

JURIDICAL STUDY OF THE DOCUMENTS SIGNED IN THE COURSE OF THE NEGOTIATIONS PROCESS ON THE TRANSNISTRIAN CONFLICT SETTLEMENT

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1. COLLAPSE OF THE EMPIRE AND CREATION OF THE REPUBLIC OF MOLDOVA AS AN INDEPENDENT AND SOVEREIGN STATE

The Republic of Moldova's statehood is a widely discussed topic among experts in constitutional law, yet we have to specifically note the fact that today the Republic of Moldova is a reality, an independent and sovereign state that emerged on the world map as a result of collapse of the Soviet empire, which naturally justifies its emergence.

Resumption of the movement for the renaissance and national liberation in the Republic of Moldova was backed by the democratization policy, "perestroika", launched by Gorbachov in 1985. It has become an objective necessity to create a viable political alternative that would meet democratic and national aspirations of people in the new environment of the second half of the mid-1980s. This period has been marked by the opposition of the Communist Party of the Republic of Moldova to the demands of the majority of the Moldovan Soviet Socialist Republic's population, thus generating and continually supporting the national minorities' hostility by spreading rumours and slanders and straining the atmosphere in the society. The Union of Writers of Moldova has taken on the role of an initiator of this alternative.

At a meeting of the intelligentsia held on 3 June 1988 in the grand hall of the Union of Writers in Chisinau, there had been created an Initiative Group of the Democratic Movement supporting reforms, which in spite of some attempts to subordinate it to the Communist Party of Moldova (CPM), was set up as an alternative being in opposition to the CPM. It was then that a provocative rumour was lauched regarding an intention of the Democratic Movement to unite the MSSR with the Socialist Republic of Romania, although it was hard to imagine that such an event could take place in the Ceausescu regime, which likewise the Chisinau communist regime, kept a meaningful silence on the developments in the MSSR.

Those days the population of the MSSR was confronted with a tough opposition of the CPM. Thus, according to the writer Vladimir Besleaga, there were "only a very few tiny islets where national conscience still throbbled", most of the society being dominated by apathy and indifference towards the events that were taking place. In the light of these developments the main objective of the Initiative Group of the Democratic Movement was gaining the right to publish the drafts of the Movement's Programme and Charter, as well as the organisation of its territorial structures that would adequately advise public opinion on the real situation in the MSSR. Simultaneously and parallel to this activity, the Democratic Movement held meetings and demonstrations and conducted a campaign of gathering signatures in favour of giving an official status to the Romanian language and the return to the Latin alphabet, for achieving political and civil rights, for dismantling the command administrative system and for the decentralization of the economy.

On 20 May 1989 there was held a Congress on the foundation of the Popular Front of Moldova, whose objective at that stage, as it was mentioned in one of the documents adopted by the Congress, was not the assumption of political and state power in the country, but rather of the economic, social and cultural sovereignty of the MSSR, as an equal state within the USSR. Beyond the utopianism of the proposed objectives (vague formulations and unachievable objectives could have been understood only after a certain period of time) the paramount importance of this declaration lies in launching by the M.P.F. of the sovereignty issue. Next

steps, rather firm ones, towards national self-determination were done on 27 August 1989 when the Great National Assembly worked out its final document “On the state sovereignty and our right to future”, in which it formulated, already quite clearly, the demand to reestablished: the historic name of our people that belonged to it during centuries – its name of **Romanian**, and the name of its language – the **Romanian language**.

The process of self-determination of the Republic of Moldova began when on 31 August 1989 the Supreme Soviet of the M.S.S.R. of the 11th legislature adopted the Law on the status of the state language, which in its preamble stipulates the following: “In order to eliminate deformations in the linguistic system of the Moldovan S.S.R., to take under the state protection the Moldovan language – one of the pre-requisites of the Moldovan nation’s existence in the framework of its sovereign national-statehood structure, to ensure its functioning in all spheres on the territory of the M.S.S.R.”

Edification of the foundation of the state “Republic of Moldova” and that of a democratic society was fulfilled with an active participation of the population and had two rather distinctive phases. First – qualified as a confused, contradictory and short phase – began in 1990 with the first free elections that were an important step in the process of democratization of the society (though still Soviet) and of edification of the Moldovan state. In 5 years after the proclamation of the “perestroika” policy the last elections to the Supreme Soviet of the Moldovan S.S.R. were held. The Law on the elections of the people’s deputies of the M.S.S.R. of 23 November 1989 introduced new elements, impossible to imagine in the practice of previous elections in the USSR. Abandoning, under the people’s pressure, partially and rather declaratively the monopoly on the political life, the C.P.S.U. and its Chisinau subdivision – M.C.P. allowed the promotion of some alternative candidates. The Law granted the right to propose candidates to workers associations with at least 100 employees, public associations, associations of schoolchildren and students from secondary and higher education full-time institutions, associations of tenants with the condition of participation of at least 300 persons, as well as to military units. In accordance with the Law provisions, on the territory of the M.S.S.R. there have been set up 380 constituencies each being able to nominate one deputy, thus preserving the old system based on the uninominal majority representation.

At the beginning of the 90’s the social-political situation in the Moldavian S.S.R., an integral part of the Soviet Union, became unstable, fluctuating, showing some tendencies of disintegration of the totalitarian system structures. A decline of the communist party as a “leading” force began. There was felt the necessity for a new force able to lead the society. At all levels discussions stirred up on the possibility to create the necessary conditions that would ensure total independence of people’s deputies councils (Soviets) in solving all matters in the state: political, economic and social ones. With special persistence party and state institutions were demanded to express themselves in favor of decentralization of the command system, of the local self-administration and self-finance.

Incapacity of the leading Soviet and party forces to face the imperative demands of the time determined the emergence of new parties, social-political movements preoccupied by the national rebirth stance, democratization of the society, freedom, protection of human rights.

These extremely important factors greatly contributed to the continuous decline of the authority of the communist party as an alleged leading force and subsequently to its defeat at the elections to the republican Supreme Soviet in February-March 1990. With the defeat of the communist party in the elections the totalitarian regime got a coup de grace. New political forces came to the leadership of the republic who were firm to operate radical changes in the whole social-political and economic system of the society.

Though held in the framework of the old political system, without any foreign observers and lack of a consolidated pluralism, the 1990 elections had rather a half-free than a free nature. From the today’s perspective these elections can be perceived as a transitional elections procedure from the elections without any choice, strictly directed by the Communist Party, to really free elections.

The victory of the Popular Front in the elections and the removal from power of the communist party led to an even greater division of political forces of the republic. Clashes of opinion concentrated on the key problems of the society's development: attitude towards the totalitarian communist system, directions of development of the national economy, state sovereignty and independence, national rebirth, state language etc. Discussions were held on different levels and often under the pressure of certain forces.

In such conditions the first democratic elections to the supreme legislative body of the state – the Supreme Soviet of the Moldovan S.S.R. were held. These elections were held under new principles, based on the majority system. Though the elections were not held in conditions of a real political pluralism, yet the candidates had the possibility to participate on equal terms to the election campaign and were able to present their activity programs to the electorate.

As a result of the elections to the Supreme Soviet there were elected 367 deputies, the majority of them being proposed and supported by new political forces – the Popular Front of Moldova, the Movement for equality in rights “Unitate-Edinstvo”, as well as the Communist Party of Moldova. Thus, to the new supreme legislative body of the republic's representatives several political structures having different programs acceded.

The country's unstable situation, the tendencies of scission of the “Soviet monolith”, deepening of the process of democratization of all spheres of social life, the tensioning relations between the Center and the Union's republics, demanded from the new supreme representative body of the country to determine its position on some fundamental issues. Based on the domestic and foreign situation, the Supreme Soviet, in a quite short period of time, elaborated and adopted a number of laws and decisions that created the legal basis and outlined the main directions of the development of the new state – the Republic of Moldova.

Analyzing the activity of the Supreme Soviet of the M.S.S.R. of the 12th legislature we note that starting from April 1990 it was step-by-step oriented towards the declaration of independence on 27 August 1991.

Expressing the will of the people, the very first session of the Supreme Soviet confirmed the decision to return to the old statehood attributes of the Moldovan state and adopted the new State Flag, Tricolor – with blue, yellow and red stripes, as the official symbol of sovereignty. During the next sessions there were adopted a number of documents of a paramount importance for the edification and consolidation of the state.

Thus, another act that demonstrates the continuation of the process of self-determination is the Law No. 10-XII of 10 May 1990 on introduction of amendments to Articles 6, 7 and 49 of the Constitution (the Fundamental Law) of the Moldavian S.S.R., which annulled Article 6 that stipulated that the leading and the guiding force of the Soviet society, the nucleus of its political system, of state and public organizations was the Communist Party of the USSR. It was replaced by the provision: “Political parties, other public organizations and movements take part in the elaboration of the republic's policy, in conducting state and public affairs through their representatives elected to the Councils (Soviets) of people's deputies, as well as in other ways”. Through Articles 6 and 7 that legalized the activities of all political parties without the right to usurp power, as well as through Article 49 that guaranteed to citizens the right to free association in political parties, political pluralism was introduced as an inherent element of a democratic state.

Though the Republic of Moldova had not got yet the independence and had not been yet a subject of international law relations, on 31 May 1990 by its Resolution No. 63-XII the Parliament unconditionally recognized the independence of the Republic of Lithuania declared on 11 March 1990 and confirmed its willingness to establish diplomatic relations with this country.

Then followed the adoption by the Parliament on 23 June 1990 of the Declaration of Sovereignty of the Moldovan S.S.R. – a document of a historical importance having constitutional power that established the foundation of the future sovereign and independent statehood status of the Republic of Moldova.

On 23 June 1990, expressing the will of people the Supreme Soviet proclaimed the Moldavian Soviet Socialist Republic a sovereign state. By this act the basic principles of the constitutional process were realized, among them being the following: the source and bearer of sovereignty is the people, the integrity and indivisibility of the state, fundamental human rights, the citizenship of the Republic of Moldova, pluralism and multi-party system etc. The Declaration of Sovereignty would serve as a basis for the elaboration of the Constitution.

It is necessary to mention that at the moment of adoption of the Declaration, the Constitution of the Moldovan S.S.R. of 15.04.1978 was in force. Its Article 68 declared the M.S.S.R. a Soviet, socialist and sovereign state. Yet, this Constitution also declared the Moldavian S.S.R. an integral part of the USSR, thus enjoying a limited sovereignty. The Declaration of 23.06.1990 did not make any references to the Soviet Union, although the M.S.S.R. nominally was still part of the USSR, established that the Moldovan S.S.R. was a sovereign state and the source and bearer of sovereignty was only the people that exercised its sovereignty through the representative bodies.

The Moldavian S.S.R. was declared a unitary and indivisible state, whose frontiers could be changed only by mutual agreements between the M.S.S.R. and other sovereign states. Land, underground resources, waters, forests and other natural resources, as well as the whole economic, financial, technical-scientific potential, valuables of the national patrimony were declared an exclusive and unconditional property of the republic.

With a view to ensuring social-economic, political and juridical guarantees of the sovereignty there has been established the absolute power of the M.S.S.R. in the settlement of all problems, the supremacy of the Constitution and the M.S.S.R. laws on its whole territory. Laws and other normative acts of the Soviet Union could have effect on the territory of the republic only after their ratification by the Parliament and those in force that contravened the sovereignty principle have been abolished.

The declaration established the institution of citizenship of the M.S.S.R., thus abandoning the double nature of citizenship of the republic and a common citizenship of the USSR regulated by Article 31 of the old Constitution.

Also, a very important step was made by introducing the provision of Article 10 where for the first time was stipulated the division of powers into legislative, executive and judiciary as a basic principle of functioning of the M.S.S.R. as a sovereign and independent state.

Though paragraph 13 of the Declaration mentioned that it would serve as the M.S.S.R.'s position on the elaboration and conclusion of the All-Union Treaty in the framework of the Commonwealth of Sovereign States, the analysis of its principles allows us to draw the conclusion that the Declaration was the first serious step towards self-determination.

The Declaration of Sovereignty of the Republic of Moldova also deals with other two political aspects of the moment. First: the totalitarian regime became so fragile that the maintenance of the USSR hierarchic old-fashioned administrative and political system was simply unreal. The agony of the central structures of power began. The relations between the center and those 15 republics were becoming more and more strain. The year 1990 was rightly considered to be the year of the proclamation of sovereignty of the republics on the whole territory of the former Soviet Union.

The second aspect deals with demographic, ethnic and psychological factors that had to be taken into account. It is a well known fact that several generations of citizens were educated in the spirit of all-union statehood and perceived the existence of Moldova only within the USSR.

Another step towards self-determination was done by the Parliament on 27.07.1990 when the Decree on state power was adopted. Although in the Declaration of Sovereignty was stipulated that the whole power belonged to the people and the power was separated into the legislative, executive and judicial branches, the Decree was meant to define those principles. Thus, the Supreme Soviet (Parliament) was declared the supreme body of the legislative power and the only exponent of the will of the whole people. The judicial power was declared subordinated only to law and any interference into the exercise of justice to be unacceptable.

Executive bodies were declared responsible to the bodies of state power, being subordinated to those in the process of legislative acts fulfillment. The decree prohibited: combination of duties in state bodies and public administration with any other posts in state or co-operative society structures, in the political parties, in the system of party leadership or political leadership of any other nature, in state and law enforcement bodies, in state security bodies, in military units, in enterprises, institutions and organizations, the membership of judges and other public employees in political parties and social-political movements.

The significance of the Decree is seen in the further development of the principle of an exclusive sovereignty of the people, in the separation of powers in state and their freedom from the influence of the communist ideology.

The second phase of the edification of the Republic of Moldova as a state started after the adoption of the Decree on state power.

During this phase the Parliament continued orderly preparations for the final act – the adoption of the Declaration of Independence. Thus, the Parliament adopted a number of laws and decisions, which are listed below in the chronological order:

- Resolution of the Supreme Soviet of the Moldavian S.S.R. of 28.07.1990 on adherence of the M.S.S.R. to the Universal Declaration of Human Rights and ratification of international pacts in the human rights field (as a rule, these kind of ratifications are done by independent states, subjects of international law relations);
- Resolution No. 336-XII of 02.11.90, by which the Republican Guard of Moldova was created (the basis of the future National Army). Its task was the defense of sovereignty, maintenance of public order and if necessary defense of the most important strategic units.
- On 03.11.90 the Supreme Soviet adopted the new state Coat-of-Arms that consisted of a shield divided horizontally into two parts: the upper part was red and the lower part was blue with a superimposed auroch's head showing between its horns an eight-pointed star. On its right the auroch's head was flanked by a five-petalled rose, and on its left - by a slightly rotated crescent. The shield was laid on the breast of a natural eagle holding in its beak a golden cross (an eagle with a cross is a symbol of Christianity), in its right claw a green olive branch and in its left claw a golden scepter. The adopted coat of arms had no connection with the USSR or other new community of states, being the coat of arms inherent to an independent and sovereign state.
- Law No. 416-XII of 18.12.90 on police, in which the old structures of the Soviet militia are abolished, while the new police institutions are not placed in the subordination to the USSR interior ministry;
- Law No. 418-XII of 19.12.90 on migration that put an end to the process of arrival to the republic of different categories of persons from all Soviet republics in order to settle in the Republic of Moldova;
- Resolution No. 420-XII of 19.12.90 on establishing bilateral relations between the Moldavian S.S.R. and other states, by which the President of the country, the Government were to ensure the conclusion of bilateral political treaties pursuit of the political and economic interests of the country;
- Law No. 459-XII of 22.01.91 on property, in which citizens of the Republic of Moldova were given the right to private property. As a matter of fact, this law stroke a death-blow on the Soviet socialist system that, according to the Marxist-Leninist doctrine, recognized only state property;
- Resolution No. 508-XII of 19.02.1991, in which the Supreme Soviet of the M.S.S.R. did not support the USSR Law of 27.12.1990 "On the vote of the whole people" (the referendum on the issue of maintenance of the USSR) and called upon citizens to refrain from taking part in the referendum scheduled for 17.03.1991;
- Resolution No. 509-XII of 19.02.91, in which the Supreme Soviet adopted a draft of the Treaty on creation of the Commonwealth of Independent States, elaborated by Moldovan

experts, and Moscow was suggested the creation of a new commonwealth within a confederation that would not have any state attributes;

- Resolution No. 589-XII of 23.05.91, in which the Parliament changed the name of the country to the Republic of Moldova, abolishing the Soviet socialist name, thus tearing off another fundamental link with the Soviet socialist system of communist type;
- Law No. 592-XII of 29.05.91 on modification of some provisions of the Constitution; Article 10 was formulated in a new wording, which legalized the following: "The economic system of the Republic of Moldova operates on the basis of market economy, combines all types of ownership in different forms of its organization, and ensures free activities of entrepreneurs... etc.". This regulation can truly be viewed as the final blow stroke on the old system. From now on, the Republic of Moldova, nominally, had nothing in common with the Soviet Union, having changed its state system.
- Law No. 596-XII of 05.06.91 on the citizenship of the Republic of Moldova that established a single citizenship on the territory of the republic and banned the common citizenship of the USSR. At the moment of its adoption this law was specific to a sovereign and independent state, because it determined permanent political and legal relations between individuals and the state, which was expressed in mutual rights and duties.

