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**President of the Constitutional Court of the Republic of Lithuania**

**WELCOMING SPEECH**  
**IN THE CEREMONY OF CELEBRATING THE 23<sup>RD</sup> ANNIVERSARY OF**  
**THE CONSTITUTION OF MOLDOVA**

**28 July 2017, Chisinau, Moldova**

Already 23 years passed from the adoption of the Constitution of the Republic of Moldova on 27 July 1994. I am pleased to note that the Constitution of Moldova belongs to the same wave of European constitutionalism as the Constitution of my country, Lithuania, which had been adopted two years before, on 25 October 1992 (this year, we will celebrate the 25<sup>th</sup> anniversary of our Constitution). It is no surprise that our constitutions have much in common. Most importantly, they are built upon the values proclaimed in the declarations of independence (or restoration of independence) of our states, which, due to similar history and similar challenges, have been similarly interpreted by our respective constitutional courts. As the supreme law, the Constitution comprises the principles and values that ensure the development of the country in a democratic way.<sup>1</sup>

I would underline a few most important values that form our national and common European constitutional identity. First, the Constitution is a means to ensure and defend our freedom and independence, i.e. the very cause of existence of our nations. Freedom supposes the free choice of our own destiny, without an external force and pressure, and, most importantly, without the dictate of those who still mourn the failure of the Soviet Union, deny our right to independent existence and consider our statehood to be an accidental phenomenon, who still claim to control our people and our land. Therefore, the very fact of uninterrupted existence of our constitutions

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<sup>1</sup> Report of the Constitutional Court of the Republic of Moldova to the XVII Congress of the Conference of European Constitutional Courts, <[http://www.confconstco.org/reports/rep-xvii/moldova\\_EN.pdf](http://www.confconstco.org/reports/rep-xvii/moldova_EN.pdf)> [accessed 12.07.2017].

and stable constitutional order for more than two decades is one of the best proofs of the irreversibility of our aspirations for freedom and sustainability of centuries-old traditions of our national statehood.

In this respect, one can note that, due to similar history of foreign occupation, we have emphasised a specific aspect of freedom in our constitutions. That is the freedom from foreign occupation forces, i.e. the constitutional outlawing of any foreign military troops deployed to the country without its consent.

Freedom certainly also means a personal freedom, the recognition in our constitutions of human dignity, rights and freedoms, and free development of human personality as the supreme values<sup>2</sup>. Again, in both our countries, the Constitution is an instrument for defending inherent human rights in accordance with not less favourable standards than those provided by the Universal Declaration of Human Rights and other universally recognised norms of international law.

Secondly, the notions of freedom and independence in both of our constitutions are inseparable from that of democracy. The Constitution creates a democratic political system in which the people themselves must work together to find how the emerging problems should be solved.<sup>3</sup>

Democracy implies not only a means to realise the sovereignty of our people, but it also includes an aspect of representation of interests of all the people concerned and excludes the so-called demo-dictatorship (*democratura* – the dictatorship of majority). In the Constitution of Moldova, there is an explicit requirement to exercise democracy under the conditions of political pluralism<sup>4</sup>. No doubt, this implies the requirement to have such an electoral system that would ensure fair and balanced representation of the people not distorting the proportions between sympathies of the

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<sup>2</sup>Art. 1 para. (3) of the Constitution of Moldova, <[http://www.constcourt.md/public/files/file/Baza%20legala/Constitutia\\_engl\\_25.11.16.pdf](http://www.constcourt.md/public/files/file/Baza%20legala/Constitutia_engl_25.11.16.pdf)> [accessed 12.07.2017].

<sup>3</sup>Bryer, S., *Making Our Democracy Work*: Alfred Knopf, 2010, p. 136, in Butvilavičius, D., *Amendments to the Constitution* (Summary of the Doctoral Dissertation), Social Sciences, Law (01 S), Vilnius, 2013, p. 8.

<sup>4</sup>Art. 5 of the Constitution of Moldova, <[http://www.constcourt.md/public/files/file/Baza%20legala/Constitutia\\_engl\\_25.11.16.pdf](http://www.constcourt.md/public/files/file/Baza%20legala/Constitutia_engl_25.11.16.pdf)> [accessed 12.07.2017].

society towards various political forces. Political pluralism in an open civic society also excludes corruption and oligarchic management system.

According to both of our constitutions, democracy must be capable of defending itself against those who aim to destroy the very fundamentals of a pluralistic democracy and human rights. This means rejection of dictatorship and totalitarianism, including the ideologies of the former Soviet and Nazi occupation regimes, as well as incompatibility with the Constitution of the authoritarian aspirations and ambitions.

Thirdly, the provided understanding of freedom, independence and democracy naturally leads us to one more important element of our constitutional identity, that is the European geopolitical orientation<sup>5</sup> (as confirmed by both our constitutional courts, in particular by the Moldovan Constitutional Court in the case regarding the EU Association Agreement). It implies aspirations for the fully fledged membership in the European Union and the corresponding commitments. It is only logical that any other adverse geopolitical orientation would be incompatible with the Constitution<sup>6</sup>, in particular with its fundamental values – freedom, independence and democracy. Therefore, according to both of our constitutions, the activities aimed at the integration to the post-Soviet organisations based on dependency to the former USSR (which have less in common with freedom and democracy) or at closer association with the aggressor state are to be regarded unconstitutional in themselves and, moreover, contrary to our independence acts.

