, the Chairman of the Parliament of the Republic of Moldova Alexandru Moşanu and the Prime Minister Valeriu Muravschi protested against the occupation, on 3 December 1991, of the Moldovan towns of Grigoriopol, Dubăsari, Slobozia, Tiraspol and Ribniţa, situated on the left bank of the Dniester, by the 14th Army under the command of Lieutenant-General Iakovlev, and accused the authorities of the USSR, particularly the Ministry of Defence, of having initiated these acts. The soldiers of the 14th Army were accused of distributing military equipment to the Transnistrian separatists and organising the separatists into military detachments which were terrorising the civilian population.

31. By a decree issued on 26 December 1991 Igor Smirnov, the “President of the MRT”, established the “armed forces of the MRT” from the USSR troops and formations deployed in the territory of the “MRT”.

32. In January 1992 Lieutenant-General Iakovlev was dismissed from the position of commander of the 14th Army by the commander of the combined armed forces of the CIS. By a decision of 29 January 1992 of the commander-in-chief of the joint armed forces of the CIS, Lieutenant-General Iakovlev was placed at the disposal of the Military Registration Bureau of Primorski district of the city of Odessa (Ukraine).

33. In 1991-1992, following the clashes with the Moldovan security forces, a number of military units of the USSR which later belonged to the Russian Federation, went over with their ammunition to the side of the Transnistrian separatists, and numerous military equipment of the 14th Army fell into the hands of separatists.

34. The 14th Army's Parcani sapper battalion, under the orders of General Butkevich, had gone over to the separatist side. It was this battalion which had destroyed the bridges at Dubăsari, Gura Bâcului-Bâcioc and Coşniţa.

35. Armoured combat vehicles, mine throwers, battle tanks and armoured transport vehicles were transferred to the to the separatists from 14th Army units. In addition, during the fighting, eight 14th Army helicopters had taken part in transporting ammunition and the wounded on the separatist side.

36. The separatists' military operations were directed by the 14th Army, which coordinated all its actions with the Ministry of Defence of the Russian Federation.

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37. Thousands of Russian Cossacks had come from Russia to fight alongside the separatists against the forces of the Republic of Moldova and were provided munitions by the 14th Army officers.

38. The 14th Army had intervened actively, both directly and indirectly, in the Transnistrian conflict, against the armed forces of the Republic of Moldova. The Transnistrian separatists had been able to arm themselves with weapons belonging to the 14th Army and with the 14th Army's complicity.

39. Taking into account the support offered by the troops of the 14th Army to the separatist forces and the massive transfer of arms and ammunition from the 14th Army's stores to the separatists, it is certain that the Moldovan army was in a position of inferiority that prevented it from regaining control of Transnistria.

40. On 5 March 1992 the Parliament of the Republic of Moldova protested against the silence of the Russian authorities, amounting to complicity in its view, about the support allegedly given to the Transnistrian separatists by armed groups of Cossacks from Russia belonging to the Union of Cossacks, an association recognised by the Russian authorities. The Moldovan parliament asked the Supreme Soviet of the Russian Federation to intervene, with a view to securing the immediate withdrawal of the Russian Cossacks from Moldovan territory.

41. On 23 March 1992 the ministers of Foreign Affairs of Moldova, Russian Federation, Romania and Ukraine met in Helsinki, where they adopted a declaration laying down a number of principles for the peaceful settlement of the conflict. At further meetings held in April and May 1992 in Chişinău, the four ministers decided to establish a Quadripartite Commission and a group of military observers to supervise any eventual ceasefire.

42. On 24 March 1992 the Parliament of the Republic of Moldova protested against the interference by the Russian Federation into the internal affairs of the Republic of Moldova after the Presidium of the Supreme Soviet of the Russian Federation issued a declaration on 20 March 1992 by which it indicated to the Republic of Moldova particular solutions for the settlement of the Transnistrian conflict, with respect for the rights of the "Transnistrian people".

43. On 28 March 1992 the President of the Republic of Moldova, Mr Snegur, decreed the state of emergency. He noted that some "adventurers" had created on the left bank of the Dniester, "not without help from the outside", a "pseudo-State", and that, "armed to the teeth with the most up-to-date equipment of the Soviet army", they had unleashed armed conflict, doing everything they could to bring about the intervention in the conflict of the 14th Army of the combined armed forces of the CIS. Under the state of emergency, the Moldovan Ministries of National Security and of the Interior and other relevant bodies, acting in concert with the units of the Moldovan army, were ordered by the President to take all necessary measures to break up and disarm illegally armed formations and seek out and bring to justice all those who had committed crimes against the State authorities and the population of the Republic. The founders of the "so-called Moldavian Republic of Transnistria"

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and their accomplices were called to dissolve illegal armed formations and surrender to the authorities of the Republic of Moldova.

44. By Decree no. 320 of 1 April 1992, the President of the Russian Federation placed the military formations of the former USSR stationed in Moldovan territory, including those on the left bank of the Dniester, under the jurisdiction of the Russian Federation, so that the 14th Army became the Russian Operational Group in the Transnistrian region of the Republic of Moldova (“the ROG” or, as previously, “the 14th Army”).

45. By the Decree no. 84 of 1 April 1992, the “President of MRT”, Igor Smirnov, dismissed Lieutenant-General Iakovlev from the position of commander of the “Defence and Security Department of MRT”.

46. On 2 April 1992 General Netkachev, the commander of the ROG (the 14th Army), ordered the Moldovan forces which had encircled the town of Tighina (Bender), held by the separatists, to immediately withdraw, failing which the Russian army had to take counter-measures.

47. On 4 April 1992 the President of the Republic of Moldova Mr Snegur, sent a telegram to the heads of States members of the CIS, to the commander of the combined armed forces of the CIS and to the commander of the 14th Army, drawing their attention to the fact that the 14th Army was failing to remain neutral.

48. By Order no. 26 of 8 April 1992 issued by the commander-in-chief of the combined armed forces of the CIS, it was decided that only troops and units of the 14th Army stationed in the territory of the former Moldovan Soviet Socialist Republic could form the basis for the establishment of the armed forces of the Republic of Moldova.

49. Three military units which had been part of the 14th Army decided to join the new army of the Republic of Moldova: a unit at Florești (ammunition store no. 5381), the 4th artillery regiment at Ungheni and the 803rd rocket artillery regiment at Ungheni.

50. The soldiers of the 115th independent battalion of sappers and firemen of the 14th Army refused to enlist in the armed forces of Moldova and “placed themselves under the jurisdiction of the Transnistrian region”, according to the terms used by the Government of the Russian Federation.

51. In a message sent in April 1992 to the commander-in-chief of the combined armed forces of the CIS, the President of the Republic of Moldova, Mr Snegur, declared that the events in Transnistria were prompted and supported by “the imperial and pro-communist structures of the former USSR and their legal successors” and that the 14th Army had not complied with the requirements of neutrality within the conflict. In this respect he emphasised that the Transnistrian military formations were equipped with modern weapons which belonged to the former Soviet army and that large numbers of Russian citizens had taken part in the conflict on the separatist side as mercenaries.

52. In a letter sent in April 1992 to the leaders of the member countries of the United Nations Security Council, the OSCE and the CIS, Mr Snegur accused the commander of the 14th Army of the fact that, in December 1991 the latter had provided military equipment to Transnistrian units and

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complained against the attitude of the 6th Congress of Deputies of the Russian Federation, which called for the preservation in the Republic of Moldova of Russian Federation military units as “peacekeeping forces”. Lastly, Mr Snegur observed that one essential condition for the peaceful settlement of the Transnistrian conflict was the rapid withdrawal of the Russian Federation military troops from the territory of the Republic of Moldova, and asked the international community to support the young Moldovan State in its struggle for freedom and democracy.