In order to consolidate the constitutional order and sovereignty of the Moldavian S.S.R., the rights, freedoms and security of its citizens, to ensure cooperation of the central bodies of the state power and state administration, on 3 September 1990 the Supreme Soviet adopted a decision on establishing the function of the President of the Moldavian S.S.R. and introduced necessary modifications and amendments in the Fundamental Law of the state.

One of the immediate and extremely important tasks of the supreme institutions of the country, the President and the Supreme Soviet was a consolidation of the statehood and amelioration of the domestic social-political situation. As a result of the economic and political disorder in the country, caused by the disintegration of the totalitarian system, reactionary, neo-bolshevik forces supported chauvinistic tendencies of the non-native language speakers manifested in different actions directed towards the maintenance of the dying Soviet system, on the one hand, and towards undermining territorial integrity of the Republic of Moldova, on the other. Under the pressure of these destructive forces on 19 August in Comrat and on 2 September in Tiraspol there was declared the creation of the Gagauz Republic and of the Transnistrian Moldovan Soviet Socialist Republic, the artificial and anti-constitutional entities, which were in contradiction with the Declaration of Sovereignty of the Republic of Moldova. In order to ameliorate the social-political situation in the republic, on 2 September the Supreme Soviet announced a moratorium on all manifestations that could aggravate the inter-ethnic relations in the republic. Yet, the leaders of the destructive movements continued to neglect legislative acts adopted by the supreme body of the state power of the republic. In such conditions the Supreme Soviet demanded from the Ministry of the Interior, the State Security Committee and the republican Prosecutor's Office to ensure strict respect of the Moldovan S.S.R. legislation on the territory on the left bank of the Nistru and in some southern districts of the republic. At the same time, it asked the USSR Government to withdraw immediately and unconditionally (in 24 hours) the USSR Ministry of the Interior's regiment from the territory of the Moldovan S.S.R.

The efforts made by the administrative and legislative authorities of different levels did not ameliorate the situation. The concrete measures undertaken for the settlement of the emerged problems through dialogue, based on trust and mutual understanding, in the framework of the provisions of the Constitution and other laws of the Moldovan S.S.R. were ignored. Intensification of interethnic confrontations could lead to an uncontrollable situation that would have unforeseeable consequences for the future of the republic.

In order to prevent interethnic clashings, eliminate the threat of disorder, defend security and citizens' lives, as well as being guided by the constitutional provisions, on 26 October 1990 the Supreme Soviet took a decision to declare the state of emergency and to introduce the direct

administration of the Supreme Soviet for the period of 3 months on the territory of some localities of the southern districts of the republic where the provisions of the Fundamental Law of the Moldovan S.S.R. were flagrantly violated.

An explosive situation on the ground forced the Supreme Soviet of the Moldova S.S.R. to adopt a special decision regarding the Decree of the President of the USSR "On holding military parades in celebration of the 73-rd anniversary of the Great October Socialist Revolution". After debates about this document it was asserted that the compliance with the Decree would inevitably lead to a greater confrontation between different forces and social-political movements, which in their turn could become a brake on the way of consolidation of the society, of overcoming political and economic crisis, of conciliation on national level. Being aware of the consequences the Supreme Soviet took the decision not to ratify this Decree of the President of the USSR and to consider it void on the territory of the Moldovan S.S.R.

At this stage of the state edifice the leadership of the republic operated in extremely difficult conditions. The danger of escalation of interethnic conflicts, disintegration of the republic, ruination of the economic potential, degradation of the human potential persisted. The Supreme Soviet, loyal to the Declaration of Sovereignty of the Moldovan S.S.R. was undertaking all measures for the consolidation of forces in order to achieve civic conciliation in the country.

The escalation of the conflict situation was mainly due to the interference of the Center (leadership of the Soviet Union) into the internal affairs of the republic. In the Decree of the President of the USSR of 22 December 1990 "On measures for normalization of the situation in the Moldovan S.S.R." Moscow tried to place itself, as it used to do before, in a position of a great leader, demanding that on the territory of the Moldovan S.S.R. the laws and other normative acts of the USSR were unconditionally applied and did not want to take into account that Moldova had become a sovereign state, therefore the legal (and not only) documents of other states could be applied on the territory of the country only after their ratification by the Supreme Soviet of the republic. The Declaration of Sovereignty of the Moldovan S.S.R. and other legislative acts were an objective reality and could not be contested or ignored by anybody. The declarations of sovereignty of the union republics that were adopted during 1990 on the whole territory of the Soviet Union signaled in the most clear way of a possibility of the USSR disintegration. Being aware of an extremely difficult situation, the central leadership was more and more insisting on the organization of an all-union referendum in the problem of preserving the URSS. Discussions on this issue separated the society even more. A complicated situation showed the necessity for a political power capable in the extreme conditions to take quick and to their best correct decisions. The communist party of Moldova was trying to regain its role of a leader or rather – of a dictator in the society. The country was enveloped in a wave of democratization and europeanization, but, at the same time, was more and more sliding to a total crisis.

The newly created institutions and first of all national and democratic forces, represented both in the legislative and executive bodies, as well as outside them were making efficient efforts to unite the image of the young state, taking care, naturally, of its state attributes.

Taking into account the poorly camouflaged intention of preserving the totalitarian state, on 17 March 1991 the Moldovan S.S.R. did not participate in the referendum.

The decision of the republican authorities not to take part in the all-union referendum did not intimidate the center. Thus, on 22 December 1990 the President of the USSR signed the Decree "On measures for normalization of the situation in the Moldovan S.S.R." and on 26 April 1991 the Nationalities' Soviet of the Supreme Soviet of the USSR adopted a resolution "On ways of achieving conciliation for the normalization of the situation in the Moldovan S.S.R.", in which the situation in the republic was asserted unilaterally, superficially and without identifying the real causes that aggravated it. In both documents the center tried to treat the Republic of Moldova as a subject of federal law. In the resolution of the Nationalities' Soviet the leadership of the republic was asked to immediately begin negotiations with the opposition forces leaders from Tiraspol and Comrat. Without taking into account the realities the decision demanded from

Moldova to join the renewed USSR, a state structure that did not enjoy the support of the Union's republics. The resolution of the Nationalities' Soviet contained an appeal to all people of Moldova, although it was known that there was only one people the Republic of Moldova – Moldovan people (and the national minorities). This appeal encouraged the separatist leaders, certain groups of the non-native language speakers with their aberrant pretensions for self-determination, in contradiction to the international law standards. Thus, separatists were spreading calumnies against laws adopted by the Moldovan Parliament alleging that these laws would infringe the rights of the non-Moldovan population and that the law on the functioning of languages was classified as discriminatory. They also asked for the supremacy of laws and other normative acts of the Soviet Union on the territory of the republic. The attempts of the center to maintain its powers at any price could not reach the goal. The All-Union Supreme Soviet had come to allowing workers' unions and public organizations in enterprises and institutions, military units to create election districts and constituencies, constituency and district commissions for holding the referendum. By adopting such decisions the All-Union Supreme Soviet flagrantly violated the law on referendum issued by it.

The adopted acts on the supremacy of the republican laws over the All-Union's ones allow us to qualify the aforementioned resolution of the Supreme Soviet of the USSR as an unacceptable interference into the internal affairs of a sovereign state.

The next step, which meant, first of all, the beginning of a breakaway from the bolshevik totalitarian regime was the change made on 23 May by the Legislative body of the name of the Moldovan Soviet Socialist Republic into the Republic of Moldova. Thus, in a relatively short period of time indispensable elements of the transformation of a former "Soviet socialist republic" into a real state were being asserted.

In summer of 1991 the situation in the Soviet Union was extremely complex. All fifteen republics that formed the Soviet Union proclaimed their independence. Four of them – Lithuania, Latvia, Estonia and Armenia, led by the idea that sovereignty was just a step on the path of national self-determination declared their independence.

In those circumstances the key problem for the Kremlin was to identify the form of the Soviet state's organization and the relations between the republics that would form the new union.

At that moment there were at least three conceptions regarding the future of the Soviet Union. Michail Gorbaciov insisted on a Union with a federation characteristics, which would have a Center would not merely maintain but consolidate its relations with the powerful republics. Sovereignty was accepted only in the framework of sovereignty of the Federation that was viewed as an integration tool. Boris Eltin pleaded for a confederation based on the sovereignty of the republics, on direct agreements between them, accepting the maintenance of a Center, but one deprived of any possibilities to interfere into the inter-republican relations. The third option was proposed by the Baltic States: secession that would just leave the Union without its component parts. In August 1991 interminable discussions and permanent revision of the drafts of the Union treaty seemed to come to an end. Nonetheless not everyone was ready to sign it. Finally, the only republics that were ready on 20 August to sign the agreement, besides Russia and Kazakhstan, were Uzbekistan, Tadjikistan and Kirgizstan.

It has to be mentioned that for Michail Gorbaciov it was essential that the treaty was adopted and the Soviet Union survived in any form. Being confident that through initialing a new Union Treaty he had found the optimal solution for the complicated situation of the state organization of what was still called the Soviet Union, Michail Gorbaciov was spending his vacation in Foros, Crimea. The President of the USSR was due to come to Moscow on the day of signing of "the historical document". The presidential aircraft already landed on a special airport. The text of the speech that had to be delivered on the day of "the most important event in the history of the totalitarian state of a Soviet type in the second half of the XX-th century" was already edited.

Yet, history introduced its changes, everything being turned upside-down by the 19 October putsch. The Vice president of the USSR, the Prime Minister, Director of the KGB, ministers of defense and the interior of the USSR and some others, supported by Anatolii Lukianov,

Chairman of the Supreme Soviet of the USSR, attempted a coup de etat “with a view to defending the vital interests of the peoples and citizens of the USSR, the independence and sovereignty of the state, to enforce legal order, stabilizing the situation, overcoming crisis and in order to avoid chaos, anarchy and fratricidal civil war”. It was the CPSU, who inspired and orchestrated the putsch and as a result of the putschists actions the USSR was paralyzed.

The true goal of the putschists was revealed on the very first day of the “state of emergency” - they tried to bring the Soviet Union back to the totalitarian regime, to suppress democracy and peoples’ desire of freedom, to reestablish the situation convenient to the CPSU oligarchy. One of the main objectives of the putschists was to make sure that the Union Treaty was signed. In their understanding the Soviet Union had to be preserved by any means. The text of the document due to be signed on 20 August was vehemently criticized on 19 August by the Chairman of the Supreme Soviet of the USSR Lukianov. The putsch ideologist specified that the final document did not take into account critical objections made by the Supreme Soviet of the Soviet Union, that it offered to the republics unlimited possibility to suspend Union’s laws on their territories and that finally it was nothing but a bomb that would fuel the war of laws and aggravate all the existed discrepancies.

After the August events Michail Gorbaciov would try to continue the activities towards signing the new Union Treaty, but it would be too late. The putsch decisively contributed to the rise of secessionist tendencies. On the other hand, Russia announced its intentions to assume, based on a special status, the role of a “nucleus” of the future Union of Sovereign States.

In these circumstances president Gorbaciov’s efforts to maintain the Union became totally inefficient. The republics one after another were declaring their independence.

Likewise the whole world, the population of the Republic of Moldova was shocked by the news about the events in Moscow. At the same time, the putsch was called to uncover the authentic image of the political forces in the Republic of Moldova. On the one hand, on 19 August there was issued a common Declaration of the President, the Presidium of the Parliament and the Government of the Republic of Moldova, where the putschists’ actions were qualified as a “coup de etat of the reactionary forces” and was firmly reaffirmed an ascendant way of the Republic of Moldova to freedom and independence. Thus, all decision adopted by the so-called State Committee for the state of emergency in the USSR were considered unlawful and without any legal power on the territory of the republic. An appeal was launched to the citizens of the republic not to take part in any actions that contravened the Constitution, to repel violence and dictatorship path, chosen by the Committee for the state of emergency, and in case of usurpation of power to manifest civic disobedience. On the other hand, general Kolesov, Military Commissar of the Republic of Moldova tried to place himself at the top of the military authorities of the capital city, pretending that he was appointed as a military commander of Chisinau by the Moscow “GKCP” (State Committee for the State of Emergency). Simultaneously, general Osipov, Commander of the South-Eastern army group, along with general Kolesov, at a meeting with the prime-minister Valeriu Muravschi called for the abolition of the decision of the Parliament of the Republic of Moldova banning common patrolling of Moldovan military and police troops. The demand had been rejected.

At the same time the pro-imperial separatist forces grew visibly active. The Comrat self-proclaimed Supreme Soviet addressed to Ianaev a greeting telegram where they expressed their readiness to implement any decision of the “GKCP”. Tighina City Soviet adopted a decision calling upon the population to ensure a strict fulfillment of the putschists’ decisions. In Tiraspol the self-proclaimed Supreme Soviet of the “Transnistrian Moldovan Republic” adopted a decision greeting measures undertaken by the “GKCP”. There was established a committee for the emergency situation, led by Rileakov. The GKCP received telegrams of solidarity from Tiraspol (Emelianov), the local branch of the liberal-democrat party of the USSR (Bolshakov) and the university led by Iakovlev and Galinski. After some hesitation the Communist Party of Moldova expressed its attitude towards the putsch. The “Cuvintul” newspaper published a declaration of the Secretariat of the Central Committee of the CPM, which strikingly contrasted

in its demagogic and empty content with the position of the Chisinau officials. The declaration did not clearly and directly assessed the criminal character of the coup de etat. On the contrary, there could be felt a justification of the anti-constitutional actions of the State Committee for the State of Emergency. The real position of the CC of the CPM could be seen in the pages of its newspaper "Sovetskaia Moldova", which regardless the decision of the Government of the Republic of Moldova not to publish on the territory of the Republic of Moldova any documents issued by the "GKCP", made public all the decrees, resolutions and communiqués of the new Moscow leadership.

