

Moldovan Constitutional Court on the Istanbul Convention Guidelines from the Venice Commission¹

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1. Introduction

The Republic of Moldova signed the Istanbul Convention² on 6 February 2017,³ which was followed by a process of aligning national legislation with the provisions of the treaty. The Istanbul Convention was approved by the Moldovan Parliament and ratified on 14 October 2021,⁴ but the ratification process was not unanimous. Of the 101 members of parliament, 54 members from the ruling Party of Action and Solidarity voted in favour of ratification. The electoral bloc of communists and socialists in parliament (BECS) did not participate in the vote.⁵ The ratification was further criticized by the Orthodox Church of the Republic of Moldova,⁶ which has a strong position in the country. In its appeal to the president, parliament and government, the Church expressed the opinion that the text of the Istanbul Convention ‘denies the reality of the existence of a man and a woman’, being considered a Trojan horse to introduce a ‘third sex’ and ‘gay marriages.’⁷

These debates and approaches should be viewed in a broad context. Thus, the Istanbul Convention has not been well received in all countries of the Council of Europe. Even in the case of the EU Member States, all of which signed the Convention, it was ratified by 22 (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain

¹ Presented at the *Global Summit on Constitutionalism*, organized by the Constitutional Studies Program at the University of Texas in Austin and the International Forum on the Future of Constitutionalism, held in Austin, Texas, 20–22 March 2025. See the official programme: *Global Summit on Constitutionalism*, University of Texas in Austin, 20–22 March 2025.

² Council of Europe, *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*, 2011, available at <https://www.coe.int/en/web/istanbul-convention>.

³ Council of Europe, *The process of ratification and implementation of the Istanbul Convention: good practices of the signatory states. Study developed within the project 'Awareness-raising activities on the Istanbul Convention in the Republic of Moldova'* (Council of Europe 2020), p.9, available at <https://rm.coe.int/prems-138920-rom-2573-procesul-de-ratificare-couv-texte-a4-web/1680a06544> (accessed on 21 August 2025).

⁴ See Press Release <https://parlament.md/ns-newsarticle-Moldova-a-ratificat-Convenia-de-la-Istanbul.nspx>.

⁵ See <https://iwpr.net/ro/global-voices/moldova-ratifica-convenia-de-la-istanbul-pe-fondul-dezinformarii-si-opozitiei>.

⁶ Radio Free Europe/Radio Liberty, *Moldovan lawmakers ratify Istanbul Convention despite opposition from church*, 14 October 2021, available at <https://www.rferl.org>.

⁷ See Venice Commission, *Amicus Curiae Opinion on the compatibility with international human rights standards of the decision of the Constitutional Court of the Republic of Moldova of 23 April 2021 on the temporary suspension from office of the President of the Constitutional Court* (Opinion No. 1065/2021, CDL-AD(2021)044, 14 December 2021) available at <https://www.venice.coe.int/webforms/documents/?opinion=1065&year=2021> (accessed on 22 August 2025), para.13–15.

and Sweden). Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and Slovakia have not ratified the Convention.⁸ The European Union (EU) signed the Convention on 13 June 2017,⁹ so the Member States that have not yet ratified the Convention will only be bound by the EU *acquis* implementing the Convention. Any other matters regulated by the Convention will remain within the competence of the Member States.¹⁰ Turkey withdrew from the Istanbul Convention on 1 July 2021.¹¹

At the heart of the debates and in opposition to this Convention is primarily the definition and use of the concept of 'gender' as distinct from biological sex, as well as concerns about the impact of this concept on traditional values, national identity and the role of the family.¹² Numerous voices, including those of religious leaders, political parties and segments of civil society, have argued that the introduction of the notion of gender would pave the way for the recognition of non-binary gender identities and would undermine traditional conceptions of family and gender roles, concerns that were also expressed in parliamentary debates in the Republic of Moldova.

The Council of Europe has been supporting Member States in the Istanbul Convention ratification process with awareness-raising programmes implemented in the case of the Republic of Moldova within the framework of the Council of Europe Action Plan for the Republic of Moldova 2017-2020 and funded with Action Plan-level funds.¹³ However, the ratification law was challenged before the Constitutional Court of Moldova (CCM), and the decision made in this case opens valuable perspectives for complex debates.