53. On 20 May 1992 the Chairman of the Parliament of the Republic of Moldova protested against the occupation of new territories of Transnistria on 19 May 1992 by the forces of the 14th Army, backed up by Cossack and Russian mercenaries and by Transnistrian paramilitary forces. His statement pointed out that this military aggression on the part of the Russian Federation violated Moldova's sovereignty and all the rules of international law, making the negotiations then in progress to find a solution to the conflict in Transnistria to be an illusion. The Chairman accused the Russian Federation of arming the Transnistrian separatists and asked the Supreme Soviet of the Russian Federation to call a halt to the aggression and to withdraw Russian military forces from the territory of the Republic of Moldova.

54. On 26 May 1992 the Parliament of the Republic of Moldova sent a letter to the Supreme Soviet of Ukraine, expressing its gratitude to the Ukrainian authorities which refused any involvement in the occupation of 19 May 1992.

55. On 22 June 1992 the Parliament of the Republic of Moldova launched an appeal to the international community, opposing to the “new aggression perpetrated in Transnistria on 21 June 1992 by the forces of the 14th Army” and complaining that its actions of destruction and pillage had driven large numbers of civilians to flee their homes. The international community was urged to send experts to Transnistria to halt the “genocide” of the local population.

56. On 23 June 1992 the President of the Republic of Moldova, Mr Snegur, asked the Secretary-General of the United Nations, Mr Boutros Boutros-Ghali, to inform the members of the Security Council of the “assault on the town [of Tighina] by the 14th Army”, which he viewed as “direct and brutal” interference into the internal affairs of the Republic of Moldova. He also expressed his concern in respect of the statements of the President of the Russian Federation, Mr Yeltsin, and the Vice-President, Mr Rutskoy, “which clearly show[ed] that the Russian Federation [was] not prepared to abandon the 'rights' it no longer possess[ed], neither *de jure* nor *de facto*, over a territory that no longer belong[ed] to it after the dismemberment of the Soviet empire”. Mr Snegur concluded that “the threats recently repeated against the legal leaders of the Republic of Moldova, an independent and sovereign State, by the Russian authorities are a reason of concern for the public opinion of the Republic of Moldova, since they seem to prefigure other means of interference into our internal affairs, that is, means and methods specific to the Soviet communist imperialist system ...”

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57. In the first half of July 1992, intense discussions took place within the CIS about the possibility of deploying a CIS peacekeeping force in the Republic of Moldova. Mention was made in that connection of an agreement signed in Minsk in March 1992 concerning groups of military observers and strategic CIS peacekeeping forces.

58. At the CIS meeting held in Moscow on 6 July 1992, it was decided to deploy in the Republic of Moldova, as a preliminary step, a CIS peacekeeping force made up of Russian, Ukrainian, Belarusian, Romanian and Bulgarian troops, provided Moldova makes such a request. Although the Parliament of the Republic of Moldova made such a request the very next day, the force was never deployed since some countries had had second thoughts about their agreement to join a CIS force.

59. On 10 July 1992, at the CSCE Helsinki Summit the President of the Republic of Moldova Mr Snegur asked for consideration to be given to the possibility of applying the CSCE peacekeeping mechanism to the situation in the Republic of Moldova. However the mechanism has not been used due to non-effective and lasting ceasefire.

87. On 21 July 1992 the President of the Republic of Moldova, Mr Snegur, and the President of the Russian Federation, Mr Yeltsin, signed *the Agreement on the principles for the friendly settlement of the armed conflict in the Transnistrian region of the Republic of Moldova*. According to Article 1 of this Agreement:

"The Republic of Moldova and the Russian Federation, striving for the complete and expeditious ceasefire and for the settlement of the armed conflict in the Transnistrian districts by peaceful means, have agreed as follows: As of the signing of the Agreement, the parties to the conflict undertake to take all necessary measures for the complete ceasefire, as well as any armed actions against each other. Upon the cessation of the fire, the parties to the conflict shall withdraw the units of their armed forces and other formations, military equipment and armaments, and shall finalize the process within seven days. The purpose of such a de-commitment is to create a security zone between the parties to the conflict. The concrete coordinates of the area will be determined by a special protocol of the parties engaged in the implementation of this Agreement. "

61. This Agreement introduced the principle of a security zone to be created by the withdrawal of the armies of the "parties to the conflict".

62. Under Article 2 of the Agreement, a Joint Control Commission ("the JCC") was set up, composed of representatives of Moldova, the Russian Federation and Transnistria, with its headquarters in Tighina (Bender).

63. The agreement also provided for peacekeeping forces charged with ensuring observance of the ceasefire and security arrangements, composed of five Russian battalions, three Moldovan battalions and two Transnistrian battalions under the orders of a joint military command structure which was itself subordinate to the JCC.

64. Under Article 3 of the agreement, the town of Tighina was declared a region subject to a security regime and its administration was put in the hands of "local organs of self-government, if necessary acting together with the

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control commission". The JCC was given the task of maintaining order in Tighina, together with the police.

65. Article 4 required the 14th Army of the Russian Federation, stationed in the territory of the Republic of Moldova, to remain strictly neutral; Article 5 prohibits sanctions or blockades and lays down the objective of removing all obstacles to the free movement of goods, services and persons.

66. Lastly, the measures provided for in the agreement were defined as "a very important part of the settlement of the conflict by political means" (Article 7).

3. Events which took place following the armed conflict

67. On 29 July 1994 the Republic of Moldova adopted a new Constitution. It provides, *inter alia*, that Moldova is neutral state and the stationing in its territory of troops belonging to other States is prohibited.

68. On 21 October 1994 the Republic of Moldova and the Russian Federation signed an agreement concerning the legal status of the military formations of the Russian Federation temporarily present in the territory of the Republic of Moldova.

69. Article 2 of the agreement provided that the withdrawal of the Russian army from Moldovan territory was to be synchronised with the political settlement of the Transnistrian conflict and the establishment of a special status for the "Transnistrian region of the Republic of Moldova".

70. This agreement has never been ratified by the authorities of the Russian Federation and so it never came into force.

71. The principle of neutrality of the 14th Army set forth in Article 4 of the Agreement of 21 July 1992 (see § 65 supra) has been constantly violated: the transfer of certain military equipment and ammunition by the 14th Army to the unconstitutional authorities in Tiraspol; training of "MRT" troops by the Russian army; and transfers of military units from the 14th Army to the "MRT" side – for example, the Parcani sapper battalion, converted into an "MRT" artillery unit, the transfer of the fortress of Tighina (Bender) to the 2nd "MRT" infantry brigade, or the transfer to the "MRT" of the Slobozia depot, occupied by a 14th Army signals battalion.

72. "MRT" military units had been brought into the security zone with the connivance of the JCC's Russian troops, that new paramilitary units had been formed in the town of Tighina (Bender), which had been declared a security zone and was under the responsibility of the Russian peacekeeping forces, and that firms in Tighina (Bender) and Tiraspol were manufacturing weapons and ammunition.