Yet, there were not the putsch supporters who determined the position of the Republic of Moldova during those days. Obviously, the 18-19 August events in Moscow contributed to the acceleration of the process of self-determination, but, of course, this was not the main factor of the Republic of Moldova's independence. The above documents presented and analyzed in a chronological order demonstrate that the entire activity of the Parliament of the XII-th legislature was directed towards imposing an irreversible character on the process of self-determination, the goal being to tear off the links with the Soviet empire and to create an independent and sovereign state – the Republic of Moldova.

On 20 August 1991, thousands of citizens gathered in the Great National Assembly Square in Chisinau, in the resolution adopted, qualified the Moscow events as a putsch of the reactionary forces of communist origin, which tried to maintain by any means a political and social regime that historically failed. Participants to the protest meeting condemned the coup de etat of the reactionary communist forces and demanded an urgent adoption by the Parliament of a Declaration of independence of the Republic of Moldova and prohibition by law of the CPM activity. Secession from the empire had to take place at the same time with the prohibition of the Communist Party, which strived to maintain the USSR and the Soviet totalitarian regime.

On 23 August 1991 the Presidium of the Parliament of the Republic of Moldova adopted the decision "On the Communist Party of the Republic of Moldova". The decision reads: "In the course of years the CPM, a component part of the CPSU, carried out an anti-popular policy, usurped power and substituted the power and state administration bodies, organized repressions and mass deportations, forced collectivization, planned famine, methodically and systematically depreciated and exterminated national culture, popular customs and traditions, national languages by falsifying history. Stating that the true face and the carefully camouflaged goals of the Communist Party were exposed by the organization and support of the Moscow anti-constitutional coup de etat, the Presidium of the Parliament of the Republic of Moldova banned the activity of the CPM on the whole territory of Moldova".

In that crisis situation when the achievements of democracy were endangered, the Moldovan authorities assumed the whole responsibility for the continuation of the struggle for the republic's sovereignty and independence. Being aware of the possible consequences of the Moscow putsch, the national rebirth movement, supported by various layers of the Moldovan society, insistently demanded an urgent settlement of the issue of the republic independence. Thus, on 27 August 1991 in accordance with the decision of the Great National Assembly, the Parliament by an absolute majority of votes adopted the Declaration of Independence of the Republic of Moldova. The high legislative body, in the supreme responsibility moment, performing an act of justice in accordance with the nation's history, the international law standards and morale, in conformity with the right of people to self-determination, in the name of the entire population of the Republic of Moldova and in front of the whole world solemnly proclaimed:

- 1) the Republic of Moldova is a sovereign, independent and democratic state, free to decide its present and future, without any interference from outside, in accordance with the saint aspirations and ideals of the nation in the historic and ethnic environment of its national edification;
- 2) as a sovereign and independent state the Republic of Moldova calls upon all states and governments of the world to recognize its independence as it was proclaimed by the

freely elected Parliament of the Republic and expresses its will to establish political, economic, cultural and other relations with the European states, with all states of the world, and is ready to establish diplomatic relations with these states.

On the day of the adoption of the Declaration of Independence (27 August 1991) the Republic of Moldova had a territory of 33.700 square km. (unlike the historical Basarabia that had 44.422 square km.) with the total population of 4.366.300, that made 129,6 inhabitants per square km. Unlike other former Soviet Union republics, the Republic of Moldova was not divided into regions, but only into districts (40 districts).

The degree of urbanization of the population of Moldova was 47%, the share of the rural population being 53%. The urbanization degree was less than in the former USSR (66%), the Ukraine (67%) and the Baltic States (71%).

The Moldovans constituted two thirds of the population (64,5% in 1989), but with a slight tendency of their share to decrease. Non-native population was about 1.540.000 persons, the most numerous being the Ukrainian and the Russian nationalities: 1.162.000, or more than a third of the population (28,8%). A numerical increase of the population according to the national belonging in the course of 30 years (1959-1989) was the following: the fastest increase was registered by Russians (+92%), followed by Gagauz (+60%), and only then followed by Moldovans (48%), Ukrainians (43%) and Bulgarians (43%), while the number of Jews reduced by a third in those three decades. The number of Moldovans, Gagauz, Ukrainians and Bulgarians increased due to a natural surplus – the birth and death rates being approximately the same, while the number of Russians increased especially as a result of the migration process.

The proclamation of independence was just the beginning of the process of creation of the legislative basis of the new state, called the Republic of Moldova. The later development of the events proved that the realization of sovereignty and independence was *de facto* an extremely difficult and lasting task. This process cannot be urged or stopped, since a true sovereignty and independence of a country are established only as a result of serious changes in the society. These changes implied a transformation of the society:

- a) from a totalitarian political regime to a democratic one;
- b) from a command centralized administrative system to new market relations in all spheres of social and economic life;
- c) from a part of a centralized state to the edification of a new sovereign and independent state.

In this environment, the Soviet Union, a Bolshevik prison of nations, was living its final days.

The first state that recognized the independence of the Republic of Moldova was Romania. Same day the Government of Romania issued a Declaration, in which it recognized the independence of the Republic of Moldova and declared its willingness to establish diplomatic relations and to grant necessary assistance for the consolidation of its independence and mentioned that: “this decision of paramount importance falls logically into the process of democratic renovation, of disintegration of the totalitarian structures that take place in the USSR”. The process of recognition evolved very rapidly and today the Republic of Moldova is recognized by more than 140 states.

Yet, as in the previous cases the problem of maintenance of the totalitarian state found a surprising and innovating solution. Thus, on 8 December 1991 in Beloveskaia Puschia the leaders of the three republics – Russia, Byelorussia and the Ukraine – did not return to the issue of concluding an All-Union treaty, but signed the Convention on the creation of the Commonwealth of Independent States. The news that shocked the world’s public opinion was the decision of the three according to which the Union of Soviet Socialist Republics as a subject of international law and as a geopolitical reality ceased its existence.

The Beloveskaia Puschia initiative was immediately criticized and even condemned, but surprisingly quickly got its legal definition. On 10 December the Agreement was ratified by

the Supreme Soviets of the Ukraine and Byelorussia, and on 12 December by the Supreme Soviet of the RSFSR. On 13 December in Ashkhabad the Council of the Middle Asian states and Kazakstan generally approved the initiative to create the CIS. Finally, on 18 December the Supreme Soviet of the USSR adopted a declaration where it expressed its understanding for these actions as a real guarantee of overcoming the severest economic and political crisis. As a result, on 21 December in Alma-Ata the Declaration of 11 states that joined the Beloveskaia Puschia agreements was signed, thus putting a final dot in the strategy of unification and conservation of the former Soviet area under the aegis of the Commonwealth of Independent States, the only exception being the Baltic States.

The Agreement on the creation of the CIS, signed on 8 December 1991 specified that the signatory states would establish reciprocal relations with other states, based on the recognition and respect for their state sovereignty and equality, an inalienable right to self-determination, noninterference into the internal affairs, should refrain to resort to the use of force or the threat of force, would refrain to resort to economic or any other means to exercise pressures, respect for human rights and freedoms – provisions, which, unfortunately, have been breached by the CIS founding states themselves.

By adhering to the CIS structures Moldova refused to take part in the consolidation of the Community's "common strategic military space", as well as in the consolidation of "supranational political structures" of the CIS. The adherence of the Republic of Moldova to the Commonwealth of Independent States was viewed differently. Thus, at the moment of signing of the Founding Protocol the leadership of the Popular Front of Moldova disapproved this decision considering that: "the adherence to the CIS will not contribute to the settlement of the problems the Republic is facing, on the contrary will lead to a greater crisis, since the signed document will bring to nothing else than the maintenance of the occupied territories in the sphere of influence of the former soviet empire".

2. GENERAL NOTIONS OF A STATE'S COMPONENT ELEMENTS, WITH SPECIAL REFERENCE TO THE REPUBLIC OF MOLDOVA

State appeared almost six millenniums ago in the ancient East (Egypt, Babylon, China, India) and is considered to be a historical, political and juridical element. There are several opinions influenced by different doctrines and ideologies regarding the definition of state. Nonetheless, we will try to suggest a simple and adequate definition.

Thus, a state is a national community determined by its past, a certain unity through which a common life of a nation is performed.

By this definition we understand that a state is an organized human society, since through this a common life of a nation is fulfilled in its geographical space, or in other words, within the boundaries of a certain territory.

Due to the fact that a state is an organized society, there should exist a juridical order that will lead it.

Thus, in the narrow sense, we can define a state as a combination of fact elements, such as population and territory with law elements, such as organization and power of coercion.

It has to be mentioned that this definition is far from any appreciation of the nature and tasks of a state. In this regard we find it relevant to bring Constantin Disescu's considerations, which assert that classical theories studied state in an abstract way, elaborating a notion that is based more on what we want it to be, rather than on what it really is.

Anyway, we cannot neglect the fact that a state, once it is organized, has a certain goal and well-defined functions. Obviously, the main goal of a state is to protect the general interest (common well-being). In this connection, Hegel was absolutely right saying: "If citizens are not doing well, if their subjective goal is not satisfied, if they do not believe that a mean to fulfilling this satisfaction is the state itself, then the state is weak".

From this perspective, by a state we will understand an organized system run by the political leadership of a society and in this regard has the monopoly on elaborating and applying laws. Summarizing the above mentioned, we spotlight four important elements that can be called state's constant values:

2.1 people (nation);

2.2 territory;

2.3 government;

2.4 sovereignty.

2.1 People (nation)

A plain definition of people describes it as a group of persons that live on the same territory, as a certain entity that forms a state. In professional literature this element inherent to a state can be found under the definition of population. Thus, in international law population of a state, in a narrow meaning, is a permanent and organized community of persons that hold its citizenship.

Since the notion of population can sometimes be a source of ambiguities due to the fact that, in a broad meaning, by population we understand all persons who live on a state territory and are under its jurisdiction, the notion of people has a more concrete meaning and is used only along with the notion of state.

In order to identify people of a state there have been elaborated certain criteria, such as: a group of individuals that has the following common features – a common historic tradition; ethnic identity; cultural homogeneousness; linguistic uniformity; a community of individuals has to be formed by a certain number of members and, at the same time, this community of individuals as a whole has to manifest the will to be identified as a people or to have consciousness of being people.

For the creation of a state a discussion about the minimum number of individuals has no scientific value, since the main criterion in this process is the right to self-determination, which is conditioned by several factors we will address later.

We should mention that people of a state could be made up of a single ethnic group, if it is the only one that decided to associate in a state. However, in reality, in contemporary states along with the main ethnic group there live other groups that as a whole make up the people of a state.

The people of the Republic of Moldova therefore is formed by the main ethnic group – Moldovans, as well as by the Russians, Ukrainians, Byelorussians, Bulgarians, Gagauz etc. who live on the territory of the state and are citizens of the republic. It is specific feature that for the Republic of Moldova the state emerged as an impact of the political situation and it was necessary to constitute a political nation, taking as the basis the citizenship.

Since all constituent elements of a state are characterized by their particularity, we can conclude that on the territory of a state there cannot exist two people.

Here it is necessary to clarify what the ethnic groups are. Thus, ethnic groups represent a part of a basic ethnos, which associated in a state in another geographical area (Russians, Ukrainians, Bulgarians etc.) and which, due to some historical factors, broke away from the basic ethnos settled on the ethnic territory of another state.

Due to the fact that in the Republic of Moldova and in other states there is the problem of national minorities, that voice demands, which reach as far as self-determination, it is necessary to give some explanations in this regard.

Thus, in international treaties the notion of “national minority” is preferred to that of “ethnic group”, a fact that does not change its political-juridical nature.

The basic principle of the European Convention on Human Rights (1950) and the Helsinki Final Act (1976) is the supremacy of individual rights of citizens. In the Helsinki Final Act by using the wording “persons belonging to minorities” it is specified that rights are granted

and protected individually; having adopted the conception that individuals and not ethnic groups are bearers of rights. However, in the 1992 UN Declaration on rights of persons belonging to national minorities there was made a step to the recognition of collective rights. This wording has been broadened in political but not in juridical documents in order to embrace the right to participate in social, economic and political life and to set up associations of national minorities. Article 3 of the 1992 Declaration specifies: "Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination".

However, Article 8 specifies the supremacy of territorial integrity: "Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states".

The Organization for Security and Cooperation in Europe (OSCE), also, introduced in the discussion about protection of national minorities the proposal that this protection could be obtained by accepting some forms of self-administration. The July 1991 Report of Genoa Meeting, on minorities, held at the experts level, enumerates the results obtained by some OSCE member states in the local and autonomy legislation.

Thus, according to the additional protocol adopted on 12 May 1994 in Gdansk by the Congress of the Federal Union of the European Ethnic Communities (UFCEE) autonomy is defined as an instrument of protection of ethnic groups. Depending on certain conditions there can be spotlighted three forms of autonomy, as follows:

- territorial autonomy, in cases when an ethnic group is a majority in the area where it lives;
- cultural autonomy, in cases when an ethnic group is not a majority in the area where it lives;
- local self-administration (local autonomy) in cases when members of ethnic groups live in isolated and dispersed areas and are in majority only in smaller administrative units (districts, localities).

Article 111 of the Constitution of the Republic of Moldova stipulates that the places on the left bank of the Nistru river, as well as certain other places in the south of the republic may be granted special forms of autonomy according to special statutory provisions of organic law. In this case we talk about administrative-territorial and not political autonomy. From this perspective, it is excluded from the discussion the possibility of granting any statuses that would have elements of statehood, a fact that was not understood by the Moldovan statesmen in 1994, who even recognized the right of the Gagauz to self-determination in the Law on a special juridical status of Gagauzia where it is stipulated that in case when the Republic of Moldova changes its political status, Gagauz have the right to external self-determination.

In a situation when along with the political-juridical links there are other natural links of coexistence we have a nation.

We should not confuse nation with a sum of citizens who live on a national territory at a certain moment, thus with people. It is the one that includes the past, present and future.

We should mention that definitions of nation are very diverse, some authors even denying its existence. However, we believe that nation expresses history and continuity, especially spiritual and material. In this regard it is necessary to spotlight two essential elements of the notion of nation. The first element is of a psychological nature and includes a profound and hereditary unity of thinking and of elements that form national consciousness, and that implies a belief in a common future. The second element that, in a way, represents a sensible exteriorization of the first one is language. Linguistical identity is the test of a centuries-long common life in past and indicates a similitude and rapprochement between individuals; facilitates social relations and allows communication and handing over from one generation to another of traditions, that are a basis of culture.

Thus, we can define nation as a historical community of people, established during the formation of the territorial community and economic relations, common language, specific features of national culture and psychology.

Considering the above, we can conclude that a nation is a result or product generated by some objective elements, such as: geography, language, traditions, religion etc. According to Maurice Hauriou, nation is a mentality, a wish to live together in a community. It is obvious that the notion of nation interpreted in this way has nothing in common with a racial-state or a state-nation that are characterized by exclusivity and national fanaticism.

The notion of nation is explained by the necessity of a correct definition of the right to self-determination, the right to become state that nations enjoy, as well as for the identification of individual particularities of states.

Europe in 1989-1990, being involved in a wave of transformations, epochal political changes, witnessed a collapse of the Soviet empire of a socialist model, while three multinational states – the USSR, Yugoslavia and Czechoslovakia disintegrated into 22 new states. At the same time, bloody ethnic conflicts have burst out (Russia – Cecenia, Georgia – Abkhazia, Armenia – Nagorny Karabach – Azerbaijan, Moldova – Transnistria – Gagauzia, Yugoslavia – Bosnia – Herzegovina) as a result of different strategic interests of big powers, the solution to all problems being considered to be their self-determination.

The issue of self-determination is rather complicated, or we could even say rather hard, because there are different opinions that not always have a scientific basis.