In this light, this study seeks to examine how constitutional justice operates when courts must navigate around sensitive societal issues, often compelled to act as the ultimate arbiters of deeply divisive questions. More specifically, the analysis will address: (i) the role and instruments available to constitutional judges when deciding on matters that are both socially sensitive and highly disputed, where powerful and opposing views confront one another and where courts, although unable to dictate societal acceptance or the pace of social change, can nevertheless act as educators and provide authoritative guidance; (ii) the contribution of the Venice Commission to the international 'dialogue' among constitutional courts, offering support, expertise and normative orientation, or serving as an instrument to exercise, in the words of Aleksandra Mężykowska and Anna Młynarska-Sobaczewska, the 'art of persuasion';¹⁴ and (iii) the broader impact of this interaction in shaping not only constitutional adjudication, but also legislative developments and, in certain contexts, political trajectories at national level.

⁸ European Parliament, 'EU accession to the Istanbul Convention' (Legislative Train, January 2024) available at <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention> (accessed on 22 August 2025).

⁹ European Commission, *The EU's accession to the Istanbul Convention*, Press Release IP/23/4679, 1 October 2023, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4679.

¹⁰ European Commission, *The EU's accession to the Istanbul Convention*, Press Release IP/23/4679, 1 October 2023, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4679.

¹¹ See Statement regarding Turkey's withdrawal from the Istanbul Convention, available at <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>.

¹² A. Krizsán, C. Roggeband, & M.C. Zeller (2024). 'Who is Afraid of the Istanbul Convention? Explaining Opposition to and Support for Gender Equality.' *Comparative Political Studies*. Advance online publication. <https://doi.org/10.1177/00104140241290205> < see also A. Gwiazda, & L. Minkova (2023). 'Gendered advocacy coalitions and the Istanbul Convention: a comparative analysis of Bulgaria and Poland.' *International Feminist Journal of Politics*, 26(1), 31–53. <https://doi.org/10.1080/14616742.2023.2214566>.

¹³ See *Procesul de ratificare și implementare a Convenției de la Istanbul: bunele practici ale statelor semnatare Studiu elaborat în cadrul proiectului 'Activități de sensibilizare asupra Convenției de la Istanbul în Republica Moldova'*, <https://rm.coe.int/prems-138920-rom-2573-procesul-de-ratificare-couv-texte-a4-web/1680a06544>.

¹⁴ A. Mężykowska & A. Młynarska-Sobaczewska (2020). *The art of persuasion: Venice Commission opinions and their impact on constitutional adjudication*. *Polish Yearbook of International Law*, 40, 201–224. <https://doi.org/10.7420/pyil2020c10>.

2. Facts of the case and request for an opinion of the Venice Commission

The CCM was notified on 19 October 2021 of a complaint filed by a group of deputies, requesting a constitutional review of Law No. 144/2021 on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.¹⁵

It was essentially argued that Article 3, item c) of the Convention, which defines the concept of gender, deviates significantly from the biological reality of gender and denies the inherent differences between men and women; this concept carries a strong ideological bias and is based on the notion people are born as neutral beings, able to determine their gender throughout their lives on the basis of social factors, education and self-determination. The authors also express concern about Article 14 of the Convention, which requires the inclusion of teaching materials related to gender equality and non-stereotypical gender roles in educational curricula at all levels. They argue that the rights of parents to educate their children take precedence and, therefore, authorities should not impose educational programmes that contradict the religious and philosophical beliefs of the parents. Articles 3(c) and 14(1) of the Convention infringe upon the rights of the parents to educate their children according to their own religious beliefs, as guaranteed by Articles 31 and 35 of the Constitution. Meanwhile, it was argued that Article 28 of the Convention jeopardizes the professional confidentiality of various occupations by turning professionals into State informants. Additionally, it was claimed that Article 42(1) of the Convention contradicts the Christian view of the family, which defines marriage as a union between a man and a woman. The belief is that this religious perspective could be seen as a tradition rooted in stereotypical behaviour.