73. On 8 May 1997 Mr Petru Lucinschi, the President of the Republic of Moldova and Mr Igor Smirnov, the "President of the MRT", signed in Moscow a memorandum laying down the basis for the normalisation of relations between the Republic of Moldova and Transnistria, in which they undertook to settle any conflict they might have throughout negotiations, with the assistance, where necessary, of the Russian Federation and Ukraine, as guarantors of

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compliance with the agreements reached, and of the OSCE and CIS. The memorandum was countersigned by the representatives of the guarantor States, namely by the President of the Russian Federation Mr Yeltsin and the President of Ukraine Mr Kuchma. It was also signed by Mr H. Petersen, the OSCE President, who witnessed the signing by the parties and the guarantor States.

74. Under the terms of the memorandum, the status of Transnistria is to be based on the following principles: decisions must be agreed by both sides, powers must be shared out and delegated, and guarantees must be secured reciprocally. Transnistria must participate in the conduct of the foreign policy of the Republic of Moldova on questions concerning its own interests to be defined by mutual agreement. Transnistria would have the right to unilaterally establish and maintain international contacts in economic, scientific, technical, cultural and other fields, to be determined by mutual agreement.

75. The memorandum welcomes the willingness of the Russian Federation and Ukraine to act as guarantors of compliance with the provisions contained in the documents defining the status of Transnistria and in the memorandum. The parties also confirmed the need to pursue the joint peacekeeping forces' common activities in the security zone, in accordance with the agreement of 21 July 1992. In the event of a breach of the agreements, the memorandum also entitles the parties to seek consultations with the guarantor States with a view to measures being taken to normalise the situation. Lastly, the two parties undertook to establish relations between themselves in the context of a shared State within the borders of the Moldavian SSR as it existed on 1 January 1990.

76. On 20 March 1998 representatives of the Republic of Moldova, Transnistria, Russian Federation and Ukraine signed in Odessa (Ukraine) a number of documents intended to secure the settlement of the Transnistrian conflict.

77. According to the JCC's official documents, which present an abundance of details, in various areas of Transnistria under the control of the Russian peacekeeping forces, such as the area of Tighina (Bender), Transnistrian separatist forces acted in breach of the ceasefire agreement, therefore in the area under the responsibility of the Russian peacekeeping forces, the Transnistrians have not discharged the obligations arising for them from the agreement of 21 July 1992.

78. On 16 April 2001 the Presidents of the Republic of Moldova and of the Russian Federation, Mr Voronin and Mr Putin, signed a joint declaration, point 5 of which states:

“The Presidents advocated the rapid and fair settlement of the Transnistrian conflict by exclusively peaceful means based on respect for the principle of the Republic of Moldova's sovereignty and territorial integrity, and for international human rights standards.”

79. In a document dated 4 September 2001 analysing implementation of the Moldovan-Russian agreement of 20 March 1998 on the principles for a peaceful settlement of the armed conflict in the Transnistria region of the Republic of Moldova, the Moldovan delegation to the JCC pointed to the failure of the Transnistrian side to fulfil their obligations, in that they had

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created new military units, introduced weapons into the security zone and set up customs posts. The Moldovan delegation expressed concern about the fact that the joint military command had not taken any suitable steps to put an end to the situation but had merely noted the facts. The Moldovan delegation proposed that concrete measures to ensure that parties' undertakings were honoured be discussed by the Ministries of Foreign Affairs of Moldova and the Russian Federation. Lastly, the Moldovan delegation proposed that the function of military observer in the security zone be placed under the patronage of the OSCE.

80. Meetings with the Transnistrian side continue to take place to discuss various aspects of a possible solution to the situation in Transnistria.

B. The presence of the army of the Russian Federation and its personnel in Transnistria after the agreement of 21 July 1992

1. ROG troops and equipment in Transnistria

81. As provided for in Article 4 of the ceasefire agreement of 21 July 1992, the Republic of Moldova and the Russian Federation started negotiations over the withdrawal of the ROG from the territory of the Republic of Moldova and its status until such a withdrawal.

82. Russia proposed in 1994 that the ROG's withdrawal from the territory of the Republic of Moldova should be timed to coincide with settlement of the Transnistrian conflict, and Moldova only accepted that proposal, which it considered counterproductive, on Russia's insistence and after persuading Russia to declare itself in favour of the speedy release of the members of the Ilaşcu group.

83. The Moldovan authorities were categorically opposed to any synchronisation between the political settlement of the Transnistrian conflict and the withdrawal of the Russian armed forces from the territory of the Republic of Moldova and that they sought the complete and unconditional withdrawal of the Russian armed forces, in accordance with the OSCE's decisions, especially as the OSCE member States had set up a voluntary fund to finance this withdrawal.

84. Article 2 of the agreement of 21 October 1994 ("the first agreement") provided for the withdrawal by Russia of its military formations within three years from the entry into force of the agreement, with implementation of the withdrawal within the time-limit to take place simultaneously with a political settlement of the Transnistrian conflict and the establishment of a special status for the "Transnistrian region of the Republic of Moldova". With regards to the stages and dates for the final withdrawal of Russian troops, Article 2 provided that these were to be determined in a separate protocol to be concluded between the Ministries of Defence of both parties.

85. Under Article 5 of the agreement, the sale of any type of military technology, weapon or ammunition belonging to the military forces of the Russian Federation stationed in the territory of the Republic of Moldova could

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take place only by way of a special agreement between the governments of the two countries.

86. According to Article 7 of the agreement, Tiraspol military airport was to be used jointly by the aircraft of the ROG and the “civil aviation of the Transnistrian region of the Republic of Moldova”. A second agreement, also reached on 21 October 1994, between the Ministers of Defence of the Republic of Moldova and of the Russian Federation (“the second agreement”) governed the terms of use of Tiraspol airport. It provided, in particular, that flights to Tiraspol airport were to be made in accordance with the “Provisional rules on the joint dispersed aviation of the military formations of the Russian Federation and the civil aviation of the Transnistrian region of the Republic of Moldova”, in coordination with the State Civil Aviation authority of the Republic of Moldova and the Ministry of Defence of the Russian Federation.

87. On 9 November 1994 the Government of the Republic of Moldova adopted the decision to implement the agreement concerning the withdrawal of the Russian army from the territory of the Republic of Moldova. The Government of the Russian Federation decided to submit this agreement for ratification by the Duma. On 17 November 1998, as the first agreement of 21 October 1994 had still not been ratified by the Duma, the Minister of Foreign Affairs of the Russian Federation asked the Duma to remove this issue from its agenda on the ground that “any decision by the Ministry to reconsider this issue will depend on the evolution of relations with the Republic of Moldova and the Transnistrian region and on the political settlement in the area”. In January 1999 the agreement was removed from the Duma's agenda. It has still not come into force.

88. The second agreement was approved by the Government of the Republic of Moldova alone, on 9 November 1994.

89. Neither of the agreements of 21 October 1994 has come into force due to the failure of having been ratified by Russian Federation.

90. On 20 March 1998, among other documents concerning the settlement of the situation in Transnistria, an agreement on questions concerning the military assets of the 14th Army was signed in Odessa (Ukraine). The signatories were Mr Chernomyrdin, on behalf of the Russian Federation, and Mr Smirnov, “President of the MRT”.

91. According to the timetable annexed to the agreement, the withdrawal and decommissioning of certain stocks, to be disposed of by explosion or some other mechanical process, was to be completed by 31 December 2001, subject, among other conditions, to authorisation by the authorities of the Republic of Moldova, “particularly from the Transnistrian region”.

92. The withdrawal (transfer and decommissioning) of surplus ammunition and other ROG equipment was planned to take place by 31 December 2002 at the latest. The withdrawal of the ROG's standard-issue equipment and personnel not forming part of the peacekeeping forces was to be completed by 31 December 2002, on condition that the process of withdrawing ammunition and other equipment to Russia had been completed by then, that other equipment was transferred or decommissioned, and that the Republic of

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Moldova discharged its obligations arising under Article 17 of the agreement of 21 October 1994.