From the very beginning it should be understood that the principle of self-determination is an expression of the right of people to have their own territory in order to establish national states.

Here arises the problem, tackled above, of what kind of community can be considered a distinct people. We will remind here the criteria of identification of people. This is a group of individuals that enjoys the following common features: common historical tradition; ethnic identity; cultural homogeneousness; linguistic uniformity; the community of individuals has to be formed by a certain number of members and, at the same time, this community of individuals as a whole has to manifest the will to be identified as people or to have the consciousness of being people.

Carefully analyzing these criteria, we spotlight the following basic elements: common territory; ethnic identity; cultural homogeneousness; will and consciousness to be identified as people. Comparing these elements with the definition of nation as a historical community of people, established during the formation of the territorial community and economic relations, common language, specific features of national culture and psychology we will find out an identity that proves an indispensable connection between nation and people. Thus, people cannot be viewed simply as a group of individuals that live on a certain territory. If we admit such interpretation, we would have hundreds of “people” claiming their right to self-determination. In this regard a clear answer is given by international law, since it defines the attractive nature of the principle of nationalities viewed at from the point of view of the people’s right to dispose of themselves, a right that is called self-determination.

As a matter of fact, self-determination refers to the fact that states and their nations have the right to independence of foreign domination. In this regard, the existing states, which have been invaded or are clearly controlled by foreign powers have the right to self-determination. However, it does not mean that any non-colonial people or minority of an existing state has already got the right to self-determination or independence according to international law provisions.

Besides, the consciousness and the will to be identified as people can not derive from the desire of some leaders or from predictions of some “prophets”, but from a collective individuality of national and territorial nature.

As regard the territory, it is also indispensably linked with people being considered an ethnic territory that is an area where, as a result of a long common coexistence, a group of individuals transformed into a nation, self-determined as a state.

Thus, ethnic homogeneousness in an area or region of a national state cannot be a criterion for self-determination.

The right to national sovereignty and self-determination belongs to people (nations) that meet the above mentioned criteria.

There are some problems in cases when a territory where a people seeking self-determination, is also inhabited by other minorities or in case when due to some historic events people of other origin moved to the ethnic territories of some people (the case of the Republic of Moldova). In the latter case, the answer is not too complicated, since self-determination on foreign territories is not possible because a territory is indivisible and inalienable. In the first case the solution of the problem should take place in accordance with international law standards. There is an opinion that in the United Nations Charter self-determination is identified with independence. Indeed, Article 1 and Article 55 stipulate that respect of equal rights and of self-determination refers to the right of the people of a state to be protected from the interference of another state, the notion of equal rights referring to states not individuals.

Besides, we have to take into account the fact that at the moment when the United Nations Charter was adopted (1945) decolonization process was in a full swing and there were dependent people who did not self-governed themselves. Starting from 1960 the United Nations recognized only a very limited right to:

- 1) foreign self-determination, defined as a right to freedom gained from a previous colonial power;
- 2) domestic self-determination, defined as independence of the population of a state from foreign influence or intervention.

In the common Article 1 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights it is specified that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. The Helsinki Final Act also stipulates that self-determination is a right of peoples.

From these considerations it is very important to define the quality of a people, of the territory this people evolved on and on which it seeks self-determination. In any case we should take into account that in international treaties the right to self-determination is conditioned by the assumption that nothing can be interpreted as an authorization or encouragement of any action that could dismember or divide totally or partially territorial integrity or political unity of sovereign or independent states.

2.2 Territory

The second element of a state is the territory that is a piece of land suitable for living in and being in a permanent relation with people.

Thus, a territory of a state represents the geographical area made up of terrestrial and aquatic surface, soil, underground and air space on which the state exercises its full and exclusive sovereignty.

The territory of a state represents one of the natural material prerequisites that conditions the state's existence. The territory defines spacial limits of the existence and organization of a state sovereignty, thus being a political-juridical notion.

We have to mention that without this element a group of human beings, regardless how numerous it is, cannot create a state. In other words, territorial delimitation, exact geographical space on which state power is exercised (sovereignty) is an essential characteristic of a state.

State exercises similar power on its territory as it does on the people - a political authority that cannot be confused with private relations. However, this confusion happened in some epochs, for instance, in the feudal regime times when a monarch was considered the owner of land. After the disappearance of feudalism and the creation of national states, the idea of territorial supremacy of state power over the territory that represents an aspect of sovereignty has been elaborated.

It is absolutely necessary to remind that the definition of the juridical nature of a territory in international law begins from the fact that territory forms:

- a space of a sovereign exclusive exercise of state power;
- a space of the exercise of the right of people to self-determination;
- a object of permanent sovereignty on national resources and wealth.

Nation, people cannot exist without territory. It is the material expression of the supremacy, independence and inviolability of state and of people that live there.

The Constitution of the Republic of Moldova in Article 3 establishes that territory is a basic element of the state, specifying that it is inalienable and cannot be alienated.

The inalienability also means that on the territory of the Republic of Moldova other ethnic groups cannot self-determine, they cannot create a state, in other words, the republic can be federalized in no way.

Undoubtedly, state territories are delimited by frontiers where the state exercises its full sovereignty and acts in order to fulfill its goals and functions. State frontiers are inviolable. Due to its sovereign nature a state through its internal regulations establishes the state frontier regime and takes measures to guard and protect them.

State frontiers are those real or imaginary lines drawn between different points that separate the territory of one state from the territory of another, or if it this the case, from the free sea, and extends in height to the inferior limit of the extra-atmospheric space and in depth into the ground to the limit accessible to modern technology.

Thus, Article 3, paragraph 3 of the Constitution provides that the frontiers of the country are established by an organic law. Frontiers are necessary for the delimitation of a state's territory from other states and for fixing state competencies in space or to establish spacial limits of a state's sovereignty. According to Law No. 108-XIII of 17.05.1994 on state frontiers the Republic of Moldova has terrestrial, river and air frontiers that are drawn on land – on the distinctive relief lines, on the rivers – in the middle line of a river, on the main naval line or on the river thalweg, on lakes and other water basins – on a straight line that connects state frontiers with the bank of a lake or a bank of another water basin.

This law establishes the juridical regime of the Republic of Moldova frontiers, including several general provisions with regard to: the functions of the state frontiers, frontier passage, frontier protection line, frontier zone, guard and protection, the right to control.

In conclusion we would like to underline the fact that a state's territory was and is an essential element in the formation and existence of peoples (nations), in the process of national states evolution in accordance with the principle of self-determination.

2.3 Government

In this chapter find it necessary to mention that Government is an element that shapes and characterizes a state, ensuring the territorial and political integrity of this state. At the same time, it has the duty to observe and the observance of laws.

Often laws observance confronts with the notion of an executive power. Laws observance is the duty of all subjects of juridical relations, of all authorities, regardless the fact whether they are public or not.

However, when we talk about the executive power we have to mention that this notion comprises an idea of power that means a capacity to impose a certain behavior. Thus, in application of laws and established rules in a state there should exist a body invested with power to impose a behavior.

For observance of laws it is necessary to organize this process, elaborate material-financial, organizational and methodic framework. In this regard Government has the function of a power, which disposals are obligatory for all law subjects.

According to Article 96 of the Constitution the Government carries out the domestic and foreign policy of the state and exercises general control over the work of public administration. In other words, the Government is an integral part of the executive power, while the insurance of domestic and foreign policy takes place through the application of laws, and the Parliament approves the main directions of the state domestic and foreign policy (Article 66, paragraph d).

2. 4 Sovereignty

Sovereignty is an essential attribute of a state and consists in the supremacy of the state power on the domestic level and its independence on the foreign level from any other power.

Sovereignty is manifested in the independence of state in all spheres of political, economic, social, cultural etc. life and is materialized in setting up and carrying out of an independent domestic and foreign policy. The two parts of sovereignty make an integral whole, being an expression of an indispensable linkage between the state domestic and foreign policy.

Sovereignty has the following essential features:

- exclusivity;
- fundamental and plenary character;
- indivisibility;
- inalienability.

Exclusivity is manifested through the fact that a state's territory can be subject only to one single sovereignty.

The fundamental and plenary character is determined by the fact that sovereignty belongs to the state and is not attributed to it from outside and the state power prerogatives cover all spheres of activity – political, economic, social etc.

An indivisible character of sovereignty means that it cannot be fragmented, its attributes cannot belong more than to one holder.

Article 2 of the Constitution of the Republic of Moldova stipulates that national sovereignty resides with the people of the Republic of Moldova that exercises it directly and through its representative bodies or referendum.

Inalienability manifests through the fact that sovereignty cannot be abandoned or surrendered to other states or international organizations.

We have to underline the fact that performance of sovereignty attributes by the competent national authorities in the process of international collaboration and cooperation directed towards the promotion of national interests should not be confused with the violation of one or another of these attributes. Sovereignty is not only fully compatible, but even requires states' participation in conferences, international organizations, treaties. On their basis states freely assume the rights and obligations to promote and develop cooperation and collaboration, maintain peace and international security.

Based on their sovereignty states have the right to freely choose and promote their political, economic, social and cultural system, organize their political, economic, social life in accordance with the will and the interests of the people without any outside interference and to elaborate their own domestic and foreign policy.

In exercising its sovereignty, a state is a member of the international community and as such has to respect international law standards and principles, especially other states' sovereignty and national independence, their equality in rights and as necessary to take adequate measures of information and consultation in order to identify viable solutions to the existing problems.

Mutual respect of sovereignty and national independence in state relations, in the process of cooperation and collaboration is a *sine qua non* condition of any normal and viable relation, of the environment of peace and understanding between nations.

It has to be mentioned that sovereignty is not absolute, uncontrollable and discretionary, it has certain limits. On the domestic level sovereignty is limited by the Constitution that strictly regulates state bodies competence. Nor on the foreign level sovereignty can be absolute, because national state is an element of the international system, or in other words, in this case we talk about independence in the interdependence of national sovereignty in the system of sovereignties.

In this connection, the Constitution has some important provisions. For instance, the Constitution of the Republic of Moldova (Article 8) specifies the respect for the Charter of the United Nations and treaties to which Moldova is a party. Moreover, in paragraph 2 of the same article is mentioned that coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter.

On the fundamental rights and freedoms the Constitution of the Republic of Moldova (Article 4, paragraph 1 and 2) also specifies that constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova. Wherever disagreements appear between the conventions and treaties signed by the Republic of Moldova and its own national laws, priority shall be given to international regulations.

As concerning the state frontiers it has been already mentioned that they are sanctioned by an organic law with respect for fundamental principles and other generally accepted norms of international law.

Constitutions of the European countries confirm the idea that on the foreign level sovereignty is not and cannot be absolute as well as the interpretation that independence, yet not sovereignty, can be an subject to revision.

In this regard the Constitution of the Republic of Moldova (Article 142, paragraph 1) allows the revision of the provisions regarding the sovereignty, independence and unity of the state only by referendum based on a majority vote of registered voting citizens. Obviously, the possibility of revision of the sovereign and independent character of a state shows the possibility of its abolition, or in other words this regulation should be understood as in certain situations people, can voluntarily give up the right to be the master of its future.

3. AUTONOMIZATION

Disintegration of the empire implies the appearance of a multitude of states that replaced the Soviet republics. Where local political elite (the CPSU nomenclature and national intelligentsia with a sufficient political practice) realized the importance of the moment, the nation stepped on the divorce path, declining any compromise that would allow the maintenance of any special relation other than interstate relations on the basis of international law standards (the Baltic states). However, in the majority of the republics where the nomenclature was dependent on Moscow and the society as a whole was not ready to assume the entire responsibility and to self-govern in the framework of a sovereign state, small steps were made and the results, though quite promising at the beginning, turned to be rather superficial.

The increasing perspective of the USSR collapse put Moscow in front of a necessity to look for new means of a unitary state maintenance. The Kremlin was afraid that in case if the 15 republics got the right to leave the Union, the Russian unitary state built up for centuries and which was still called the Union of the Soviet Socialist Republics would disappear. In the Special Folder of the CC of the CPSU appeared a note – on the role of autonomies. There was elaborated a new conception regarding the All-Union Treaty that provided for the change of the Soviet Union basis. Instead of the 15 union republics, with the right to breakaway from the USSR, there should have had to appear a Union with 35 autonomous republics: 15 instead of the Union's republics, 16 within the Russian Federation and 4 within other republics. Two of those were to be created on the territory of Moldova. It reached so far that at the discussions of the first

draft of the All-Union Treaty in Novo-Ogariovo at the same table with the leaders of several union republics, leaders of all existing or projected autonomies were present.

On 26 April 1990 the Supreme Soviet of the USSR adopted a law on the equality in rights of the union republics and autonomies in the social-economic, administrative, cultural etc. spheres. Thus, as early as in 1990, the Moldavian S.S.R. was to be transformed in three autonomous republics with equal rights, all of them members of the new Union and without the right to break from the unitary state. But the parade of sovereignties began and hampered the processes directed and guided by Moscow and the 1991 putsch stopped them for a period of time.

3.1 Transnistrian separatism

In the best bolshevik traditions, that in order to achieve their goals always imitated a great attachment to the voice of people, Transnistrian separatists simulated the organization of a referendum – in Ribnita (3 April 1989), in Bender (1 July 1990) where a part of the population voted for the creation of an autonomous territory within Moldova: the Transnistrian Autonomous Soviet Socialist Republic. On 2 September 1990 in Tiraspol took place an extraordinary congress of the people's deputies from the left bank of Nistru which proclaimed the Transnistrian A.S.S.R.

It has to be mentioned that in the situation of an extreme euphoria and exaggerated expectations, when demagoguery, maximum usage of the old and frequently used techniques of manipulation and blackening of the national freedom movement, false information, rumors, ambitions, stimulation of extremist tendencies, provoking political discord, determined the majority of the population of these regions to vote for the legalization of these anti-constitutional acts. Attempts to annul these acts, in conformity with the legal procedures that existed at that time, could not be implemented by the legal bodies of the state, since paramilitary units were arming themselves from the arsenals of the 14-th Army stationed in the eastern regions of Moldova and proceeded to violent actions.

Thus, on 2 November 1990 in Dubasari, with the aim to eliminate legal bodies of the state the separatist forces occupied the premises of the court, the district Prosecutor's office, district executive committee and the police office. First casualties were registered. Separatists took control over the city. From now on the situation continuously deteriorated.

The liaison persons between Moscow and Tiraspol were deputies of the "Soiuz" group of the Supreme Soviet of the USSR, headed by Iuri Blohin. This representative of the Moldovan S.S.R. was the most welcomed guest of Anatoli Lukianov. In order to meet with Blohin Lukianov even postponed a parliamentary delegation's visit to France. We have to mention the fact that it was the office of the Chairman of the Supreme Soviet of the USSR where the will of certain political adventurers from the Nistru's left bank localities was plotted and put into practice.

Blohin falsely presented the information regarding the events in Moldova to A. Lukianov and it was made known to Mihail Gorbaciov and afterwards to the central mass media in the subjective interpretation of the latter.

For example on 21 February 1991, when the preparation for the 17 March referendum on the preservation of the USSR were underway, A. Lukianov had a meeting with Mihail Gorbaciov on the situation in Moldova. The president of the USSR required from the Chairman of the Supreme Soviet an additional information about the events in the eastern regions of Moldova. I. Blohin was the one who presented the necessary information to A. Lukianov so that he could pass it to the President of the USSR. On 29 April 1991 Gorbaciov and Lukianov agreed on the draft text of the decree on the measures for normalization of the situation in the M.S.S.R. The first to be informed by Anatoli Lukianov about those measures was Blohin.