On 27 October 2021, the Constitutional Court requested an opinion from the Venice Commission regarding the constitutional implications of Articles 3(c), 14, 28 and 42.¹⁶ This request came even though the Commission had already issued a detailed opinion on the same Convention (Armenia, 2019).¹⁷ This aspect is significant in itself, as the CCM was not merely seeking a reiteration of the Commission's prior views, but rather an assessment tailored to its own circumstances, which is capable of being organically integrated into its reasoning—an approach that reinforces the perception of the Venice Commission's opinions as persuasive instruments rather than binding determinations. It should be noted that, as a rule, the Venice Commission supports constitutional courts through the network of liaison officers¹⁸ appointed by the courts, in the sense that questions are circulated within this network about the legislation and practice. Likewise, the Commission has delivered several opinions on legislation relating to constitutional courts.¹⁹ Of even greater significance, however, is a direct request addressed by a constitutional court to the Commission, which constitutes a less common but particularly

¹⁵ <https://www.constcourt.md/ccdocview.php?tip=decizii&docid=1119&l=ro>.

¹⁶ Venice Commission, *Republic of Moldova – Amicus curiae brief for the Constitutional Court on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* (Opinion No 1065/2021, CDL-AD(2021)044, 14 December 2021) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)044-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)044-e) (accessed on 21 August 2025).

¹⁷ Venice Commission, *Armenia – Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* (CDL-AD(2019)018, 14 October 2019) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)018-e), accessed on 21 August 2025.

¹⁸ European Commission for Democracy through Law (Venice Commission), *Overview of Co-operation with Constitutional Courts – Functions of Liaison Officers*, CDL-JU(2009)004 (3 June 2009).

¹⁹ Venice Commission, *Overview of cooperation with constitutional courts* (brochure) paras 3–4 <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU%282005%29011-e> (accessed on 22 August 2025).

weighty instrument of direct dialogue.²⁰ From this perspective, it can be observed that the CCM has developed a consistent practice of resorting to the Commission in this manner (2014, 2017, 2022, 2023).²¹

In response to the request, the Venice Commission adopted *Amicus Curiae* Opinion No. 1065/2021 on 14 December 2021.²² In the introduction of the opinion, it recalled that it provided a detailed analysis on the same Convention in its Opinion for Armenia (para. 6). It also emphasized that the CCM is responsible for assessing the compatibility of the Convention with the Constitution of the Republic of Moldova (*being 'ultimately up to the Constitutional Court of the Republic of Moldova to decide whether there are any incompatibilities between the Istanbul Convention and the Constitution of the Republic of Moldova'*, see para. 8) and stated that its examination is '*mainly from the perspective of international human rights law*' (para. 7).

The conclusions reached on the main issues in this *amicus curiae* brief are as follows:

(i) *with respect to Article 3(c) of the Istanbul Convention (Gender)* – the objective of the gender understanding in Article 3(c) of the Istanbul Convention, is to eradicate violence perpetuated by the prevailing attitudes that women are inferior to men. This provision seems to be in line with Article 16 of the Constitution on Equality according to which '*all citizens of the Republic of Moldova shall be equal before the law ... regardless of sex*' and where the '*foremost duty of the State shall be the respect and protection of the human person*' and with Article 48 of the Constitution, which provides that the family is '*founded on a freely consented marriage between a husband and wife, on their full equality in rights*';

(ii) *with respect to Article 14 of the Istanbul Convention (Education)* – in terms of the non-stereotyped gender roles, the requirement of enhancing gendered understanding in education is in full compliance with international and European standards. The Republic of Moldova is already under the international obligation to protect women and girls, among others, against violence and to protect their physical and psychological integrity, *inter alia* by way of Articles 3 and 6, of the European Convention on Human Rights (ECHR) and Articles 7 and 17 of the International Covenant on Civil and Political Rights (ICCPR). The relevant provisions of Article 35 of the Constitution of the Republic of Moldova should be read in conjunction with, and interpreted in harmony with, Article 54, para. 2, of the Constitution allowing for restrictions

²⁰ For other examples in this regard see *Venice Commission, Amicus curiae brief on alternative (nonmilitary) service* (Opinion No. CDLAD(2025)006e), adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14–15 March 2025; Strasbourg, 18 March 2025) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2025\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2025)006-e) (accessed on 22 August 2025); *Venice Commission, Joint amicus curiae brief of the Venice Commission and the Directorate General of Democracy and Human Dignity (DGII) on international and European standards on the use of minority languages in public life and in judicial procedures* (Opinion No. CDLAD(2025)013e, adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14–15 March 2025; Strasbourg, 17 March 2025)) <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282025%29013-e> (accessed on 22 August 2025).