Ladies and gentlemen, let me stress that the implementation of the Constitution, in particular the realisation of aspirations for freedom, independence, democracy and European integration, cannot be achieved without real and sincere commitments of all

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<sup>5</sup> The Constitutional Court's judgment of 9 October 2014, <<http://www.constcourt.md/libview.php?l=en&idc=7&id=583&t=/Overview/Press-Service/News/The-Association-Agreement-between-the-Republic-of-Moldova-and-the-European-Union-constitutional>> [accessed 12.07.2017]).

<sup>6</sup> Dainius Žalimas: "The Constitutional Court of Moldova is one of the most advanced, stable, and efficiently functioning state institutions of Moldova", an interview with Dainius Žalimas, President of the Constitutional Court of the Republic of Lithuania, <<http://www.timpul.md/en/articol/Dainius-%C5%BDalimas-Constitutional-Court-of-Moldova-is-one-of-the-most-advanced-stable-and-efficiently-functioning-state-institutions-of-Moldova-93548.html>> [accessed 12.07.2017] (The Constitutional Court's judgment of 9 October 2014 <<http://www.constcourt.md/libview.php?l=en&idc=7&id=583&t=/Overview/Press-Service/News/The-Association-Agreement-between-the-Republic-of-Moldova-and-the-European-Union-constitutional>> [accessed 12.07.2017]).

of us to the rule of law and the supremacy of the Constitution. It requires us to live in accordance with the Constitution and its system of values rather than seeking to change the disliked provisions or challenging the interpretation of the Constitution by the Constitutional Court for reasons of short-term political benefit.

Here I would like to emphasise the role of the Constitutional Court in ensuring the supremacy of the Constitution and, at the same time, the stability of the Constitution<sup>7</sup>, which rests on preserving the basic constitutional principles and is a great (if not the most important) constitutional value. On the other hand, it is the Constitutional Court that ensures the functioning of the “living” Constitution and its viability, i.e. by its interpretation, the Constitutional Court guarantees sufficient flexibility of the Constitution in the context of modern challenges to the rule of law.<sup>8</sup> Provided its independence is strictly observed, the Constitutional Court is capable of revealing all the potential of the Constitution as a means to defend the state and its core democratic values<sup>9</sup> (e.g., one should be proud of the Constitutional Court of Moldova that has identified the constitutional identity of Moldova as the European State, proclaimed about the illegal occupation of a part of the Moldovan territory, and increased the level of human rights protection by disclosing the exception of unconstitutionality clause). Therefore, as paradoxical it may sound, due to the activities of the Constitutional Court, advancing in age, the Constitution of Moldova “gets younger” by adapting itself to the constantly changing realities of social and international life.<sup>10</sup>

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<sup>7</sup> In the judgment of 3 November 1999. It is mentioned in the judgement of 4 March 2016 of the Constitutional Court of Moldova on the review of the constitutionality of certain provisions of the Law amending the Constitution of the Republic of Moldova (the manner of electing the President), <<http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=558&l=en>> [accessed 12.07.2017].

<sup>8</sup> Žalimas, D., “Viability of the Constitution and the Role of the Constitutional Court”, Round Table “Theoretical and Practical Problems of Constitutional Justice in Ukraine”, Lviv, 16 May 2015, <<http://www.lrkt.lt/data/public/uploads/2015/10/viability-of-theconstitution-lvivroundtable.pdf>> [accessed 12.07.2017].

<sup>9</sup> Dainius Žalimas, President of the Constitutional Court of Lithuania: “The Constitution is not a suicidal covenant, it is rather a means to defend the state”, 04.05.2015, <<http://www.constcourt.md/libview.php?l=en&id=626&idc=7&t=/Overview/Press-Service/News/Dainius-Zalimas-President-of-the-Constitutional-Court-of-Lithuania-Constitution-is-not-a-suicidal-covenant-it-is-rather-a-means-to-defend-the-state/>> [accessed 12.07.2017].

<sup>10</sup> Butvilavičius, D., *Amendments to the Constitution* (Summary of the Doctoral Dissertation), Social Sciences, Law (01 S), Vilnius, 2013, p. 213.

Before finishing, I would like to quote one phrase by President of Lithuania Kazys Grinius, which may be considered a precept of every true democrat and has never lost its relevance since 1926 when it was pronounced, namely: “Do not bend the Constitution to yourself, but bend yourself to the Constitution”. Our experience has more than clearly demonstrated that the failure to comply with this maxim and to find solutions based on the Constitution can bring tragic consequences, even the loss of statehood; it also shows how important it is to stop those who betray the state by attempting to subject the Constitution to their political ambitions, as well as to prevent their unconstitutional activities from the very beginning.

Let me finish by congratulating you once again with the 23<sup>rd</sup> anniversary of the Constitution, which is in itself a great achievement. Let me wish you and all of us courage, determination, and strength in defending and implementing the fundamental Constitutional values. Let me wish further success to the Constitutional Court of Moldova that proved to be one of the most European-minded and courageous institutions in the country. I believe that, once strictly observed, the existing Constitution will be able to serve many years ahead as the basis for further consolidation of freedom, independence, and democracy, as well as for the fulfilment of the European dream of Moldova.

<i>Trăiască Moldova!</i> <i>Трэяскэ Молдова!</i>	<i>Viva Moldova!</i>
<i>Trăiască Constituția!</i> <i>Трэяскэ Конституция!</i>	<i>Viva the Constitution!</i>