On 10 April 1991 Smirnov and Marakuta, leaders of the self-proclaimed TMR, sent to A. Lukianov an appeal "On the necessity to create a single system of the law and security structures of Transnistria" where, after a completely distorted presentation of the situation in the Republic of Moldova, asked the support of the Chairman of the Supreme Soviet of the USSR in the abolition of the constitutional bodies in the regions on the left bank of the Nistru and creation of

new structures that would not be subordinated to Chisianu. Lukianov endorsed this by the following words: “To comrades Golik I. V., Pugo B. K., Trubin N. S., Iakovlev V. S., Luschikov S. G., - please carefully analyze the issues and if possible settle the main of them. 12 April 1991”. Thus, the Chairman of the All-Union legislative body who also was a lawyer, assumed, in fact the role of coordinator of frauds committed by the imposters from the left bank of the Nistru. In this connection, it is interesting the reply of one of those asked to study the Tiraspol intentions. The General Prosecutor of the USSR – N. S. Trubin in his answer to the Chairman of the Soviet Union’s legislative body ascertained that the creation of a Prosecutor’s Office structure directly subordinated to the USSR Prosecutor’s Office would be an illegal act. The USSR Prosecutor also mentioned that such an attempt could only aggravate interethnic relations. Thus, the General Prosecutor of the USSR himself ascertained that a source generating interethnic confrontations in the Republic of Moldova was located in Moscow and the factor that tensioned the situation were the separatist forces on the left bank of the Nistru.

On 14 May of the same year I. Blohin sent to the Chairman of the Supreme Soviet of the USSR the Tiraspol decision “On the participation of the Transnistrian M.S.S.R. at the elaboration and signing of the All-Union Treaty”. On this document A. Lukianov put his resolution: “Comrades Nishanov R.N., Shishov L. D. – it is necessary to elaborate a strategy for this participation and suggest the ways of this problem’s settlement”.

As a result, A. Lukianov, I. Blohin and the Tiraspol separatists returned to the idea that in order to prevent the Republic of Moldova from breaking away from the USSR it was necessary to elaborate a strategy of creation on the territory of Moldova of two state structures: on the left bank of the Nistru and in the region populated by the Gagauz, where under the guidance of the communist party the separatist forces actions were fully underway. This mission was given to Iazov, Minister of Defense and Pugo, Minister of the Interior of the USSR. In a couple of days time the General Staff of the Soviet Army was already working on the detailed plan of creation of two new state entities, which through the Odessa military district had to be immediately put into practice.

Further actions of separatists, supported politically, economically and military by the Kremlin unleashed the 1992 war on the Nistru river, wreckage of the economy and finally *de facto* the annihilation of the unity and indivisibility of the young state – the Republic of Moldova. Armed units of cossaks, legitimized in Russia, were coming to Moldova, taking part in anti-constitutional, open and violent actions, directed against territorial integrity of Moldova. The cossaks took part in the actions meant to overthrow by violent means the legitimate power in the eastern regions of the Republic of Moldova. Numerous measures undertaken by the Republic of Moldova’s leadership for the amelioration the situation were rejected by the Tiraspol illegal structures. In the end, the situation deteriorated and transformed into a real war. Moreover, the Russian troops stationed in the left bank of the Nistru localities made a direct offensive against the Republic of Moldova.

In those moments of great responsibility the Parliament of the Republic of Moldova (on 26 May 1992) addressed an appeal to the parliaments and peoples of the world with the request to support the Republic of Moldova, its independence, sovereignty and territorial integrity and to condemn the pro-imperial and neo-bolshevik forces aggression that launched an anti-constitutional rebellion in the eastern regions of the Republic of Moldova, being supported by the 14-th Army of the Russian Federation and the armed detachments of the Russian cossaks and mercenaries. The separatist forces, enjoying an obvious foreign support, neglected any efforts made by the legal authorities and the public opinion of the Republic of Moldova to settle through political means an artificially unleashed conflict.

3.2 War on the Nistru river

The Republic of Moldova became a member of the UN on 2 March 1992. One of the consequences of this event was the fact that in such a way it was recognized as being illegal the

self-proclaimed Transnistrian Moldovan Republic. On 1 March 1992 armed cossaks and guardsmen took control over the Dubasari district police office, taking 34 policemen as hostages. The Tiraspol separatist leaders backed up by the 14-th Russian Army unleashed military operations against the constitutional bodies of the state power thus beginning the armed conflict. On 6 March paramilitary units supported by representatives of the 14-th Army began to mine some positions in the conflict zone (agricultural plots, the dam of the Dubasari hydroelectric power plant, bridges over the Nistru, three of which were destroyed). From the No. 66 engineer battalion quartered in Dubasari guardsmen embezzled without difficulty over 1000 Kalashnikov machine guns, 1,5 million cartridges, 20 rocket launchers and other ammunition. The No. 59 motorized infantry regiment gave to the separatist a KamAZ lorry loaded with machine guns and 3 ZIL lorries loaded with cartridges and other ammunition.

In March-April 1992 the Russian servicemen handed over to the separatists armored military equipment. The whole technical arsenal of the Dubasari engineer brigade was put at the disposal of separatists. On 26 April on the guardsmen positions near the Cocieri village there were seen 8 armored cars and tractors. On 4 May 6 amphibian cars were brought from Odessa to Dubasari.

In the middle of May 1992 Moscow adopted a decision on the direct involvement of the 14-th Army units in the Nistru conflict. General Graciov, Russian Defense Minister sent to the commander of the 14-th Army general Netkacev the following order: "Due to aggravation of the situation in Transnistria and taking into account that this is a Russian land we have to defend it in all possible ways and by any accessible means I urge you to:

- complete from the mobilization reserves all military units of the 14-th Army stationed in Transnistria;
- bring to a fighting trim all fighting units of the 14-th Army;
- lift the blockade of all military units".

On the other hand, over 1000 cossaks and different mercenaries came from the Rostov region of Russia to take part in the combat actions on the separatists' side. On 7 May 1992 separatist forces occupied the Moldovan radio broadcasting station situated on the left bank of the Nistru. On 19 May the commander of the 14-th Army issued an order asking that the fighting military equipment was made ready for direct combat actions. Russian officers and sub-officers took part in the arming of the paramilitary units from Tiraspol, Ribnita, Bender (Tighina) and other localities. From the Tiraspol garrison to the combat zone were sent tens of tanks, armored cars, rocket launchers, antitank guns etc.

In this connection, we should mention the attitude of marshal Shaposhnikov expressed at a press conference on 20 May. Motivating the transfer of combat equipment to the paramilitary units from the eastern regions of the Republic of Moldova, the supreme commander of the CIS unified military forces declared the following: "When an 11 thousand crowd, many of whom recently buried their relatives comes to a military unit they cannot expect that among officers and generals will not be those who will take the side of these humiliated people". Thus, the Moscow Defense Minister supported, in fact, separatism in the eastern regions of Moldova.

On the basis of such evaluation of events military commissariats from the eastern regions organized mobilization to the military service in the 14-th Army. Within the units and sub-units of the Army were formed mobilization groups of reservists. In each regiment of the No. 59 infantry division there was formed a tank group enrolling reservists from Transnistria.

On 21 May 1992 the president of the self-proclaimed TMR Igor Smirnov signed a decree on the transfer of all military units of the 14-th Army under the jurisdiction of the TMR. On 24 May, upon his arrival to Tiraspol, general Stolearov, the deputy of the supreme commander of the CIS military forces declared to the separatist leaders of Transnistria that the 14-th Army represented geopolitical interests of Russia in this region and that Russia always had close links with the leaders of the self-proclaimed Transnistrian Republic. Encouraged by Moscow, guardsmen and separatists units organized a provocation in the Bender (Tighina) city, breaking the cease-fire agreement previously reached. The police office was attacked by the guardsmen and heavily fired from different types of modern military equipment. At the request of the police the

Chisinau authorities brought to the city additional units of the Interior Ministry and Ministry of Defense.

In reply to these legitimate actions of the force institutions of the Republic of Moldova, the units of the 14-th Army of the Russian Federation took part (19 June – 7 July 1992) in combat actions on the side of the separatists in the entire war theatre.

For this purpose tanks, heavy artillery, other modern military equipment, inclusively “Grad M21” rocket launchers that had been prohibited by international treaties were used.

On 7 July 1992 in Limanskoe (Ukraine) Russian, Moldovan and Transnistrian military representatives, in the presence of the 14-th Army commander agreed on an immediate cease-fire and withdrawal from the position of a heavy military equipment. Yet, the guardsmen and cossaks continued to violate openly and systematically the agreement. In the evening of 15 July a mine attack from the Parchani base on the Varnita block station was launched. In the night of 17-18 July the so-called detachments of self-defense of Transnistria opened sub-machine gun and machine-gun fire on an ambulance that arrived from Bender (Tighina) to take to hospital the wounded policemen and volunteers.

Following some diplomatic efforts, inclusively the visit of the Vice-president Rutskoi and the Russian Minister for State Security Baranikov to Chisinau and Tiraspol, Moscow drafted and Tiraspol separatists approved an agreement between Russia and the Republic of Moldova on the principles of peaceful settlement of the conflict.

The 14-th Army’s aggression can be qualified as Russia’s intervention into the internal affairs of the Republic of Moldova. As long as noninterference into domestic affairs of a state is legitimized as a fundamental principle of international law along with many others such as – refrain from the use of force or threat with the use of force, equality in rights of sovereign states, in case when one of these principles is violated, the harmed state has the right to call to international responsibility the state that from the point of view of international law committed illegal acts.

3.3 Moscow Agreement

On 21 July 1992 President of the Republic of Moldova, Mircea Snegur and President of the Russian Federation Boris Eltin signed the “Agreement on the principles of peaceful settlement of the armed conflict in the Nistru region of the Republic of Moldova”. The area of Bender city was declared a zone with an increased security regime, ensured by the military contingents of all the three Parties. The Commission was ensuring law and order in cooperation with the local police and military authorities. Administrative activity in the city was exercised by the local public authorities, and when necessary in common with the Joint Control Commission (J.C.C.). The 14th Army units stationed in the Republic of Moldova had to strictly respect the neutrality. In their turn, the two parties in the conflict committed themselves not to infringe this neutrality and to refrain from any illegal actions in their relations with the military. The Army’s status issue, the order and the terms of its withdrawal were to be determined during the negotiation between the Russian Federation and the Republic of Moldova. The parties to the armed conflict considered unacceptable the application of any types of sanctions and blockades, and undertook the obligation to immediately remove any barriers to the free movement of goods, services and people, as well as to lift the state of emergency from the territory of the Republic of Moldova. They also had to initiate urgent negotiations on the return of the displaced persons to their homes, on the assistance to the population of the affected regions, restoration of the destroyed dwellings and office buildings. The Russian Federation intended to offer the necessary assistance in this regard. Parties to the conflict had to secure a free access of the international humanitarian aid to the region. The agreement stipulated the establishment of a joint press center in the framework of the J.C.C. in order to provide a truthful information about the situation in the conflict region. The Parties-signatories were guided by the idea that measures specified in the agreement text were an important constituent element of the conflict settlement by peaceful and

political means. The agreement enters into force from the moment of its signature and is terminated by the consent of the Parties, or in case of its abrogation by one of the contracting Parties that will lead to closing the activities of the Joint Control Commission and of the military units subordinated to J.C.C.

In Moscow Mircea Shegur signed an Agreement in many aspects different from the draft adopted by the Supreme Security Council of the Republic of Moldova, because the document elaborated by the Moldovan authorities was considered to be too ideological by the Russian administration. As a matter of fact, the Snegur-Eltin Agreement followed the pattern of the Dagomis Agreement on the Southern Ossetia conflict, signed by E. Shevardnadze and B. Eltin.

The conclusion of the Agreement “between the two”, but *de facto* “between the three” - the Republic of Moldova, the Russian Federation and the Tiraspol authorities, meant the elimination of other players annoying the Kremlin – Romania, and less the Ukraine – from the diplomatic dialog, to the detriment of the national interests of the Republic of Moldova, which was left alone under the Russian political, economic and military pressure. According to the Agreement signed on 21 July, Tiraspol got the right to decide its future independently, in case of the modification of the status of an independent state of the Republic of Moldova.

It is worth mentioning that in the press communiqué of the Moscow meeting of the two leaders instead of the term “Nistru zone” used in the Agreement, the notion of the “territory on the left bank of the Nistru” was introduced, which obviously excluded the Tighina city and some other settlements on the right bank, controlled by the separatist forces from the context. Later on, during the negotiations aiming at defining the status of the territory on the left bank of the Nistru river within the Republic of Moldova, Chisinau authorities would ignore with an inexplicable easiness this provision of the communiqué, extremely favorable for the interests of the Republic of Moldova.

The Agreement legitimated the military presence of the Russian peacekeeping forces in the Transnistrian region, thus supporting Russian claims on the former Soviet Union area and creating a precedent in this regard.

The text of the document does not contain a clearly defined Russian commitment to unconditionally withdraw the 14th Army, but only a simple request in this regard. This was a serious mistake of the Moldovan diplomacy in the situation when this army was directly involved in military actions against the Republic of Moldova, and when the international organizations and the most important Western states demanded Russia to withdraw its military troops from the Republic of Moldova.

The losses of the national economy as a result of the war amounted to about 12 billion rubles (at the 1992 rouble value). For the restoration of the destroyed settlements and units there were necessary another 15 billion rubles. To compare we should mention that the national income of the Republic of Moldova in 1991 was 15.4 million rubles. 320 people died and 1180 were wounded during the war. 108000 persons fled from this territory, including 51000 to the right bank of the Nistru river.

This war had many important political consequences for the Republic of Moldova: proved the idea that a new independent state could not function beyond the Moscow sphere of influence and consolidated the political position of the neo-communist, anti-national forces. The Tiraspol administration got the possibility to carry out the policy of an “established fact”, as a result of which within the boundaries of Moldova, recognized on the international level, two statehood entities separately exist. The war tore off the mask from the Kremlin leadership face, proving that the obsession to maintain the empire, regardless its political form, was an absolute priority, for the fulfillment of which there were no rules and no moral constraints, not even towards its own population. The war consolidated a pseudo-state unit – “the Transnistrian Moldovan Republic”, a remarkable success of the Moscow empire.

4. CONSTITUTION – A FUNDAMENTAL AND SUPREME ACT OF A STATE

The word *constitution* comes from the Latin where *constitutio* means “a solid settlement”, “foundation”, “state of affairs”. *Constitutio* in the Roman law means a law that emanates from the emperor, while in ancient Greece it is a code of old laws that cannot be modified by ordinary ecclesiastic edicts.

The classical notion of constitution has its origin in the social contract theories advocated back in the XVI-th century as a necessity to announce solemnly and officially the basic elements of the social contract concluded between people and the state in order to create a civil society where governors would have an obligation to respect the citizens’ fundamental rights.

The term constitution gains new significance in the XVIII-th century, obtaining the status of a fundamental law, where fundamental principles of the whole economic, political, social and juridical life are sanctioned.

Initially, constitution was conceived as a code of juridical norms that pursued the goal to limit the governors’ powers and to guarantee the fundamental rights of man and citizen. Later on, this notion gains a richer content with regard to the code of norms that has to be included in a systematical law that will enjoy a supreme juridical power in comparison with the other norms of the state.

The moment of a constitution emergence is still discussed in the professional literature, because the notion of constitutionality appeared long before the first document bearing the traditional title of constitution was adopted.