²¹ *Venice Commission, Amicus curiae brief for the Constitutional Court of Moldova on certain provisions of the Law on Professional Integrity Testing* (Opinion No 789/2014, CDL-AD(2014)039, 15 December 2014) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)039-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)039-e) (accessed on 21 August 2025); *Venice Commission, Republic of Moldova – Amicus curiae brief for the Constitutional Court on the criminal liability of judges* (Opinion No 880/2017, CDL-AD(2017)002, 13 March 2017) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)002-e) (accessed on 21 August 2025); *Venice Commission and OSCE/ODIHR, Republic of Moldova – Joint amicus curiae brief relating to the offence of illicit enrichment* (CDL-AD(2022)029, 24 October 2022) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)029-e) (accessed on 21 August 2025); *Venice Commission, Republic of Moldova – Amicus curiae brief on declaring a political party unconstitutional* (CDL-AD(2022)051, adopted 16–17 December 2022; publ. 19 December 2022) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)051](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)051) (accessed on 21 August 2025); *Venice Commission and OSCE/ODIHR, Republic of Moldova – Joint amicus curiae brief on the ineligibility of persons connected to political parties declared unconstitutional* (CDL-AD(2023)049, adopted 15–16 December 2023) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)049-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)049-e) (accessed on 21 August 2025).

²² Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)044-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)044-e) (accessed on 19 January 2025).

of certain rights and freedoms to the extent required for the protection of the rights, freedoms and dignity of other persons. Therefore, steps on the part of the government to include these issues and principles, 'where appropriate', in curricula as a 'core' of civilization and as a necessity to protect certain basic rights, should not be seen as violating Article 35 of the Constitution;

iii) *with respect to the confidentiality rules imposed by national law on certain professionals, which do not constitute an obstacle for reporting serious acts of violence* – accepting the treaty obligation to make professional reporting possible 'under appropriate conditions', which may also include the condition of prior consent of the alleged or potential victim, does not appear to be in violation of the freedom of conscience protected by Article 31, para. 1 of the Constitution of the Republic of Moldova. That provision qualifies the exercise of freedom of conscience by stating that its exercise should be in a spirit of tolerance and mutual respect. In addition, Article 24, para. 1 of the Constitution, which obliges the State to guarantee every individual the right to life and physical and mental integrity should also be taken into account when interpreting and delimiting Article 28 of the Istanbul Convention. This may lead to the harmonization of the interpretation and application of the two provisions so as to alleviate any possible conflict;

(iv) *with respect to Article 42 of the Istanbul Convention* (Unacceptable justifications for crimes, including crimes committed in the name of so-called 'honour') – this provision contains the obligation to ensure that, in criminal procedures regarding violence against women and domestic violence, culture, custom, religion, tradition or so-called 'honour' shall not be regarded as justification for such acts. Protecting women against 'honour crimes' seems to be in line with Article 16 of the Constitution of the Republic of Moldova, as well as with the obligations it has undertaken as a contracting party to international and regional human rights treaties. Violence against women and domestic violence should be categorized as serious crimes. Their prohibition according to European, if not universal, standards touch upon the general conscience of mankind. It can, therefore, be assumed that the drafters of the Constitution did not intend to define freedom of opinion, religion and conviction, and the right to education in such a way as to justify the commitment of acts that are generally considered to be serious crimes.²³

It can be noticed that, although the Venice Commission expressly emphasized that it could not substitute the CCM in assessing the compatibility of domestic legislation with the Constitution, it nevertheless referred to specific constitutional provisions and their interpretation in light of the Istanbul Convention, thereby offering reasoning that is capable of assisting the Court in developing its own constitutional analysis.

3. The CCM's decision: the construction of the reasoning and the type of solution

3.1. Analysis of the criticisms and the architecture of the reasoning

The Court's reasoning regarding the compatibility of the gender provisions of the Istanbul Convention with the Constitution will be analysed below in greater detail, given its particularly controversial nature, both in the Republic of Moldova and in other countries. The examination

²³ CDL-AD(2021)044-e, *Republic of Moldova – Amicus curiae Brief for the Constitutional Court on the constitutional Implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), adopted by the Venice Commission at its 129th Plenary Session (Venice online, 10-11 December 2021).*

of the remaining criticisms retains the same argumentative structure and reaches comparable conclusions.