93. In their declaration at the Istanbul summit of 19 November 1999, the heads of State and government of the OSCE States indicated that they were expecting “an early, orderly and complete withdrawal of Russian troops from the Republic of Moldova” and welcomed the commitment by the Russian Federation to complete withdrawal of its forces from the territory of the Republic of Moldova by the end of 2002. Lastly, they pointed out that an international assessment mission was ready to be dispatched without delay to explore removal and destruction of Russian ammunition and armaments.

94. In observations submitted in 1999 to the Parliamentary Assembly of the Council of Europe, the Government of the Republic of Moldova asserted that on that date the official figure put forward by the Russian authorities for the quantity of ROG arms and ammunition stocked in Transnistria was 42,000 tonnes, but that it had not been possible to verify that figure, since both the Russian authorities and the Transnistrian separatists had refused to countenance an international assessment mission.

95. The authorities of the Republic of Moldova drew attention to the fact that any withdrawal of ROG personnel not accompanied by removal of the ROG's enormous weapons stocks would increase the risk that Transnistrian separatists would get their hands on these weapons.

96. A number of trainloads of equipment belonging to the ROG were moved out between 1999 and 2002.

97. On 15 June 2001 the Russian Federation and Transnistria signed a protocol concerning joint work with a view to using the weapons, military technology and ammunition.

98. The amount of high-tech weaponry, ammunition and military equipment belonging to the ROG which had been withdrawn by November 2002 from the territory of the Republic of Moldova by virtue of the agreement of 21 October 1994 represented only 15% of the total amount declared in 1994 as being stationed in Moldovan territory.

99. According to the evidence administered by the European Court in *Ilaşcu and others* (Judgment of the Grand Chamber of the European Court of 8 July 2004) in 2003 in Transnistria there were at least 200,000 tonnes of Russian military equipment and ammunition, mainly kept at Kolbasna, 106 battle tanks, 42 armoured cars, 109 armoured personnel carriers, 54 armoured reconnaissance vehicles, 123 cannons and mortars, 206 anti-tank weapons, 226 anti-aircraft guns, 9 helicopters and 1,648 vehicles of various kinds (see *Ilaşcu and others*, cited above, §131). In 2003 the OSCE Observers controlled and supervised withdrawal from Transnistria of 11 trains of Russian military equipment and 31 trains carrying 15000 tonnes of ammunitions. In the next year OSCE emphasized however that a single train containing almost 1000 tonnes of ammunitions left Transnistria.

100. From 2004 onwards, there has been no controlled withdrawal of Russian arms and equipment from Transnistria. In *Ilaşcu and Others*, the European Court found that at the end of 2004 there were about 21,000 tons of

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ammunition, more than 40000 small arms and light weapons, and about ten trains with different military equipment. In November 2006, an OSCE delegation, which was granted access to ammunition storage, reported that more than 21,000 tons of ammunition were stored in the area. In May 2005, the ROG commander reported that surplus stocks of 40000 small arms and light weapons were destroyed, but no independent observer was allowed to go on the site to verify these assertions.

101. According to particular information, a number of about one thousand Russian soldiers are deployed in Transnistria entrusted to supervise the arms stores and about 1,255 Russian soldiers belonging to international peacekeeping forces are deployed in the security zone stretching 225 km long and 12-20 km wide.

2. Relations between the ROG and the “MRT”

102. ROG personnel, and the military prosecutors and judges attached to the ROG, did not receive any specific instructions regarding their relations with the Transnistrian authorities.

103. ROG personnel can travel freely in Transnistrian territory. With reference to the movement of troops or equipment, the ROG has to inform the Transnistrian authorities in advance. According to the legal provisions in force in the Russian Federation, the ROG's prosecuting authorities are not empowered to refer cases directly to Moldovan authorities, which have jurisdiction in Transnistrian territory. Any theft or other criminal act committed by a Transnistrian civilian against the ROG must be reported by the ROG authorities to the relevant authorities of the Russian Federation, since only they can refer the matter to the authorities of the Republic of Moldova.

104. In practice, criminal prosecution of this type of crimes is performed by Transnistrian authorities.

105. ROG investigators are empowered to investigate criminal acts committed by ROG personnel or with their participation, but only in relation to the individual soldiers implicated.

106. ROG equipment and installations lending themselves to civilian use have been transferred to the “MRT”.

C. Economic, political and other relations between the Russian Federation and Transnistria

107. Russia used to provide and continues to provide economic and political assistance to the Transnistrian region.

108. At the end of the conflict, the 14th Army superiors participated in the public life events in Transnistria. Particularly, the 14th Army militaries participated in the elections in Transnistria, in the military parades of the Transnistrian forces and in other public events.

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109. Permanent consular posts, acting as voting bureaus, were opened by the authorities of the Russian Federation on the Transnistrian territory, in the absence of any consent from the authorities of the Republic of Moldova.

110. In the Resolution no. 1334 IGD of 17 November 1995, the Duma of the Russian Federation declared Transnistria a “zone of special strategic interest for Russia”.

111. Eminent politicians and representatives of the Russian Federation have confirmed on various occasions the support it has lent to Transnistria. Representatives of the Duma and other prominent figures of the Russian Federation have travelled to Transnistria and taken part in official events there.

112. For their part, representatives of the “MRT” regime have travelled to Moscow on official visits, notably to the Duma.

113. On 19 May 1994 Lieutenant-General Iakovlev, the former commander of the 14th Army and former head of the “Defence and Security Department of the MRT”, became a citizen of the Russian Federation.

114. In 1997 Mr Mărăcuță, the “President of the Supreme Soviet of MRT”, was granted Russian nationality.

115. In 1999 Mr Caraman, one of “MRT” leaders, also acquired Russian nationality.

116. Mr Smirnov was granted Russian nationality in 1997.

117. The arms industry is one of the pillars of the Transnistrian economy, which is directly supported by Russian firms involved in arms manufacture in Transnistria.

118. From 1993 onwards Transnistrian arms firms began to specialise in the production of high-tech weapons, with the help of funds and orders from various Russian companies, including the Russian arms producer and trader Росвооружение (Rosvoorujenye). Russian companies provide Transnistrian firms with the technology and equipment they need to manufacture modern weaponry and military equipment. Transnistrian firms also produce components for Russian arms manufacturers. For example, the Elektrommash company receives the components for the silenced pistols it produces from the Russian Federation and delivers components for various weapons systems assembled in the Russian Federation.

119. Under the cover of withdrawal, the ROG was supplying Transnistrian firms with parts and tools for military use. The Râbnița engineering works, which produces 82 mm mortars, regularly received truckloads of mortars and howitzers from the ROG stores at Colbasna, passed off as “destruction of untransportable ammunition”.

120. In addition, there was interdependence between Transnistrian economic and other interests and the ROG on account of the fact that the ROG employs huge numbers of the inhabitants of Transnistria.

121. According to the same study, nearly 70% of the command structure of the ROG unit stationed in Colbasna (including the ammunition store) was made up of inhabitants of Râbnița and Colbasna, while 100% of the technical staff of the Colbasna stores (head storekeepers, technicians and mechanics) were inhabitants of the region.

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122. In all, 50% of the ROG's officers and 80% of its non-commissioned officers were inhabitants of the "MRT".