The first constitution or document with constitutional powers is considered to be Magna Charta Libertatum adopted in 1215 in England. Yet, the first written constitutions were adopted in the American Confederation (1776 Virginia State; 1777 New Jersey State) and afterwards in 1787 in Philadelphia where the Constitution of the USA was adopted. On the European continent the first written constitution is considered to be the French one (1791). It is interesting to mention the fact that in France, two years before the adoption of the constitution (1789), there was adopted a document of a paramount importance entitled the Declaration of the Rights of Man and Citizen, which read: “Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution”.

Since a constitution includes a code of norms, of regulations, obviously there is an object these regulations refer to and, as a matter of fact, the object of regulation is a quintessence of a constitution.

In order to determine the normative substance of a constitution we find it helpful to assess all content elements, because they differ from one state to another, so that every constitution has its own normative substance, specific for the regulation of particular combinations of social relations. Thus, every state establishes through constitutional norms the most important political, social, economic and juridical requirements. The fact that they are gathered in a separate law, called fundamental, already distinguishes it from the normative substance of other juridical documents that do not regulate fundamental social relations.

In this regard there are different definitions of constitution. For instance: a fundamental law of a state that regulates the way of governors’ nomination, their duties and defines the governors’ rights and freedoms; a norm that includes principles of organization of a state and a balance of relations between different state powers; a fundamental juridical document that enjoys supremacy over other acts that regulates principles and ways of organization and functioning of public authorities and relations between these authorities and citizens, by sanctioning and guaranteeing fundamental rights and freedoms of those citizens.

A closer analysis of constitution definitions allows to distinguish the material content of constitutions by which a code of norms, regulations, a number of provisions regarding handing over and exercising of power are meant.

Along with the material content a constitution can be defined according to its formal or organic content, as a set of rules, regardless the subject of regulation, adopted in concordance with some special, distinct procedures that can be revised only by a special body empowered in this regard, as well as in accordance with some procedures that differ from those used in other laws.

In this regard there should be mentioned that whatever the definition of a constitution is, it has to contain a number of basic elements, inherent to an act with supreme juridical power.

Out of those we will mention the following:

- type of law, because structurally a constitution represents a set of norms, rules of conduct;
- a fundamental law, that means it regulates only fundamental social relations in all spheres of human activity, a fact that gives it the capacity of the main source for all other branches of law;
- a supreme juridical force, that imposes the rule of conformity of the entire law system with the constitution's provisions;
- an object of regulation that establishes the material content of a constitution, either by enlisting the main areas it regulates or by emphasizing the qualitative elements;
- specific rules distinct from adoption and modification that make them different from other legal acts.

From the definitions of constitution we can determine the areas, the social relations it regulates, but cannot identify its functions. In this regard Georges Bourdeau highlights two functions: juridical function and political function.

From the juridical point of view a constitution has the following functions:

1. Represents the validity basis for the entire juridical order, because its norms serve as a foundation for other norms that are part of the juridical system.
2. Determines the ways of governors' nomination and defines their duties.
3. Establishes principles in accordance with which power is exercised, for instance, through the representatives or directly, the power is separated and balanced, political pluralism etc.

From the political point of view constitution's functions are much more complex since they:

1. Organize and transfer the right to exercise power in such a way that it cannot be exercised for personal purposes but only in general interest.
2. Constitute the basis for the governing system legitimacy, justifying the governors' decision-making powers that they have in accordance with the assigned duties.
3. Indicate the idea of the right of a public institution that proves the organizational character of the constitutional act.

Determination of the constitution functions allows us to get some broader information regarding the significance of a constitution than that obtained only from definitions. It has to be mentioned that depending on a state political system the constitution functions differ which legitimize the appropriate regime either dictatorial, democratic, monarchic, presidential, or parliamentary.

Usually, in professional literature a constitution is called a fundamental law, a supreme law, the law of laws, as well as other expressions that underline the supreme juridical value of the norms it amalgamates are used.

Previously, we have determined that a constitution represents a code of juridical norms, invested with supreme juridical power, adopted and modified in accordance with certain distinct juridical procedures and that regulates the principles of organization of a society in a state and the operation of public authorities.

From this definition it is important to distinguish the causes that attribute the supreme juridical power to the constitutional juridical norms in other words, how the constitution supremacy can be explained.

"Dictionary of the Romanian language" explains the word *supremacy* as a superiority combined with authority and power; dominating position; preponderance.

Due to the fact that constitution functions are determined by the totality of political, social, economic, juridical factors, which are in a close linkage and interaction, they should be viewed also as generators of supremacy.

To conclude we can say that the scientific evidence of a constitution's supremacy should be viewed in the dialectic of the phenomenon of a state based on the rule of law, in the complexity and logic of political, social, economic and juridical phenomena and their interaction.

In the Republic of Moldova the necessity to adopt a new constitution that would really legitimize the people's sovereignty emerged before 27 August 1991. On 16 June 1990 by the Decision No. 118-XII the Supreme Soviet of the S.S.R. of Moldova set up a Commission for the elaboration of a new constitution draft.

After quite a long period of time in March 1993, when the Republic of Moldova had already gained its independence, the Commission presented to the Parliament a draft of the constitution. After some heated debates, on 12 March 1993 the Parliament adopted the main draft, published it in the press and set up a new commission entitled to work out and finalize the draft.

The Presidium of the Parliament adopted on 15 March 1993 the Decision "On measures regarding the organization and carrying out discussions on the draft of the constitution among the population", allowing the citizens of the country to express their attitude towards the new constitutional regulations. As a result, district executive committees presented to the Parliament over 400 letters on behalf of more than 380 000 citizens that addressed almost all articles of the constitution.

On 27-28 May 1993 an international scientific conference took place in Chisinau. It was attended by well-known scientists, among them the "father" of the French constitutional law, Jacques Cadart, experts in the field of law from different countries that carefully examined the draft constitution and expressed concrete observations and suggestions

The draft was approved by numerous international institutions, such as: the Council of Europe, the Venice Commission, the prestigious University of Sorbona etc.

Yet, 1993 did not end with the adoption of the new constitution, since the Parliament of the 13-th legislature self-dissolved, being unable to continue the lawmaking process.

After the elections of the new Parliament a new commission was established for the elaboration and finalizing the text of the constitution. The commission held over 15 meetings where the draft was worked out and presented to the Parliament. The new Constitution of the Republic of Moldova was adopted on 29 July 1994 and entered into force on 27 August 1994.

Here we have to mention the fact that a constitution, regardless how good it is, will continue to be a document of a declarative nature, should there not be established some guarantees, political and juridical mechanisms that will ensure the exact implementation of the constitution provisions.

The constitutional norms can be breached both by high state officials – parliament, head of state, government, and judicial bodies, as well as by individuals. In this regard, every state must necessarily create proper conditions for the constitutional norms to be easily exercised by all subjects of the **legal** relations who, obviously, must respect first of all the constitutional provisions.

In order to make sure that the commitment to respect the constitution is not a senseless phrase, a state has to create political and juridical mechanisms that will ensure the legitimacy of all participants and good functioning of all public authorities in conformity with the principle of separation and balance of powers in a state.

Among those mechanisms, besides the traditional judicial bodies, we note the following institutions: Constitutional Court, Administrative Court, Ombudsman, Court of Auditors. Their activities should bring a general contribution to the legitimacy as an inherent principle of a state based on the rule of law, which also embraced the notion of control of laws constitutionality, even if some of them do not deal directly with this issue. Thus, the principle of legitimacy as a fundamental principle of organization and functioning of the state institutions system, also guarantees the supremacy of constitution by exerting control over laws constitutionality through specific methods and forms either exercised directly by bodies of specific competence or indirectly by ensuring the principle of legitimacy.

The head of state has an important role in ensuring the supremacy of constitution. In this regard we mention the Romanian Constitution (Article 80, paragraph 2), Polish Constitution (Article 28, paragraph 2), Croatian Constitution (Article 94, paragraph 2) that regulate the President's responsibility to supervise the respect of the Constitution and a good functioning of public

authorities; as well as the Hungarian Constitution (Article 29, paragraph 1) – the President supervises the democratic functioning of state authorities.

In this regard the Constitution of the Republic of Moldova does not directly require the President to be the guarantor of respect for the constitutional provisions, although this responsibility can be inferred from the Article 77, paragraph 2 where the President is declared the guarantor of national sovereignty and independence, from the right to suspend the Government's acts that contradict the legislation until the adoption of a final decision by the Constitutional Court (Article 88, paragraph i of the Constitution), as well as from the right to address interpellations to the Constitutional Court (Article 25 of the Law on Constitutional Court).

4.1 Contradictions between the acts signed by the Republic of Moldova and the self-proclaimed TMR and the Constitution of the Republic of Moldova

For a more detailed analysis of the acts concluded we will bring integrally the texts of those, believing it useful to analyze them in order of their signature, highlighting the contradictions in those documents.

4.1.1 Economic acts

Protocol Resolution on the settlement of problems in the field of the activity of customs authorities of the Republic of Moldova and Transnistria, signed on 7 February 1996 in Tiraspol. In accordance with the results of the negotiations between the leaders of the Republic of Moldova and Transnistria concluded on 28 April 1994, 21 December 1994 and 15 February 1995 and taking into account the agreement reached between the heads of authorities customs the following resolution is adopted:

1. Abolition of customs offices of Transnistria at the entrance on its territory from the territory of the Republic of Moldova, reserving to Transnistria the right to control (by non-customs means) goods exported by Transnistria.
2. At the border with the Ukraine to set up common customs offices in accordance with intergovernmental agreements and their supply with the new equipment.
3. Customs clearance procedures for the Transnistrian goods are carried on as of 10 March 1996 by customs services of the Transnistrian region with a stamp, heading and the seal of a new type – “Republic of Moldova. Transnistria. Tiraspol Customs” in the Moldovan and Russian languages, with the right to perform all customs procedures for all goods from Transnistria.
4. The Transnistrian side solves the problem of imposing import customs tariffs in conformity with those that are in applied force in the Republic of Moldova for goods produced in far away countries, apart from food products (except for alcoholic beverages and tobacco).
5. Until the new regulations concerning customs insurance enter into force in the Transnistrian customs authorities, at the passage the Transnistrian goods through customs offices of the Republic of Moldova, the permission and a preliminary elaboration of acts is done only if those have the relevant acts issued by the Transnistrian customs, without paying any customs taxes.
6. The Republic of Moldova and Transnistria ensure a free and exempted of duties passage of goods from far away countries and the Baltic states, while observing the terms set in paragraph 4.
7. Transnistria undertakes the obligation to inform in due time and promptly the Customs Department of the Republic of Moldova about the goods that arrive from far away countries in the Republic of Moldova through Transnistria.
8. There will be performed a prompt exchange of information between the customs authorities of both parties in order to identify and fight with customs regulations infringements and contraband.

9. For a rapid settlement of issues concerning reciprocal activities of customs authorities and convergence of regulations to organize regular reciprocal working visits of the heads of the customs authorities.
10. Customs Department of the Republic of Moldova informs the CIS customs authorities of the Transnistrian customs identification attributes.
11. Customs Department of the Republic of Moldova grants to the customs authorities of Transnistria the legal basis in the framework of the Agreement on customs union of the C.I.S. countries.
12. The assessment of the implementation of this resolution is carried out quarterly by introducing modifications and supplements if necessary.
13. This resolution enters into force on the date of signature.

Having examined and interpreted the provisions of this protocol decision we spotlighted a number of wordings that ran in flagrant contradiction with Article 1, paragraph 1 of the Constitution of the Republic of Moldova, the fact that should make it impossible to sign this document by the country's leadership, that in fact compromised the constitutional power of the Republic of Moldova.

Below we will present the reasons that come to prove this conclusion.

The progress of the Tiraspol leadership is obvious in the sense that they have been allowed during the negotiations to change the stresses on the situation in the eastern regions, sliding from the formula negotiated in 1992 – the Nistru region of the Republic of Moldova – to a new one – that agreed in the framework of this act negotiations between the leaders of the Republic of Moldova and Transnistria.

Thus, it is accepted the equality between the two parties – the Republic of Moldova, a sovereign, independent, unitary and indivisible state, recognized by the international community and a subject of international law, and Transnistria – without specifying its status, but considered, according to the viewpoint of the Tiraspol leadership, a new state entity, silently accepted by the Republic of Moldova.

In this regard, the provisions of this protocol decision are in absolute contradiction with Article 1, paragraph 1 of the Constitution of the Republic of Moldova that stipulates that the Republic of Moldova is a sovereign, independent, unitary and indivisible state.

We should specify that under these provisions on the territory of a unitary state there is a unity of state institutions and those have the decisive role both on the external and domestic level, and we cannot talk about an agreement between two governments on the territory of one state, because this automatically implies that a government was set up by anything but a constitutional way. Thus, paragraph 2 of this act has no legal basis.

Although according to paragraph 1 of this act there are granted some advantages to business operators of the Republic of Moldova, because they are exempted from customs control at the entrance on the territory of Transnistria, Transnistria was reserved the right to export its goods without customs control. In this regard paragraph 3 specifies that Transnistria receives a stamp, a heading and a seal of a new model – “Republic of Moldova. Transnistria. Tiraspol Customs”, that deprives the Republic of Moldova of the right to exercise the legal control over goods transported by Transnistrian business operators. In this connection, the Republic of Moldova makes a very big mistake by inserting the word “Transnistria” on the stamp, since in the case of state institutions the stamp and the seal are applied only on behalf of the state and not of some administrative-territorial units, thus reconfirming the existence of Transnistria.

By setting up common customs offices on the boundary with the Ukraine Transnistria is given the right to introduce import taxes, a fact that contradicts the constitutional principles, because customs is a state institution and the law that regulates this activity is a mandatory law that cannot be applied differently in different parts of the country, thus neglecting once again the state's authority.

Paragraph 5 of this decision silently recognizes the Transnistrian statehood, since the Republic of Moldova agrees that in the nearest future Transnistria will adopt its own customs legislation.

Another breach of the provisions of the Moldovan Constitution is done in paragraph 8 of the this act, where the two parties agree to make an exchange of rules and regulations that provide for customs activities. In this regard, we should mention that customs authorities are law institutions and constitute an indivisible state system, and it is impossible to talk about two customs systems and about two different categories of rules and regulations.

According to paragraph 10 the Republic of Moldova agrees to inform the CIS customs authorities of the Transnistrian customs identification attributes of Transnistrian goods, the fact that confirms that the Republic of Moldova acknowledges the existence of Transnistria as an entity distinct from the Republic of Moldova.

In conclusion we should note that by concluding this act the Republic of Moldova wished to justify its political activity by abolishing customs offices between the Republic of Moldova and Transnistria, while giving up too much in economic and constitutional terms.

4.1.2 Political acts

Protocol on matters agreed upon, signed on 11 March 1996 in Tiraspol

Transnistria adopts the Fundamental Law (Constitution).

Transnistria adopts Laws and regulations.

Transnistria has its own state symbols (flag, coat of arms, anthem).

The following languages are used in Transnistria as official languages – Moldovan, Ukrainian and Russian.

Transnistria solves problems of economic, social and cultural development in the interest of the population that inhabits its territory.

Transnistria has the right to individually establish and maintain international relations in the economic, technical, scientific and cultural fields, while in other fields with the parties' consent.

The Republic of Moldova and Transnistria ensure a free activity of the local mass media on their territories in accordance with the current legislation.

By interpreting the acts signed by the Republic of Moldova and Transnistria we notice the lack of interest of the Republic of Moldova towards its own eastern territories, as regards the fact that Chisinau representatives do not contribute to the conclusion of acts compliant with the Constitution – the Fundamental law of the state (a law that governs all other laws and regulations), but on the contrary there can be noted a tergiversation of the settlement of the existing problems in the framework of a common space – the Republic of Moldova.

Interpretation of this document from the legal point of view singles out quite a number of provisions that obviously are in contradiction with the Constitution of the Republic of Moldova.