Thus, when assessing the constitutionality of the contested provisions, the Court considered the object and purpose of the Convention, as well as the Explanatory Report as a complementary interpretative tool. In analysing the title and preamble, the Court observed that the Convention's aim is to combat violence against women and domestic violence. In the preamble, the drafters recognized that the *de jure* and *de facto* achievement of equality between women and men is a key element in preventing violence against women. The Court further noted that combating such violence from the perspective of gender equality is grounded in research showing that socially constructed roles and stereotypes considered appropriate for women and men reproduce harmful practices and contribute to the acceptance of violence against women (see §43 of the Explanatory Report). Article 2(1) of the Convention sets out its scope of application, covering all forms of violence against women, including domestic violence, which disproportionately affects women. The Court therefore concluded that the Convention's object and purpose is to eradicate violence against women, including domestic violence, by promoting gender equality.

The Court also addressed Article 3(c) of the Convention, which defines 'gender' as the socially constructed roles, behaviours, activities and attributes that a society considers appropriate for women and men. According to the Court, the drafters introduced this notion with a single purpose: to make states understand that violence against women and domestic violence are rooted in gender inequality and stereotypes. In this respect, §43 of the Explanatory Report stresses that measures to protect and support victims must consider the gendered nature of such violence, which arises from inequality, stereotypes, gender roles and discrimination against women. In this context, the Court referred to Article 6 of the Convention, which requires Parties to include a gender perspective in the implementation and evaluation of its provisions and to promote gender equality and the empowerment of women. Article 12(1) obliges States to adopt measures to promote changes in social and cultural patterns of behaviour of women and men to eradicate prejudices, customs, traditions and practices based on the idea of inferiority of women or stereotyped roles. Thus, these provisions aim to promote changes in mentality and attitudes to reduce gender-based violence. Similarly, Article 4(3) requires that the implementation of the Convention, especially measures to protect the rights of victims, is to be ensured without discrimination on such grounds as sex or gender identity. As for the claim that Article 3(c) denies natural differences between men and women and promotes the idea of a 'neutral human being', thereby affecting parental rights to educate their children according to religious beliefs, the Court noted that §43 of the Explanatory Report makes clear that the Convention does not seek to replace the terms 'woman' and 'man'.

The CCM further referred to the Venice Commission's Opinion No. 961 (14 October 2019) on the constitutional implications of the ratification of the Istanbul Convention, as well as to its *amicus curiae* for Moldova, Opinion No. 1065 (14 December 2021). Both emphasized that the Convention does not aim to 'eliminate differences' between women and men or to suggest that they are, or should be, 'the same'. Rather, it calls on States to reject the notion of women's inferiority. Prejudices, stereotypes, customs and traditions still favour men in many situations, while stereotyped gender roles contribute to assigning women an inferior status and legitimizing harmful practices and violence. These phenomena hinder women's ability to report violence and claim their rights. Consequently, the Court concluded that Article 3(c) of the Convention does not conflict with Article 31 of the Constitution (freedom of conscience), Article 35 (right

to education), or Article 48 (protection of the family). On the contrary, the notion of ‘gender’, as defined in the Convention, is consistent with, and may even reinforce, the protection of constitutional rights and values relating to the family as a ‘natural and fundamental element of society’. The Court underlined that, while Moldovan law defines marriage as being between a man and a woman, the Convention does not prescribe any alternative family model. Nor does it regulate family life or same-sex partnerships. It merely condemns forced marriage as a form of violence (see §§23, 25, 32, 67 of Opinion No. 961).

In the light of this analysis, the CCM found *‘that there is no causal link between the arguments of the applicants concerning the alleged denial of natural differences between men and women, and the alleged impairment of parental rights to educate their children in accordance with religious beliefs, on the one hand, and the purpose pursued by the notion of gender in Article 3(c) of the Convention, on the other’* and therefore declared this part of the complaint to be inadmissible.

In the same manner of argumentation, consistently relying on the Venice Commission’s opinions, the CCM rejected the other criticisms. It dismissed the claim that Article 14 undermines parental rights in education, stressing instead the flexibility afforded to States and the absence of any obligation to override parental preferences. The Court also observed that the obligation in Article 42(1) of the Convention does not interfere with the State’s duty to protect the family under Article 48, paras 1–2 of the Constitution. As noted by the Venice Commission, the Convention does not define or promote the family, relationships between partners, or same-sex relationships. It refers to marriage only in the context of forced marriage and does not oblige States to legalize same-sex marriage. Consequently, the Istanbul Convention does not conflict with national constitutions that define marriage as a union between a man and a woman (see §§67 and 71 of Opinion No. 961). The Court therefore concluded that this part of the complaint was also inadmissible.