123. There is judicial cooperation for the transfer of prisoners between the Russian Federation and Transnistria, without the participation of Moldovan authorities. Russian prisoners detained in Transnistria have been transferred thanks to such cooperation to the prisons in the Russian Federation.

124. Visits between officials of the Russian Federation and the "MRT" continued to take place, including the participation in the celebrations to mark the anniversary of the "MRT" 's declaration of independence.

125. "MRT" leaders have been awarded official distinctions by various institutions of the Russian Federation and are received in honour by its State organs.

126. The Russian Federation has direct relations with the "MRT" regarding its gas exports.

127. Transnistria receives electricity directly from the Russian Federation.

128. Products manufactured in Transnistria are exported to the Russian market, some of them being passed off as Russian products.

129. The ROG buys certain products which it needs to supply its troops directly from the Transnistrian market.

130. Russian companies have taken part in privatisations in Transnistria. The documents submitted by the applicants show that the Russian company "Itterra" bought the largest undertaking in Transnistria, the Râbnița engineering works, despite the opposition of the authorities of the Republic of Moldova.

131. The authorities of the Republic of Moldova have never officially recognized "MRT" as a state entity.

D. "Jurisdiction" over the occupied territories

132. By a series of judgments, the European Court recognized the *de facto* "jurisdiction" of the Russian Federation over the separatist territory. The Court considered that the separatist regime could not have survived without the continued military, economic and political support of the Russian Federation (*Ilascu and others v. Moldova and the Russian Federation*, ECtHR Grand Chamber Judgment of 8 July 2004, *Ivanțoc and others v. Moldova and the Russian Federation*, judgment of 15 November 2011, *Catan and Others v. Moldova and the Russian Federation*, ECtHR Grand Chamber Judgment of 19 October 2012).

RELEVANT LEGISLATION

133. Relevant provisions of the Constitution (M.O. 1994, no.1) are the following:

Article 1

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The State of the Republic of Moldova

”[...]

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

Article 3
Territory

“(1) The territory of the Republic of Moldova is inalienable.

(2) The borders of the country are sanctioned by an organic law, subject to the unanimously recognized principles and norms of international law.”

Article 8

Observance of International Law and International Treaties

“(1) The Republic of Moldova commits to observe the Charter of the United Nations and the treaties to which it is a party, to ground its relationships with other states on the unanimously recognized principles and norms of international law.

(2) The coming into force of an international treaty containing provisions which are contrary to the Constitution shall be preceded by a revision of the latter. “

Article 11

The Republic of Moldova -a Neutral State

“(1) The Republic of Moldova proclaims its permanent neutrality.

(2) The Republic of Moldova does not admit the stationing of any foreign military troops on its territory.”

IN LAW

134. Based on the content of the complaint, the Court observes that it concerns in its essence the effects of the **declared neutrality** of the Republic of Moldova in the circumstances when **a part of the national territory is occupied by the foreign military troops**.

135. Thus, the complaint refers to a set of interconnected constitutional elements and principles, such as sovereignty, territorial integrity, national security and military neutrality.

A. ADMISSIBILITY

136. According to its decision of 10 September 2014 (see paragraph 3 above), the Court held that, under Article 135 para.(1) p.b) of the Constitution, Article 4 para. (1) p.b) of the Law on the Constitutional Court and Article 4 para. (1) p.b) of the Code of Constitutional Jurisdiction, the complaint on the

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interpretation of the Constitution falls within the competence of the Constitutional Court.

137. Articles 25 para.(1) p.g) of the Law on the Constitutional Court and 38 para. (1) p.g) of the Code of Constitutional Jurisdiction empower the Member of the Parliament with the right to submit complaints to the Constitutional Court.

138. The Court notes that the issues submitted by the authors of the complaint have not previously been the subject of interpretation by the Constitutional Court.

139. The Court considers that the complaint cannot be dismissed as inadmissible and there are no other grounds for suspending the proceedings under Article 60 of the Code of Constitutional Jurisdiction. The Court notes that it has been legally referred to and it has jurisdiction to rule on the interpretation of Article 11 of the Constitution. The Court will therefore continue to examine the merits of the complaint.

140. Under Article 6 para. (2) of the Code of Constitutional Jurisdiction, the Constitutional Court establishes the limits of its competence.

141. The problems submitted for resolution to the Court imply the analysis of two interdependent issues. Given that the interpretation of permanent neutrality influences the rationale regarding the prohibition of deployment of military troops belonging to other states on the territory of the Republic of Moldova, the Court will examine these issues separately, while certain aspects are to be dealt with in common. Therefore, the Court will consider: a) the permanent neutrality; b) the prohibition of the displacement of foreign military troops.

142. The Court holds that the prerogatives with which the Court was vested based on Article 135 para.(1) p.b) of the Constitution provide for the establishment of the authentic and full meaning of constitutional norms, which can be achieved through textual or functional interpretation, insofar as it can be deduced from the text of the Constitution, taking into account the generic character of the normative provision, the particular situations that the legislator could not have foreseen at the time of drafting the normative provision, subsequent regulations (related or even contradictory), complex situations in which the rule should have been applied, etc.

143. In order to elucidate the issues raised in the complaint, the Court will deal in particular with the provisions of Article 11 in conjunction with Article 1 para.(1), Article 3 and Article 8 of the Constitution, with the use of all methods of legal interpretation.

B. THE MERITS

I. PERMANENT NEUTRALITY STATUS

1. Submissions of the authors of the complaint

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144. According to the authors of the complaint, the permanent neutrality status proclaimed in Article 11 of the Constitution, shows certain phrasing deficiencies that are to be interpreted by the Constitutional Court.

145. The authors of the complaint claim that at the moment of adoption and enforcement of the Constitution, military troops of the Russian Federation were stationed on the territory of the Republic of Moldova.

146. In the opinion of the authors of the complaint, considering the obvious contradiction between the *de facto* deployment of foreign (Russian) military troops in the Eastern region of the Republic of Moldova and the *de jure* interdiction provided for in Article 11 of the Constitution, the permanent neutrality of the Republic of Moldova has never been enforced and cannot be applied as long as there is a presence of foreign troops, which violates the condition of non-stationing of foreign military troops.

147. In this context, the authors of the complaint declare that the neutrality has not been recognised officially and expressly neither on international arena by any State or international organisation, nor in the regional geopolitical context.

2. Submissions of the authorities

148. According to the Parliament, the neutrality of the Republic of Moldova was declared unilaterally, without it being a consequence of an international treaty.

149. In the view of the Parliament, by proclaiming the neutrality in Article 11 of the Constitution, the Republic of Moldova made its choice on the course of its foreign policy, starting from instituting the principle of permanent neutrality as a plenary goal to be achieved in international relations.

150. According to the Parliament, the opting for a permanent neutrality was determined by a number of factors: the necessity to consolidate sovereignty under complex political conditions and the lack of statehood traditions. Hence, the stability, absolutely necessary to implement reforms, requires the withdrawal of foreign (Russian) military troops from the territory of the state, easing of internal political tension, and defining the development perspectives and directions of the country.

151. The Parliament mentions in its opinion that the provisions of Article 11 of the Constitution do not refer to the relations of the Republic of Moldova with other countries or international organisations with a view to conclude agreements on neutrality observance and the guarantee of external non-aggression. Hence, the provisions of Article 11 of the Constitution do not set restrictions for the Republic of Moldova when measures to defend sovereignty, independence, territorial integrity and other vital interests are undertaken, including by use of international armed forces or that of other states.