The conclusion of this act contravenes to Article 1, paragraph 1, Article 12 and Article 66, paragraph c of the Constitution of the Republic of Moldova, the fact that would make it impossible to sign this document by the country's leadership, since this compromises the constitutional power of the Republic of Moldova. Below we will present the reasons that come to prove this conclusion.

Similarly to the above mentioned case, the two parties are also situated on an equal basis, and more than that - the Republic of Moldova agrees with the adoption by Transnistria of its own Constitution, laws and regulations, as well as to have its own state symbols. In this circumstances we believe that the Republic of Moldova expressly recognizes the existence of Transnistria with all state attributes, as a state entity different from the Republic of Moldova.

Thus, we should note that this type of acts can be concluded only within a federal state, because all states that associate themselves with such a pattern of state organization have the right to adopt their own Constitution and other local laws. But as long as the Republic of Moldova is a

sovereign, independent, unitary and indivisible state, on its territory there can function only one system of laws, regardless their type (constitutional laws, organic laws, ordinary laws) and a unity of institutions that interpret and ensure the uniformity of legislative regulations on the entire territory of the country.

Beside the fact that paragraphs 1 and 2 of this act are in absolute contradiction with the provisions of Article 1, paragraph 1 of the Constitution of the Republic of Moldova, since they allow Transnistria to have its own Constitution and local laws, paragraph 3 of this act contradicts Article 12 of the Constitution, which stipulates that the Republic of Moldova has a flag, a coat of arms, an anthem – state symbols that are protected by law. How can we understand the situation when at a certain moment a part of the country (the eastern regions) has its separate symbols, different from those of the Republic of Moldova? Is not this a bare indeed this irresponsibility and lack of professionalism that leads to the loss of the state authority and encourages anti-constitutional separatist forces?

Memorandum on the on the bases for normalization of relations between the Republic of Moldova and Transnistria, signed on 8 May 1997 in Moscow

The leadership of the Republic of Moldova and Transnistria, hereinafter referred to as the Parties: proceeding from the necessity for the fastest and full settlement of the relations between the Republic of Moldova and Transnistria exclusively through peaceful political means; reaffirming their commitment to the principles of the UN, OSCE, and generally recognized norms of international law, and also to the agreements reached previously between the Republic of Moldova and Transnistria;

recognizing the responsibility for securing civil peace, international concord, the strengthening of stability and security in this area of Europe; giving prime importance to the realization of basic human rights and freedoms of the individual, notwithstanding ethnic origin, religious belief, political tenets, place of residence and other differences;

considering that uniting their spiritual and material resources will accelerate the solution of their common economic and social problems and will open the possibility for constructing a modern flourishing society through joint efforts;

Through the mediation of the Russian Federation, the Ukraine and the OSCE Mission,

Have agreed to the following:

1. The Parties reaffirm their commitment not to resort to the use of force or the threat of force in their mutual relations. Any differences shall be resolved exclusively by peaceful means, through negotiations and consultations and by the mediation of the Russian Federation and the Ukraine, as guarantor States for the fulfillment of the agreements achieved; of the OSCE and with the assistance of the CIS.

2. The Parties shall continue the establishment between them of state-legal relations.

The Document, defining these relations, the status of Transnistria, shall be based on the principles of mutually agreed decisions, including the division and delegation of competencies, and mutually assured guarantees.

The Parties will proceed to the elaboration of this document immediately after the signing of this Memorandum, giving consideration to all previously signed agreements, including those achieved on 17 June 1996.

3. Transnistria shall participate in the conduct of the foreign policy of the Republic of Moldova - a subject of international law - on questions related to its interests. Decision of such matters shall be taken by agreement of the Parties.

Transnistria has the right to unilaterally establish and maintain international contacts in the economic, scientific, technical and cultural spheres, and in other spheres by agreement of the Parties.

4. The Parties submit a request to the Russian Federation, the Ukraine, and the OSCE to continue their mediating efforts for the achievement of a lasting and comprehensive normalization of relations between the Republic of Moldova and Transnistria.
5. The Republic of Moldova and Transnistria will act as mutual guarantors of the full and unconditional fulfillment of the agreements on the relations between them.
6. The Parties welcome the declaration of the Russian Federation and the Ukraine about their readiness to act as Guarantor States for the observance of the provisions set forth in the respective documents about the status of Transnistria and the agreements set forth in the present Memorandum.
7. The Parties made a request to the OSCE to continue its assistance with a view to ensuring the observance of the agreements achieved.
8. The Parties declare the necessity to elaborate a mechanism of guarantees by all the participants to the negotiating process.
9. The Parties reaffirm that activities for maintaining peace, carried out by the Joint Peace-keeping forces in the Security Zone in accordance with the agreement between the presidents of the Republic of Moldova and the Russian Federation dated 21 July 1992 "On the Principles of Peaceful Settlement of the Armed Conflict in the Transnistrian Region of the Republic of Moldova" shall be continued.
10. In the event of a violation of these agreements, the Parties have the right to address themselves to the Guarantors for carrying out consultations with the goal of taking measures for normalizing the situation.
11. The Republic of Moldova and Transnistria shall build their relations in the framework of a common state within the borders of the Moldavian SSR as of January of the year 1990.

Evaluation and political-juridical interpretation of the provisions of the document entitled "Memorandum..." spotlight a number of elements. The provisions of both the introduction and the main part of the document are in an evident contradiction with Article 1, paragraph 1 and Article 11 of the Constitution of the Republic of Moldova, the fact that would make it absolutely impossible to sign this document by the top leadership without breaking the Fundamental Law of the country and without compromising, on domestic and external levels the constitutional power of the Republic of Moldova. Below we will present the reasons that come to prove this statement.

It is an obvious fact that in the document it is accepted the equality of the parties. The text of the Memorandum was entirely conceived from the perspective of bilateral relations between two the equal political and statehood subjects: the Republic of Moldova, an independent state, recognized by the international community and subject of international law, and Transnistria, a state entity, *de facto* independent (according to the Transnistrian leadership viewpoint), yet unrecognized as such on the international level, but that acts in its relations with the Republic of Moldova as a subject of international law. In this connection we underline that the "Transnistrian Moldovan Republic" was attributed features of a subject of international law, a capacity indirectly recognized by the state officials of the Republic of Moldova by initialing and signing of the act that provides for the "normalization of relations between the two parties, the Republic of Moldova and the Transnistrian Moldovan Republic".

Also, the juridical language used in the Memorandum is similar, or almost identical to that used when drafting international agreements between states. This fact brings us to the idea that this act regulates certain relations between two states, and does not only stipulates the fundamental principles of settling a conflict situation concerning the legal status of an administrative-territorial unit of the Republic of Moldova.

In order to recognize Transnistria's status of an entity equal to the Republic of Moldova there was used a veiled juridical wording present in the preamble of any international treaty where a reference to the UN and the OSCE principles is made (see paragraph 2 of the preamble), principles that are at the core of the relations between states, subjects of international law. Thus,

according to paragraph 2 of the preamble, the relations between the Republic of Moldova and Transnistria have to be normalized on the basis of fundamental principles of international law, among them being the following:

- 1) to refrain from the threat or the use of force (a principle formulated in paragraph 1 of item 1 of the main part of the document);
- 2) settlement of international disputes by peaceful means (a principle found in paragraph 2 of item 1 of the main part of the document);
- 3) peoples' equality in rights and their right to decide their own future (here we should not forget about "the Transnistrian people's right to self-determination", a right claimed many times by the Tiraspol authorities and expressly referred to in the so-called constitution of the "Transnistrian Moldovan Republic");
- 4) sovereign equality of states and fulfillment in good faith of the undertaken commitments etc.

We should mention that the orientation and content of the preamble of the Memorandum legally and politically ground the claim and, implicitly, the legitimate right of Transnistria to establish statehood and political relations with the Republic of Moldova, according to the provisions of item 2 of the main part of the document that finally will lead to the creation of a "state-territorial entity in the form of a republic" (paragraph 2 of item 2 of the main part).

In this regard, the Memorandum provisions are in the absolute contradiction with the Constitution of the Republic of Moldova. Thus, paragraph 1 of Article 1 of the Constitution declares that "the Republic of Moldova is a sovereign, independent, unitary and indivisible state". At the same time Article 109 of the Constitution that states basic principles of the local public authorities expressly stipulates that "the enforcement of the principles mentioned above may not detract from the unitary character of the State" (paragraph 3, Article 109). Also, these Memorandum provisions are in contradiction with Article 111, paragraph 1 of the Constitution that stipulates that "the places on the left bank of the Nistru river ... may be granted special forms of autonomy according to special statutory provisions of the organic law". In reality, however, the status of a "state-territorial entity in form of a republic" greatly exceeds the competence of an autonomy status specified in paragraph 1 of Article 111, and in its essence implies the creation of a state within another state.

By accepting the role of "guarantor states" of Russia and the Ukraine with a view to secure the observance of the Transnistria's status of "a republic", inclusively to settling all disputes between the "Transnistrian Moldovan Republic" and the Republic of Moldova it is allowed a violation of the country's sovereignty and independence, stipulated in Article 1, paragraph 1 of the Constitution, as well as of the status of a permanent neutrality of the Republic of Moldova proclaimed in Article 11, paragraph 1. In this context, it is very important that the status of a permanent neutrality is incompatible with the acceptance of any bilateral or multilateral agreements or commitments that comprise juridical clauses allowing interferences, regardless of their nature, in the matters related to the sovereignty of a neutral state even under the clause of guaranteeing or respecting the status of territorial-administrative units of this state. At the same time, the acceptance of paragraph 8 of the Memorandum's main part regarding "the necessity to elaborate a mechanism of guarantees" for the observance of the status of Transnistria will create legally justified possibilities, for an unlimited period of time, for third countries to interfere into the internal affairs of the Republic of Moldova, thus damaging the image of Moldova abroad as an independent and neutral state.

The Memorandum, also, both in the preamble and its main part, makes a total abstraction from the fundamental **responsibilities** of the eastern region of Moldova regarding the observance of the country's constitutional order and contains solely the obligations to be assumed by the central authorities of the Republic of Moldova. In a situation when this act contains no provisions regarding the future of the paramilitary units, of the interior and security troops that are currently under the Tiraspol control, territorial integrity of the Republic of Moldova is under a question mark. Signing of the Memorandum without clarifying these issues and without getting

the approval of Tiraspol for the demilitarization of Transnistria, or without bringing these military units under the central authorities' control would mean a violation of Article 108 of the Constitution that stipulates that "the armed forces are subordinated solely to the will of the nation, and their purpose is to safeguard the sovereignty, independence, unity and territorial integrity of the country, as well as the constitutional democracy".

Keeping silence about the existence of the Transnistrian military forces in the text of the Memorandum could be interpreted, and for sure will be, as a tacit agreement and even as a legitimization by the leadership of the Republic of Moldova of the maintenance of these forces under the Tiraspol control.

In this context, we mention that the lack of any special provision regarding the future of the Transnistrian military forces logically falls into the skilful tactics used by the Transnistrian side (permanently consulted and assisted by Moscow experts in this matter) at the negotiations with the Chisianu representatives on getting separate concessions on specific issues, which actually are linked and thus inseparable from the general framework of the settlement of the conflict situation in Transnistria, and that had to be tackled by no means in a separate manner. As a result, small concessions made by Chisinau officials on specific matters in order to show good will and sincere willingness to identify solutions for the settlement of the Transnistrian problem (and not of the Transnistrian dispute – a notion completely wrong but intensely used at the official level and by the Moldovan mass media, because the term "dispute" is used in international law in order to define a misunderstanding or a controversy between two or more states and by no means for qualifying a conflict situation) are much bigger concessions that bring serious damage to the vital national interests of the Republic of Moldova. In this case the main goal of Transnistria is the recognition by Chisinau of the juridical status of a "state-territorial entity in the form of a republic" without correlating and defining the competences of the new entity in conformity with the Constitution of the Republic of Moldova, deflecting the attention from its state attributes like the armed forces that are, as we proved above, in flagrant contradiction with the Fundamental Law of the common country according to paragraph 1 of the main part of the document.

Indisputably, if the Memorandum is ratified and Transnistria obtains the juridical status of a republic, it will lately be able to reject any Chisinau demand of abolition of the Transnistrian self-proclaimed competencies that are not in compliance with the Moldovan Constitution, under the pretence that Transnistria as a state (or republic) has the right to have armed and security forces, as well as other force attributes. We believe that in this way we will not solve the Transnistrian conflict, we will rather recognize the exclusion of the regions of the left bank of the Nistru river from the incidence of the Constitution of the Republic of Moldova, which as a matter of fact represents the very objective of the separatists. At the same time, the presence on the territory of the Republic of Moldova of an entity that is not under the total control of the central authorities will represent a factor of uncertainty, instability and risk. It is obvious that the authors of the Memorandum did not consider it necessary to make references to the necessity to built up an independent and integral state from the territorial point of view under the name of the Republic of Moldova, because, perhaps, the independence and territorial integrity of the Republic of Moldova is not present as a primary objective in the compromise versions of the Memorandum.

The lack of any concrete provisions in the Memorandum regarding the force attributes of Transnistria, and thus a silent acceptance of the Chisinau leadership to leave under the Tiraspol control the Transnistrian military forces is also in contradiction with Article 11 of the Constitution of the Republic of Moldova that specifies the permanent neutrality of the country. Taking into account the complex situation in Transnistria, as well as the involvement of the Russian Federation and the Ukraine as mediators and guarantors of an eventually negotiated settlement, and at the same time their specific interest in supporting certain settlement patterns viewed from the long-term strategic interests perspective, it can be assumed presupposed that the sum of these elements will affect, especially from the international credibility point of view, the

permanent neutrality status of the Republic of Moldova. At the same time, from this perspective the presence of the 14th Army on the country's territory is in its essence a complete denial of the neutrality status of Moldova.

We should focus our primary attention on the provision of Article 3 of the Memorandum. In accordance with this article "Transnistria shall participate in the conduct of the foreign policy of the Republic of Moldova - a subject of international law - on issues touching its interests. Decisions of such matters shall be taken by the agreement of the Parties". The question is: what are those foreign policy matters Transnistria is directly interested in? Undoubtedly, one of those issues could be the one connected with the presence on the territory of the Republic of Moldova of the mobile group of the Russian troops. In this case how can Chisinau secure the Tiraspol amicable agreement for the withdrawal of Russian troops and respect for the Constitution? It is hard to imagine. And in case if Tiraspol, pursuing its own foreign interests that do not necessarily coincide with those of Chisinau, would like to get the latter's consent in keeping the Russian troops in the form of a military base in Moldova? Thus, Article 3 by no means approaches the day when the Russian army will leave the territory of Moldova, on the contrary, it could become a source that generates new failures in relations with Tiraspol, significantly undermining the power of Chisinau arguments at the negotiations with Moscow.

Agreement on cooperation between the Parliament of the Republic of Moldova and the Supreme Soviet of Transnistria, signed on 14 March 2000

The Parliament of the Republic of Moldova and the Supreme Soviet of Transnistria, hereinafter referred to as Parties, proceeding from the necessity for the fastest and full settlement of the relations between the Republic of Moldova and Transnistria, have agreed to the following:

Article 1

Taking into account the provisions of the Memorandum on the basis for normalization of the relations between the Republic of Moldova and Transnistria, the Parties hold regular consultative meetings for the harmonization and elaboration of common direction of the lawmaking process, problems and questions susceptible to the coordination of legislative activity.

Article 2

The Parties communicate to each other plans on their legislative activities and laws adopted.

Article 3

The Parties will carry out working visits, hold common Conferences, seminars, scientific symposiums in lawmaking issues.