Accordingly, the Court held that the referral did not meet the admissibility requirements and could not be examined on its merits.

3.2. Rejection of the referral as being inadmissible

In this case, not only does the structure of the reasoning deserve attention, but so does the solution adopted by the CCM, namely the rejection of the referral as being inadmissible.

The concept of inadmissibility is of particular relevance in constitutional adjudication. This subject has previously been addressed, for example, in relation to the practice of the Romanian Constitutional Court (CCR), in the context of judicial activism and judicial deference.²⁴ Generally, inadmissibility serves as a mechanism through which the CCR delineates its jurisdiction from that of other authorities, such as the legislature or the ordinary courts, broadly characterized as judicial deference.²⁵ It simultaneously cannot be denied that inadmissibility can occasionally operate as a form of judicial avoidance,²⁶ allowing constitutional judges to

²⁴ Tudorel Toader and Marieta Safta, *Ghid de admisibilitate la Curtea Constituțională a României* (2nd edn, Editura Hamangiu 2020).

²⁵ About judicial deference and pericolele ssale a se vedea Romyana van Ark and Tarik Gherbaoui, ‘Excessive Judicial Deference as Rule of Law Backsliding: When National Security and Effective Rights Protection Collide’ (2024) 20(3) *Utrecht Law Review* 26–41, DOI: 10.36633/ulr.1081 <https://utrechtlawreview.org/articles/10.36633/ulr.1081> (accessed on 22 August 2025).

²⁶ Jeanne M Dennis, *The Constitutional Avoidance Doctrine: Judicial Minimalism (Part 1 of 3)* (Legal Sidebar, Congressional Research Service Product LSB10720, 29 March 2022) <https://www.congress.gov/crs-product/LSB10720> (accessed on 22 August 2025).

refrain from involvement in politically or socially sensitive matters. However, unlike in Romania—where the grounds of inadmissibility are expressly established by law, typically covering situations that prevent the Constitutional Court from examining the merits of a case (further refined through jurisprudence)—in the Republic of Moldova, such grounds were, at that time, based on jurisprudence. In this respect, the CCM appears to have been guided by the case law of the European Court of Human Rights (ECtHR).

Thus, an analysis of the ECtHR's *Practical Guide on Admissibility Criteria* suggests that the solution adopted by the CCM corresponds to what may be termed 'inadmissibility on the merits,' the referral being rejected as 'manifestly ill-founded.' According to the Guide:

'Even where an application is compatible with the Convention and all the formal admissibility conditions have been met, the Court may nevertheless declare it inadmissible for reasons relating to the examination on the merits. By far the most common reason is that the application is considered to be manifestly ill-founded... In fact, any application will be considered "manifestly ill-founded" if a preliminary examination of its substance does not disclose any appearance of a violation of the rights guaranteed by the Convention, with the result that it can be declared inadmissible at the outset without proceeding to a formal examination on the merits... The fact that the Court, in order to conclude that an application is manifestly ill-founded, sometimes needs to invite observations from the parties and enter into lengthy and detailed reasoning in its decision does nothing to alter the "manifestly" ill-founded nature of the application.' (*Mentzen v. Latvia* (dec.), 2004).

The Guide further specifies:

'An applicant's complaint will also be declared manifestly ill-founded if, despite fulfilling all the formal conditions of admissibility, being compatible with the Convention and not constituting a fourth-instance complaint, it does not disclose any appearance of a violation of the rights guaranteed by the Convention. In such cases, the Court's approach will consist in examining the merits of the complaint, concluding that there is no appearance of a violation and declaring the complaint inadmissible without having to proceed further.'

Under the recently adopted legislation of the Republic of Moldova, this basis of inadmissibility is expressly regulated in Article 27(3)(f) of Law No. 74/2025 on the Constitutional Court: '(3) A referral shall be declared inadmissible where: (...) (f) it is manifestly ill-founded.' This legislative innovation seems to reflect a borrowing from the model of the ECtHR and strengthens judicial efficiency while maintaining the requirement of reasoned decisions. Nevertheless, critics caution that codified inadmissibility can restrict access to constitutional justice, since once a case has been rejected as being inadmissible, it cannot be reconsidered—even if circumstances subsequently change.²⁷

4. The role of judicial dialogue, responsibility and procedural creativity

The decision of the CCM and the way the Court chose to proceed in this case, exemplify the multifaceted role of constitutional adjudication in a transnational context. Three dimensions emerge as being central to understanding this approach: the function of judicial dialogue, the responsibility of constitutional judges and the importance of procedural creativity.