152. Also, the Parliament underlines that the constitutional provision that proclaims permanent neutrality of the Republic of Moldova is compatible with the universal collective security system that allows the Republic of Moldova to participate in international peacekeeping operations.

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153. However, the Parliament mentions that in the absence of international recognition and guarantees, the effects of permanent neutrality are not effectively enforced internationally. The Parliament gives the example of the Russian military troops present on the Left Bank of the River Nistru, troops that have not been withdrawn despite the fact that the Russian Federation has assumed this commitment, including at international level.

154. Hence, according to the point of view submitted by the Parliament, the provisions of Article 11 of the Constitution prohibit the initiation of military aggression towards other states, as well as using the territory of the Republic of Moldova by foreign troops that aim to attack other states. The constitutional norm does not refer to the actions that have the purpose to reject armed aggressions against the Republic of Moldova and does not prohibit the conclusion of any international treaty that would discourage and prevent any external aggression, as well as would guarantee the sovereignty, independence and territorial integrity of the Republic of Moldova, including through national or multinational military intervention in order to ensure this purpose.

155. According to the Government, the provisions of Article 11 of the Constitution, which are to be interpreted, do not contain ambiguities, imprecisions or vagueness and hence, and therefore do not require an interpretation. In the opinion of the Government, the aspects addressed by the authors of the complaint do not refer to the interpretation of Article 11 of the Constitution, but based on the nature of the formulated questions, they refer to the possibility to derogate from the invoked constitutional norm, as well as to an analysis of certain facts.

156. According to the information communicated by the Ministry of Foreign Affairs and European Integration (MFAEI), the permanent neutrality of the Republic of Moldova is regulated only domestically by Article 11 of the Constitution. No legal acts/treaties have been concluded internationally and no UN Resolution has been adopted that would recognise expressly this status. Up until now, the Republic of Moldova has not undertaken any actions focused strictly on the recognition of its neutrality internationally. The only relevant step in this regard was the initiative launched in June 2004 by the President of the Republic of Moldova on the Stability and Security Pact for the Republic of Moldova, which envisaged the signing of a political document by the Russian Federation, the United States of America, Ukraine, Romania, and the European Union. Based on this document, these countries were to commit themselves to observe certain principles and to promote a number of common objectives regarding the Republic of Moldova, including the observance and guarantee of neutrality of the Republic of Moldova. The main purpose of this initiative was to create favourable external conditions to settle the Transnistrian conflict, but the discussions failed.

157. According to MFAEI, the international practice acknowledges different forms of neutrality of a states, each specifics being determined by the historical context and political interests. The recognition of neutrality internationally is not a mandatory requirement, but a political option which is promoted by a state when it corresponds to its interests.

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158. The President of the Republic of Moldova did not provide the Court with his opinion regarding this subject.

3. The appreciation of the Court

3.1. Fundamental principles

1) The Law of Neutrality

159. Neutrality is a complex concept in international law and in politics, which basically means that such a state does not participate in wars between other states.

160. The rights and obligations of belligerents and those of neutral states in times of an armed conflict are governed by the law of neutrality. The law of neutrality was transformed in the 19th century into a customary law and was codified in part in two conventions signed on October 18, 1907 at The Second Hague Peace Conference:

- The Fifth Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land;
- The Thirteenth Convention concerning the Rights and Duties of Neutral Powers in Naval War.

161. The law of neutrality confers a certain number of rights to a neutral state. For example, it prohibits any attack on the territory of the neutral state by belligerents, or the passage of any troops, munitions or provisions through its territory. The neutral state is also entitled to free movement of its economic goods and its nationals are free to trade on land and by sea with any other state, whether belligerent or not. On the other hand, the law of neutrality also imposes certain obligations on the neutral state. It is not permitted to play any direct part in armed conflicts or to assist belligerents by furnishing them with troops or arms. It is forbidden to place its territory at the disposal of belligerents for military purposes, whether to install operational bases, to move troops through it, or nowadays even to overfly it. The neutral state is obliged to ensure the inviolability of its territory with a suitably equipped army.

162. The law of neutrality does not impose any further conditions limiting the foreign policy of a neutral state, neither does it define the peacetime position of a permanently neutral state. In particular, traditional practice and doctrine have not prevented neutral states from collaborating with foreign military authorities to prepare joint defence measures. Similarly, a state that has proclaimed itself permanently neutral is under no obligation to extend its neutrality to the political, ideological or economic realms (see The White Paper on Neutrality, Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993).

163. The law of neutrality grants great freedom of action, and limits the political decision-making of the state only to a very small extent. Neutrality is not an institution that determines the overall conduct of foreign policy; rather, it is a status under public international law whose narrow essential content

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leaves great latitude for formulation of a foreign policy adapted to the needs of the moment and one which, in practice, has to be constantly developed to meet changes in the international political scene. The only unchanging principle inherent in neutrality is nonparticipation by a state in armed conflicts between other states.

164. The rights of a neutral state may be summarised as follows:

- **The right to independence, sovereignty and territorial integrity**, which are ensured through suitable means in accordance with the principles applied by international community.
- **A permanently neutral state enjoys the rights that follow from its international personality (the right to be a party in treaties, to participate in international conferences).**
- **The neutral state is entitled to protect its nationals on the territory of belligerent states.**
- **The neutral state has the right to the observance of its goods.**
- **A permanently neutral state will actively support the efforts of international community in the field of disarmament, confidence building, and interstate cooperation.** In this regard, the neutral states are entitled to participate in the activities of international organisations to ensure collective security of states. Therefore, a state with permanent neutrality is entitled to become a party of defensive alliances, when it is under attack. The participation of neutral states in such alliances under certain conditions, may become a guarantee of their security and territorial inviolability. At the same time, a permanently neutral state is not entitled to become a member of an international organisation with goals and principles which are in breach of its status.
- **The right to legitimate defence** (individual and collective) against an armed attack directed to the sovereignty and territorial integrity of the state.
- **A neutral state is entitled to take part in peacekeeping operations conducted by international organisations.** The practice shows that the neutral states participate actively in such types of operations.

2) Neutrality as an instrument adapted to defend national interests

165. Historically, neutrality has never been a rigid, fixed and unchanging institution, neither in its content, nor in its duration. On the contrary, the states have adapted neutrality to international requirements and their own interests. The periods of active involvement in foreign policy of the states alternate with more reserved periods of involvement in their foreign policy.

166. Neutrality describes the position of a state in a war involving other states. Neutrality is thus defined in relation to tensions and military conflicts, *i.e.* in relation to basic forms of insecurity. It is essentially in this context that it has a function as a foreign and security policy maxim. Such a status is appropriate when antagonistic states or blocs oppose each other and the country in question fears the outbreak of military conflicts in which it may become involved and have to defend itself on its own.

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167. Neutrality should continue as a foreign and security policy instrument, as long as it remains more appropriate than other instruments to safeguard national interests.

3) Neutrality and security

168. In view of the number of interdependent challenges of the final decade of the 20th century and beginning of the 21st century, neutrality cannot be understood as a position of passivity and isolation. Solidarity has always been a determining maxim in the current collective security system, because in many fields, the individual interests of the states can be achieved only through the availability to share international responsibilities and to participate in solving international issues and to take part in international decision-making. The interests of the states can be satisfied only through global solidarity, cooperation and participation at regional and global level.

169. With the end of the Cold War, different types of dangers have come to the fore, some unexpected, some forgotten: regional conflicts within East European countries sparked by nationalism, minority problems, secessionist aspirations or border disputes, wars raging outside Europe with implications for our continent, coercion with weapons of mass destruction or equally effective conventional weapons, terrorism, mass migration and waves of refugees, destruction of the environment, and disasters.