Article 4

The Parties undertake the commitment to have regularly a vast exchange of analytical, materials, statistical data etc. used in the elaboration of legislative drafts.

Article 5

The Parties ensure the fulfillment of Article 3 of the Memorandum in the relations between the Parliaments.

Article 6

The Parties make efforts for finding a suitable solution, proceeding from their interests and according to the norms of international law, for the participation of the representatives of the Supreme Soviet of Transnistria at the sessions of the international parliamentary organization, according to their Statutes.

Article 7

In order to fulfill this agreement, the Parties set up parliamentary commissions for collaboration, as well as permanent working groups in order to cooperate in concrete issues.

Article 8

The Parties find it necessary to establish a parliamentary control separate from the process of talks between the leadership of the Republic of Moldova and Transnistria.

Article 9

For an express, integral and objective exchange of information in the legal field, the Parties will participate in the establishment of a communication system between the Parliament of the Republic of Moldova and the Supreme Soviet of Transnistria.

Article 10

Each Part can propose modifications and amendments to the present agreement by sending a written notification to the other Part. Modifications and amendments enter into force with the consent of the Parties.

Article 11

The Agreement was done in two copies in the Russian language, both texts being equally authentic.

This agreement reveals the same wrong wordings used time and time again by Chisinau authorities, particularly that the Republic of Moldova and Transnistria are equal from the juridical point of view.

Thus, the Parliament of the Republic of Moldova – a supreme representative body of the people and the only legislative authority in the state accepts by concluding this agreement to place itself on the same level with the Supreme Soviet of Transnistria – an anti-constitutional body, thus neglecting the provisions of Article 60 of the Constitution.

In this regard, the Republic of Moldova and Transnistria undertake the commitment to convey to each other the plans on the lawmaking activities and the laws adopted. The Parliament in this case very easily passes over its main responsibilities – to ensure the unity of legislative regulations on the whole territory of the country (see Article 66, paragraph c of the Constitution), admitting the existence of a separate category of legislative regulations – those of Transnistria.

It is not possible that a constitutional authority accepts any materials used in drafting laws by an anti-constitutional authority.

By signing the Memorandum Transnistria was allowed to take part at the implementation of the foreign policy of the Republic of Moldova, while by signing this agreement the Republic of Moldova undertook the obligation to ensure the fulfillment of this paragraph of the Memorandum in relations between the Parliaments. If making reference to the Parliament's basic powers in the foreign policy field (Article 66, paragraph g of the Constitution), those are to ratify, denounce, suspend and abrogate the action of international treaties concluded by the Republic of Moldova, thus offering the same powers to the Supreme Soviet of Transnistria.

Undoubtedly, paragraph 5 of this agreement contravenes Article 8 of the Constitution of the Republic of Moldova to respect international law and international treaties, since an international treaty can be ratified only by one competent body that issues a juridical instrument exchanged in the case of bilateral treaties or deposited with the depositary (a state or an international organization) in the case of multilateral treaties. Thus, automatically this excludes the possibility to ratify a treaty simultaneously by two bodies in the name of the same state.

It is clear that the international community will critically react to the information that the Parliament of the Republic of Moldova ratified an international treaty, but the Supreme Soviet of Transnistria denounced or suspended it. We cannot talk about the Republic of Moldova as a subject of international relations when the legally created institutions as such contribute to the diminution of their status of an international law subject, sharing their legal competencies with anti-constitutional bodies.

Furthermore, Transnistria aims at the participation of the representatives of the Supreme Soviet at the sessions of the international parliamentary organizations. As a rule, the Statutes of such organizations stipulate that each member state delegates a certain number of the state representatives, member states being free to choose the way of nominating its representatives, but respecting the condition that those are elected by the parliament among its members or are nominated by parliament according to its established procedures. In this case the question is - what will be the form that could be accepted by the Supreme Soviet of Transnistria proceeding

from their interests and according to the provisions of international law – to participate in the name of the Republic of Moldova or Transnistria.

Even if declaratively, this agreement seeks to develop a common strategy of the lawmaking process, while from the juridical point of view, the Parties turn away from the idea to build up a common unitary and indivisible state.

4.1.3 Juridical Acts

Agreement on principles of cooperation between the Ministry of Home Affairs of the Republic of Moldova and the Transnistrian local police authorities, signed on 26 January in Tiraspol

The Ministry of Home Affairs of the Republic of Moldova and the Transnistrian local police authorities (hereinafter referred to as the Parties), attaching great importance to the development of cooperation in all spheres of their institutions activities and aspiring to a common wish to ensure the law order on their territories through the consolidation and extension of business relations between the home affairs institutions of both Parties have agreed to the following:

Article 1

Not to interfere by any means in the activities of the home affairs institutions of the other contractual Party. Not to admit in the framework of the Parties practical cooperation manifestations of a political, military, religious, racial or other nature that have no connection with the professional activities.

Article 2

The Parties agreed to ensure, in the limits of their competencies and within the territories they exercise their duties, the protection of human rights, of the legitimate interests and goods of the citizens and juridical persons of the other Party in the same manner as the protection of the similar values of the citizens and juridical persons from their own territory, if their examination falls within the competencies of this Party and is regulated by its legislation.

Article 3

The home affairs institutions of the Parties undertake the obligation to provide, on a reciprocity basis, practical multidimensional assistance with regard to:

- a) combating crime, especially organized crime, connected with illegal trafficking of drugs, arms, munitions, explosive, toxic, with strong effect and radioactive materials and substances, trafficked on both territories or aimed at subverting economies and financial systems of the Parties;
- b) pursuing of criminals that hide from the investigation, trial or imprisonment sentence, as well as persons that evade from payment of taxes, allowances due to children, debts and sums due to be paid according to contract commitments;
- c) pursuing of persons under investigation, identification of persons that have to undergo a forceful treatment, as well as those that vagabondage, inclusively minors of this category and identification of the deceased persons;
- d) tracing out and restitution to the rightful owners of auto and motor vehicles, of goods, documents and other stolen valuables;
- e) tackling different requests and missions, inclusively those of an operative pursuit character, referring to cases and materials of the home affairs institutions.
- f) settlement within the legal framework of issues regarding handing over to the other Party of persons found on their territory and against whom there have to be instituted criminal proceedings.

Article 4

Each Party undertakes the obligation to initiate, at the request of the other Party, criminal pursuit of its citizens in case when there are sufficient evidences regarding the commitment by those of

illegal acts on the territory of the other Part in conformity with the legislation of both Parties, and are punishable by law being guided, at the same time, by its own legal procedures.

Article 5

The home affairs institutions of both Parties give each other juridical assistance in the form of tackling of inquiries and fulfilling official missions (written), regarding carrying out some procedural or administrative actions and measures of operative pursuit, that will be done in an established way and will contain the following:

- a) all requisites and the address of the home affairs institution that sent the inquiry or the mission and those of the home affairs institution to which those are addressed;
- b) the character of this mission and the date when the penal file was initiate or the date of other material for which the juridical assistance is necessary;
- c) basic facts about the defendants, suspects, accused, convicted and about victims from this file, their citizenship, occupation, permanent or temporary residence;
- d) data regarding legal representatives of these persons and their residence;
- e) concrete essence of the inquiry or mission, ways of conveying the necessary information, as well as the contents and brief description of investigated facts that could facilitate the qualitative accomplishment of the inquiry or mission;
- f) full data and the exact address of the institution that carries out the mission, the date and title of the document by which it was entitled to carry it out.

Article 6

If one of the contracting Parties that received an inquiry or a mission from the other Party does not have the necessary competence for their accomplishment, it will send the inquiry or the mission to a competent authority, notifying its counterpart about this fact and taking measures for their accomplishment by the authority it was passed to.

If the other Party cannot give the required juridical assistance, it will notify the other Party, bringing the reasons and specifying the circumstances that do not allow the accomplishment of the inquiry or mission.

Article 7

All home affairs institutions inquiry and missions, as well as the replies on their fulfillment are sent only through the competent central authorities of the contracting Parties, a measure considered by them as a guarantee of their qualitative execution, in the law terms and conditions.

Article 8

In the course of practical cooperation and professional interaction, certain home affairs authorities or the contracting Parties themselves can elaborate or fulfill common measures or operations in combating organized crime, terrorism, gangsterism, illicit drug trafficking, other serious and extremely dangerous crimes regarding the pursuit and arrest of persons that committed those crimes, as well as identification and neutralization of members of the inter-regional criminal groups.

Article 9

Parties undertake the obligation, in the limits of their competence, to give necessary assistance in overcoming the consequences of natural disasters, accidents and catastrophes.

Article 10

To practice free-of-charge internship and training in the framework of professional training courses of the home affairs institutions of the Parties, to exchange normative acts and administrative-departmental documents, advanced experience in the methodology and tactics of crime fighting.

By mutual consent of the Parties to practice training of personnel in educational institutions of the home affairs system.

Article 11

Not to initiate, although not to hinder the transfer of employees of the home affairs structures of one Party in order to continue their service in subdivisions of the other Party, guaranteeing them, at the same time, maintenance of the general length of service, payment of percentage increases

to their salary for the years served, establishing of state pensions equivalent of those of the employees of the home affairs institutions of the Party they have been transferred to.

Article 12

All disputes regarding the organization of practical cooperation of the Parties inclusively those connected with the interpretation and application of the present Agreement will be settled through bilateral consultations and negotiations.

Article 13

On the basis of the present Agreement between the Parties there can be concluded protocols and agreements of the home affairs institutions and departments that agreed on the concrete directions of activity or on the fulfillment of specific operative service tasks.

Article 14

The present Agreement enters into force on the date of its signature by both Parties and is valid until the expiry of three-months period from the date when one of the Parties received the notification of the other Party of the latter's intention to denounce the Agreement. Within the validity term by consent of both Parties there can be introduced modifications and completions that can extend or restrict the object of its action.

The Parties express their hope that the present Agreement will undisputedly contribute to the efficient cooperation of the home affairs structures in order to optimize professional activities of the Parties, combating crime and maintenance of the law order.

Although the Republic of Moldova concluded a number of documents with Transnistria, their goal being the two Parties rapprochement and settlement of problems within one common state in the boundaries of the SSRM as of January 1990, until now this objective was not achieved, either because the Republic of Moldova did not wish that, or because it could not impose its firm position.

Thus, concluding agreements in a vast majority of areas of cooperation the Republic of Moldova makes the same mistakes by granting Transnistria a statehood status. These types of agreements can be concluded only between states.

If we closely examine the Agreement, we notice from the very beginning that the language used and the structure of the text are similar to those of the international treaties concluded between states.

The preamble of the document demonstrates the wish to ensure law order on the territory through the consolidation and extension of home affairs relations between the institutions of both Parties. Thus, it is obvious that the Republic of Moldova and Transnistria have separate territories, which is in the absolute contradiction with Article 1, paragraph 1 of the Constitution.

Further on, in Article 1, the parties undertake the obligation not to interfere by any means in the activities of the home affairs structures of the other party, noninterference being recognized as a fundamental principle of international law and is applied in relations between states and not within one state where the supremacy of law order has to be ensured.

In Article 2 it is acknowledged that the parties ensure the protection of human rights, legitimate interests and goods of citizens and juridical persons of the other party. In this case the notion of citizenship is neglected – a notion that expresses the belonging of one person to a certain state. These regulations are in direct contradiction with Article 18 of the Constitution that stipulates that no citizen of the Republic of Moldova may be citizen of another country. Thus, on the territory of the Republic of Moldova there can be only one citizenship and we cannot talk about the Transnistrian citizenship.

In Article 3, paragraph f the parties, also, undertake the obligation to pursue and pass over in the legal framework persons that are on their territory and have to be prosecuted. Though no direct reference is made to the notion of extradition the notion “to pass over in the legal framework” is synonymous with that of extradition, because on the territory of a unitary state there is only one structure of legislative, executive and judicial institutions and in this case the question arise what bodies these persons should be passed over to.

Another contradiction with the provisions of the Constitution of the Republic of Moldova is the one that the parties undertake the obligation to exchange normative acts and administrative-departmental documents, advanced experience in the methodology and tactics of combating crime. In this case, as well the unity of legislative regulations on the whole territory of the country is not taken into account (Article 66, paragraph c of the Constitution), moreover the Republic of Moldova accepts normative acts of an advanced experience from Transnistria.

We should mention that the Transnistrian problem could be solved on the basis of principles of sovereignty and territorial integrity of the Republic of Moldova only if parties to the conflict have common interests in this regard.

4.2 The juridical nature and effect of the acts concluded. Eventual procedures of their abrogation.

We wish to mention the fact that we are not against the signature of this kind of acts, but these acts have to be in conformity with the provisions of the Constitution, contributing to the settlement of all problems within an indivisible territory.

In this regard Article 7 of the Constitution stipulates that no laws or no other legal acts in contradiction with the provisions of the Constitution may have any legal power. Thus, we can say that these acts concluded between the Republic of Moldova and Transnistria with the violation of the provision of the Constitution have no legal power or in other words are void, that is they have no effects for the parties (*quod nullum est, nullum producit effectum*).

The sanction that is applied to legal acts, which violate the imperative legal provisions that protect legitimate interests, for depriving them of legal effects contrary to the law, is their absolute nullity.

For a juridical act to produce effects it is necessary to publish it, so that it is brought to the attention of the interested persons (*opozabilitate erga omnes*). Articles 76, 94, 102 of the Constitution of the Republic of Moldova stipulate that a normative act produces effects only after its publication in the Official Monitor of the Republic of Moldova, non-publication bringing the effect of its non-existence.

The question in this regard is if the aforementioned acts signed by the President, the representatives of the Government and the Parliament produce legal effects. It is easy to understand that these cannot produce legal effects, since from the legal point of view they do not exist, for they have been concluded with the violation of the provisions of the Constitution and are not published in accordance with law.

Due to the fact that Article 20 of the Constitution of the Republic of Moldova regulates a free access to justice of every person and, *per a contrario*, if those acts would produce legal effects and somebody's rights, freedoms and legitimate interests would be infringed by these acts provisions, this result in the effect that this person has the right to address to the court asking for their overruling or removal of the obstacles created by those acts, in accordance with the procedure of the administrative court. But Article 4 of the Law on Administrative Court stipulates that purely political acts of the Parliament, the President and of the Government cannot be brought in front of the administrative court.

Since in these acts the juridical and political contents is interdependent, courts will be able to refuse to accept any claims in this regard, referring to the competence of the Constitutional Court.

Due to the fact that only a restricted number of subjects of law have access to the procedures of the Constitutional Court, the plaintiff has to request the assistance of a member of the Parliament, a representative of the Government or the President of the country in order to contest them. In this case the plaintiff will enter into a vicious circle, because those entitled to attack in the court the constitutionality of those acts are at the same time those interested in these acts, respectively those who signed them (President, Government, Parliament).

Representative political entities in the Parliament and the Government, as well as the President of the country have in this regard a higher level of juridical initiative, because they can demand the abrogation of these acts, either directly by their unilateral annulment (cancelation) or indirectly by addressing to the Constitutional Court.

The obstacle that can arise on the indirect way can be the refusal of the Constitutional Court to examine addresses, motivating its incompetence.

It is obvious that at present these acts can be subject to constitutional control the court addressed is therefore entitled to act in conformity with the law, thus informing the institution or the person in charge that the respective normative act contravenes the legislation in force.

If the person or the institution will not abrogate the normative act, the court will take a decision applying the law that regulates the similar juridical relations and that does not contravene the Constitution and, in the absence of a similar law, the court will be guided by the fundamental principles of the legislation, the contents and essence of which derive from the constitutional provisions.