²⁷ Moldovan Constitutional Court's new inadmissibility ruling explained (Moldova1.md, 11 April 2025) <https://moldova1.md/p/47172/moldovan-constitutional-court-s-new-inadmissibility-ruling-explained> (accessed on 22 August 2025).

In terms of *judicial dialogue*, the interaction between the CCM and the Venice Commission exemplifies the constructive role of transnational constitutional dialogue. The Venice Commission's opinions played a pivotal role in supporting the CCM's reasoning. Key contributions include: i) *clarification of Gender Concepts* – the Commission's distinction between biological sex and socially constructed gender roles provided a nuanced framework for interpreting the Convention; ii) *respect for State Sovereignty* – by emphasizing the discretionary implementation of educational provisions, the Commission reinforced the principle of subsidiarity; iii) *alignment with European Standards* – the Commission's analysis situated Moldova's obligations within a broader European context, promoting uniformity in the application of human rights norms. The CCM drew upon these insights while anchoring its reasoning in the constitutional commitment to international law under Article 8 of the Moldovan Constitution '(1) *The Republic of Moldova pledges to observe the Charter of the United Nations Organization and the treaties to which it is a party, to institute relationships with other states on the basis of unanimously recognized principles and norms of international law. (2) The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter.*' By invoking the authority of the Venice Commission and the jurisprudence of the ECtHR, the Court positioned itself within a community of shared legal values. This judicial dialogue enhanced both the legitimacy of its decision and Moldova's integration into the European constitutional space. In this regard, the opinion was expressed that this could be seen as 'the CCM acting tactically to have on its side the opinion of an international institution presenting clear arguments to the opposition's anti-constitutional claims.'²⁸ In this light, the Moldovan case reaffirms the Venice Commission's pivotal role in shaping European constitutionalism and, more broadly, in strengthening constitutional justice across Europe and beyond.

Equally significant is *the responsibility* borne by constitutional judges to remain attentive to the evolving dynamics of the society in which they operate. 'Taking the pulse of society' does not imply deference to fluctuating majoritarian pressures. Rather, it requires the assurance that constitutional adjudication resonates with social realities while safeguarding enduring principles of equality, identity and minority rights. In sensitive areas, judges must balance the immediate protection of constitutional values with the long-term preservation of social cohesion and public trust. In this light, the CCM's cautious approach reflects a deliberate exercise of judicial responsibility. By situating its decision within a broader dialogue with European institutions, the Court strengthened the authority of its judgment while mitigating potential societal polarization.

Within this framework, the use of inadmissibility could be characterized as a nuanced expression of judicial responsibility. Before its express codification, the CCM employed this mechanism as a jurisprudential innovation, borrowing from ECtHR practice by rejecting referrals as 'manifestly ill-founded.' Far from being a mere strategy of avoidance, inadmissibility functioned as a filter that allowed the Court to defuse political tension, prevent further polarization, and yet still convey constitutional guidance. By doing so, the CCM preserved institutional legitimacy and reinforced the authority of its reasoning through reliance on the Venice Commission's expertise.

²⁸ Irina Criveț, *Moldova, Mic-Drop! A Long-Awaited Ratification of the Istanbul Convention*, IACL-AIDC Blog (12 May 2022) <https://blog-iacl-aidc.org/new-blog-3/2022/5/12/moldova-mic-drop-a-long-awaited-ratification-of-the-istanbul-convention> (accessed on 22 August 2025).