170. Since joint efforts are necessary to combat these threats, these cannot be addressed through national measures, but only through international cooperation, especially through joint actions at European level. Such defence requires a multinational approach.

171. The same is valid for the creation of efficient preventive instruments and restriction of regional conflicts that threaten European stability and security.

172. If neutrality meant prohibition of cooperation with other states in the field of security policy, it would have represented a dangerous obstacle for international measures that refer to the elimination of these threats.

173. Any country that does not participate in international security cooperation, it risks to be isolated. Such a country would not be a respected and equal partner in Europe. In case of a threat, it might not be able to rely on solidarity and support from its partners and it would become particularly vulnerable to certain dangers.

174. The law of neutrality, developed from the beginning of the past century, refers to the behaviour of neutral states **in case of war** and does not mention preventive defence measures **during peace**. Insofar as the arms have evolved at the end of last century, and we cannot ensure our defence except through **cooperation with other countries** in certain fields, this cooperation (provided it does not exceed certain limits) shall be considered **compatible with the spirit of neutrality**. This applies even more, given a **neutral state is not only entitled, but also obliged to take military precaution measures**

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that can be requested reasonably to be able to defend efficiently against possible attacks.

3.2. The practice of other states

175. As a political option, some states have declared, by different internal documents, their *status of permanent neutrality*.

Switzerland. The status has been established since 1815 by the Act on the Neutrality of Switzerland, reconfirmed by Art.435 of the Versailles Treaty.

Luxemburg. Its neutrality ceased to be guaranteed by the Versailles Treaty, but was unilaterally maintained until the Luxemburg territory was invaded by Germany in 1940.

Austria. Austria declared permanent neutrality to force the withdrawal of occupation troops in an internal law in 1954, which entered into force on 5 November 1955, after the State Treaty between Austria and 4 great powers (England, France, the USSR and the USA) was signed on 5 May 1955 and joined the UN in the same year.

Malta. Declared unilaterally its permanent neutrality, and the European states took note of this declaration in the Concluding Document of Madrid Meeting in 1983 of the Conference on Security and Cooperation in Europe.

Laos. Its permanent neutrality was established by the Government Declaration of 9 July 1962 and by the Declaration on the Neutrality of Laos of 23 July 1962, Geneva.

Cambodia. The neutrality of Cambodia was established by a constitutional law on 12 January 1957, defined by the Prince Norodom Sihanouk as an expression of international policy. According to the principle of neutrality, Cambodia was not to undertake any aggression against a foreign state, but if it becomes a victim of an attack, it reserves the right to defend itself, to call upon the United Nations, as its member, or to a greater power with which it is in good relations.

A separated case is *Turkmenistan*, a new state that emerged as a result of the USSR disintegration. It decided in an internal law that it will have permanent neutrality, which was recognised by the General Assembly in 1995 and asked the UN member states to respect and support it.

176. In order to be effectively enforceable internationally, some states obtained the recognition through multilateral acts and international guarantees of neutrality (Austria and Laos cases).

3.3. The application of the abovementioned principles in this case

177. Neutrality refers to foreign policy and security of the State. The neutrality of the Republic of Moldova is closely related to its historical background; the military occupation of its Eastern area was a determinant factor in proclaiming its neutrality in the Constitution. From a historical and constitutional point of view, neutrality has never been a goal in itself, but rather an instrument among many others that would allow the Republic of Moldova

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to meet its true objectives, among which the withdrawal of foreign troops from its territory, consolidation of its independence and restoration of its territorial integrity.

178. According to Article 11 of the Constitution, there are two distinctive characteristics of the permanent neutrality instrument of the Republic of Moldova. First, permanent neutrality means that the Republic of Moldova commits itself to stay neutral in any present or future conflict, irrespective of the identity of the belligerents, location and its onset. Second, the neutrality of the Republic of Moldova means that the Republic of Moldova does not admit the stationing of foreign military troops on its territory. This, however, does not impede the Republic of Moldova to make use of all its means to defend itself militarily against any aggressor and to prevent any act that is incompatible with its neutrality, which may be committed by the belligerents on its territory.

179. The Republic of Moldova included the status of neutrality in the Constitution without requesting its confirmation by the UN. Actually, no state has recognised the neutrality of the Republic of Moldova and there are no international guarantees of this status (as in the case of Austria). The military occupation of a part of the territory of the Republic of Moldova when the neutrality was declared, as well as lack of international recognition and guarantees of this status, **do not affect the validity of constitutional provisions on neutrality.**

180. Article 11 of the Constitution stipulates that the “Republic of Moldova proclaims its permanent neutrality”. Although the second paragraph of the article specifies that the “Republic of Moldova does not admit the stationing of any foreign military troops on its territory”, since the Soviet occupation of the present territory of the Republic of Moldova (1944-1991) until now, in the Eastern part of the country there are still stationed occupation troops of the Russian Federation. Practically, the Soviet/Russian occupation has never stopped in the Eastern part of the country, although the independence of the Republic of Moldova has been proclaimed. The Russian Federation has recognised it, but withdrew its army only from the western part of the Moldovan territory (11% of the territory of the Republic of Moldova is still under occupation).

181. Hence, the fact that the Russian Federation did not withdraw its occupation troops from the Eastern region of the country, but on the contrary, has consolidated its military presence in the Transnistrian region of the Republic of Moldova, this constitutes a **violation of constitutional provisions regarding the independence, sovereignty, territorial integrity and permanent neutrality of the Republic of Moldova, as well as of international law.**

182. Neutrality and independence are interdependent: the independence is both what neutrality seeks to protect and, given the state has to make decisions freely, it is a *sine qua non* condition of neutrality. To show credibility, a permanently neutral state has to prove a sufficient degree of real independence from other states. Only then will it be able to resist pressures during crisis and meet its obligations as neutral state.

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183. The Court notes that inasmuch the Republic of Moldova remains under military occupation, the more relative are rendered its independence and autonomy, which are required by the status of neutrality.

184. The law of neutrality does not impose additional conditions that would limit the foreign policy of a neutral state nor it **defines the position during peace** of a permanently neutral state. The only unchanging principle of neutrality is the non-participation of a state in armed conflicts between other states.

185. The Court notes that the purpose of every security policy should be the security at four levels: individual (citizens), collective (associations of interest), national (State) and international (foreign environment). It implies a continuous adjustment of the national security system to the foreign and domestic environment in order to face the new challenges and security issues at all five levels: political, military, economic, ecological and social, including: individual, cultural, energy, food, informational, communications, telecommunications, resources, etc.

186. The security of the Republic of Moldova should be ensured considering the geopolitical factors that exercise their influence in the South-Eastern European region and directly on the State.

187. Ensuring security and national defence means that the national interest may not be sacrificed in favour of another state, group of states or international organisations and in case of attacks against the components of its security, the State may keep them, including with the support of national and international armed forces.

188. The Court notes that the **Constitution is not a suicide pact**. Hence, if there is **any threat against fundamental constitutional values, such as national independence, the territorial integrity or the security of the state, the authorities of the Republic of Moldova are under the obligation to take all the necessary measures, including military to defend itself efficiently**.

189. Moreover, under the conditions of more and more obvious independent limited capacities of defence, an increased international cooperation, both bilateral and multilateral, is imperative.

190. It is obvious that neutrality does not constitute an obstacle in the defence policy of the Republic of Moldova. A too narrow interpretation, limiting very much the defence possibilities, would be a handicap for our country and its citizens. The purpose of neutrality is to enhance the security of the country and not to limit its defence capacity.