Nonetheless, it can be argued that the chosen path of inadmissibility, while effective in defusing political tensions, inevitably leaves certain substantive issues unresolved. In particular, the Court avoided an explicit engagement with the deeper societal debates on gender, family and education, thereby limiting its educative function as a constitutional actor. This restraint, although understandable in a polarized context, risks reinforcing ambiguity and leaving contested values to be further instrumentalized in the political arena. In this sense, the Moldovan case highlights not only the strengths but also the limitations of judicial dialogue: while it enhances legitimacy and mitigates conflict, it may also come at the cost of underdeveloped constitutional reasoning on sensitive matters. Yet, the Court's reliance on inadmissibility also reveals the inherent dilemmas of judicial minimalism. While procedural avoidance may shield courts from political backlash, it does not fully address the underlying societal disagreements that fuel constitutional disputes. In contexts where issues such as gender equality or family values are deeply contested, the absence of substantive engagement can limit the transformative and educational potential of constitutional adjudication. For constitutional justice to fulfil its broader mission as an educator of democratic values, future jurisprudence may need to go beyond conflict management and articulate more directly the constitutional principles at stake. The lessons drawn from this case are therefore twofold: judicial dialogue is necessary for legitimacy and stability, but its long-term impact depends equally on the court's willingness to address, rather than merely deflect, the fundamental questions posed by society.

5. Concluding Remarks

The Moldovan case illustrates that constitutional adjudication today extends beyond national boundaries. By engaging in judicial dialogue, exercising responsibility and employing procedural creativity, the CCM upheld constitutional principles while mitigating political conflict. Yet the decision also reveals the limits of restraint: dialogue can enhance legitimacy, but unresolved substantive questions may persist in the public arena.

At the same time, the case highlights the particular significance of Moldova's acceptance of the Istanbul Convention, which not only reinforces international obligations to combat gender-based violence, but also sets a standard for reshaping societal attitudes towards equality and non-discrimination. In this respect, constitutional adjudication assumes an educative function: by interpreting national provisions in harmony with international human rights standards, courts help guide social understanding of sensitive issues such as gender, family and education.

More broadly, the Moldovan experience emphasizes the importance of judicial dialogue in Europe's multi-layered system of rights protection,²⁹ where national, regional and international courts must work towards a convergent and upward development of fundamental rights.

²⁹ Michael C. Tolley, 'The Three Dimensions of Rights Protection in Europe's Multi-Layered System of Governance', in Giuliana Ziccardi Capaldo (ed.), *The Global Community Yearbook of International Law and Jurisprudence 2020* (New York, 2021; online edn, Oxford Academic, 17 February 2022), <https://doi.org/10.1093/oso/9780197618721.003.0020> (accessed on 22 Aug. 2025).

Abstrakt

Mołdawski Trybunał Konstytucyjny w sprawie wytycznych Komisji Weneckiej dotyczących Konwencji Sтамbulskiej

Republika Mołdawii ratyfikowała Konwencję Sтамbalską w 2021 r. Podobnie jak w innych krajach europejskich, ratyfikacja Konwencji nie obyła się bez zawirowań. W tym kontekście niniejszy artykuł odnosi się do skargi na niekonstytucyjność ustawy ratyfikacyjnej krytykującej niektóre postanowienia Konwencji uznane za sprzeczne z Konstytucją Republiki Mołdawii. Orzeczenie Sądu Konstytucyjnego Republiki Mołdawii (TKM) w sprawie tej skargi ma szczególne znaczenie zarówno ze względu na uwzględnione w nim zagadnienia merytoryczne, jak i sposób argumentacji oraz rodzaj przyjętego rozwiązania. Istotne jest to, że Sąd Konstytucyjny oparł się na wydanej przez Komisję Wenecką opinii *amicus curiae*, o którą wyraźnie zwrócono się w tej sprawie, a następnie podjął decyzję o rozstrzygnięciu sprawy, uznając skargę za niedopuszczalną, a nie przyjmując ją lub odrzucając ze względów merytorycznych. Artykuł uwzględnia ten kontekst i analizuje podejście Sądu Konstytucyjnego Republiki Mołdawii do zarządzania sprawami, rozstrzygania ich oraz uzasadniania swoich decyzji, a także omawia narzędzia, jakimi dysponują sędziowie konstytucyjni w razie pojawienia się kwestii społecznie drażliwych i spornych, jak również przedstawia ogólny wkład Komisji Weneckiej w rozwój europejskiego konstytucjonalizmu i konsolidację sprawiedliwości konstytucyjnej w Europie i poza nią.

Słowa kluczowe: Sąd Konstytucyjny Republiki Mołdawii, Konwencja Sтамbulska, Komisja Wenecka, definicja płci, sprawiedliwość konstytucyjna, niedopuszczalność

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