191. If the Republic of Moldova is not capable to defend itself against threats, it should adapt its current security and defence policy to the new circumstances.

192. Moreover, neutrality cannot be applied to the aggressor, as **the state cannot abstain when it is aggressed**. Neutrality creates special rights and obligations, which as a rule, do not exist during peace times and which end with the conclusion of hostilities or when the war starts between a neutral state and one of the belligerents. The neutral state **enjoys the right to legitimate**

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defence (individual and collective) against an armed attack targeting the sovereignty and territorial integrity of the state.

193. Along the same line, article 51 of the Charter of the United Nations provides the following: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security’.

194. The Constitutional Court notes that the provisions of the Constitution imply that the independence and security of the State may be ensured, including with the use of armed forces, both nationally and internationally. According to the Constitution (provisions of Article 8), while considering the limits and interdictions enshrined in the Fundamental Law, the international treaties of the Republic of Moldova and laws adopted to implement these treaties may provide for different measures in order to ensure the independence and security of the state internationally, *inter alia*, measures of collective international defence and/or other joint measures, peacekeeping and international security measures, other international military cooperation measures, with constitutionally clear and reasoned bases, goals and character.

195. One of the commitments of the Republic of Moldova in ensuring the security of the state and its independence was assumed by accession to the United Nations. In this context, the UN asks its members to ‘take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace’ (para.1, Art. 1 of the UN Charter). Also, no UN member may shirk its obligations under this Charter, except for cases when it is exempted by the Security Council. Article 2 of the UN Charter provides that ‘all Members [...] shall fulfil in good faith the obligations assumed by them in accordance with the present Charter’, and Article 25 stipulates the commitment of the Members of the United Nations to agree to accept and carry out the decisions of the Security Council in accordance with the present Charter, because the Security Council is conferred the primary responsibility for the maintenance of international peace and security (Art. 24).

196. In accordance with the provisions of Articles 41 and 42 of the Charter, the Member States of the United Nations, by decision of the Security Council, shall participate in non-military and military sanctions. The State shall authorise on its territory the actions decided by the Security Council based on Chapter VII of the Charter, including the rights of passage that shall be provided by the State to implement the sanctions against the aggressor (art. 43 of the Charter). These cannot be considered war actions in the meaning of international law, but are police actions towards the states that are guilty of

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violating the international law and hence, are not covered by the law of neutrality, being considered compatible with a collective security system.

197. Also, in accordance with Article 51 of the Charter, member states of the UN may assist the victim of aggression by informing the Security Council on the undertaken measures.

198. The main task of the security policy of a state is to eliminate structural causes of potential violent conflicts. The specific instruments to avoid conflicts include among others: preventive diplomacy, early detection and timely actions, peaceful conflict settlement, but also the threat of imposing sanctions, disarmament and building military confidence. Crisis management and conflict prevention may take place within the European Union, NATO and OSCE partnerships.

199. Modern neutrality does not exclude cooperation with military alliance members to consolidate the defence capacity of the Republic of Moldova, as long as they can agree on the key issues. In this partnership context, the peacekeeping operations are perfectly consistent with neutrality. Neutral states, such as Austria, participate actively in the EU crisis management tasks, in accordance with the Lisbon Treaty. Also, Austria cooperates closely with NATO in important and necessary fields, such as crisis management, humanitarian or peacekeeping operations.

200. Similarly, the new National Security Strategy of the Republic of Moldova approved by the Parliament on 15 July 2011 provides that in the context of security of the Republic of Moldova, an important role resides with the participation in global, regional and sub-regional efforts of promoting stability and international security through cooperation within the UN, OSCE, NATO and other international organisations, as well as participation in missions of The Common Security and Defence Policy of the EU (CSDP).

201. The Strategy provides that the national security of the Republic of Moldova may not be conceived outside the European security context and that within the integration efforts, a special attention should be paid to enhance cooperation with the EU within CFSP and CSDP, directed towards the consolidation of national and regional security.

II. INTERDICTION ON THE STATIONING OF MILITARY TROOPS OF OTHER STATES

202. The provisions of Article 11 of the Constitution, according to which no foreign military bases can be stationed on the territory of the Republic of Moldova, *inter alia*, means that no military bases managed and controlled by foreign states can be located on the territory of the Republic of Moldova.

203. The adequate implementation of imperatives that result from territorial integrity and state security is a constitutional priority of foreign and security policy of the Republic of Moldova. Furthermore, this is applicable to the need to apply the European standards on human rights and freedoms, the duty to ensure the development of national defence system in accordance with the needs of the defence system, including the collective one and also to ensure corresponding defence expenditures for such a development. The identification

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of maximum and indispensable security guarantees and the insurance of constitutional democratic order, although not mentioned directly in the Constitution, bear an intrinsic 'constitutional value'. Without such an imperative, obviously, the Constitution as a public pact would be deprived of value, and the state would not be considered a common good for the entire society. Therefore, ensuring the security imperative, independence and constitutional democratic order is also a constitutional value.

204. Article 11 of the Constitution should be seen as an instrument of protection, not as an obstacle in protecting the independence, democracy and other constitutional values of the Republic of Moldova.

III. PARTICIPATION IN COLLECTIVE SECURITY SYSTEMS

205. The neutrality of the Republic of Moldova – an example of compatibility of neutrality with the universal collective security system – contains data on the participation of armed contingents of the Republic of Moldova in operations conducted under the UN to maintain the peace and security in 'hot areas'.

206. Therefore, the Court considers that along with the examples provided in cases of Austria and Switzerland, the Republic of Moldova, a permanently neutral state, is not neutral in issues related to world peace, contributing effectively to the enhancement of international security.

207. Participation to a collective security system, which like the UN security system would impose collective sanctions against aggressors and international law offenders, is not in contradiction with neutrality status. The extent to which one security system or another or an alliance are contrary to neutrality status should be estimated on a case-by-case basis, and there is no generally applicable interdiction. The decision shall be based mainly on the answer to the question as to whether participation to a regional defence system is to protect the country and its population more efficiently than non-participation.

Based on these reasons, in accordance with Articles 140 of the Constitution, 26, 28 and 28¹ of the Law on the Constitutional Court and 6, 61, 62 let. b), 68 and 75 of the Code of Constitutional Jurisdiction, the Constitutional Court unanimously,

D E C I D E S:

1. In the meaning of Article 11 of the Constitution corroborated with Article 1 para.(1), Article 3 and Article 8 of the Constitution:

- the military occupation of a part of the territory of the Republic of Moldova at the moment of declaring neutrality, as well as the lack of international recognition and guarantees of this status, **do not affect the validity of constitutional provisions on neutrality;**

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- in the event of **any threats to constitutional fundamental values, as well as national independence, territorial integrity or state security, the authorities of the Republic of Moldova are obliged to take all necessary measures, including military that would allow it to efficiently defend against these threats;**
 - stationing of any military troops or bases on the territory of the Republic of Moldova, *managed and controlled by foreign states*, is unconstitutional;
 - the participation of the Republic of Moldova in collective security systems, such as the United Nations security system, peacekeeping operations, humanitarian operations, etc., which would impose collective sanctions against aggressors and international law offenders, is not in contradiction with the neutrality status.
2. This decision is final, cannot be subject to any appeal and enters into force on the date of adoption. It shall be published in the Official Journal of the Republic of Moldova.

President

Alexandru TĂNASE

Chişinu, 2 May 2017
JCC No. 14
Complaint No. 37b/2014