



Republic of Moldova
CONSTITUTIONAL COURT

*Non-official translation,
which may be subject to editorial revision*

OPINION

**on ascertaining the interim office of the President of the Republic of
Moldova for the failure to exercise the constitutional duty of
dissolving the Parliament and for setting the date for
snap parliamentary elections**

(Application no.113f/2019)

CHIȘINĂU

9 June 2019

In the name of the Republic of Moldova,
The Constitutional Court composed of:

Mr. Mihai POALELUNGI, *President*,
Ms. Raisa APOLSCHII,
Mr. Aurel BĂIEȘU,
Mr. Corneliu GURIN,
Mr. Artur REȘETNICOV,
Mr. Veaceslav ZAPOROJAN, *judges*,
and Ms. Ludmila Chihai, *registrar*,

Considering the application lodged with the Court on 9 June 2019
and registered on that date,
Examining the application in a public hearing,
Considering the case-files,
Having deliberated in closed session,

Delivers the following opinion:

PROCEDURE

1. The case originated in an application lodged with the Constitutional Court on 8 June 2019 by the Members of Parliament Serghei Sîrbu, Igor Vreamea and Vladimir Cebotari, pursuant to Articles 4 para. (1) let. f) of the Law on the Constitutional Court, 4 para. (1) let. f) and 38 para. (1) of the Code of Constitutional Jurisdiction and 135 para. (1) let. f) of the Constitution as interpreted by the Judgment of the Constitutional Court no. 28 of 17 October 2017.

2. The applicants requested the Constitutional Court:

“1. To ascertain the circumstances justifying the interim office of the President of the Republic of Moldova for his failure to exercise his constitutional duties aiming at:

- ascertaining the circumstances justifying the dissolution of the Parliament of 10th legislature;
- signing the Decree on Parliament’s dissolution and on setting the date of snap parliamentary elections.

2. To establish the interim office of the President of the Republic of Moldova for the exercise of these constitutional duties.”

3. The Court decided to examine the admissibility jointly with the merits.

4. At the public sitting of the Court appeared the MP Igor Vreamea, one of the applicants.

RELEVANT LEGISLATION

5. Relevant provisions of the Constitution:

Article 1

The State of the Republic of Moldova

“[...]”

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

Article 85

Dissolution of Parliament

“(1) In the event of impossibility to form the Government or in case of blocking up the procedure of adopting the laws for a period of 3 months, the President of the Republic of Moldova, following consultations with parliamentary fractions, may dissolve the Parliament.

(2) The Parliament may be dissolved, if it has not accepted the vote of confidence for setting up of the new Government within 45 days following the first request and only upon declining at least two requests of investiture.

[...]”

Article 91

Interim office

“In the event the office of the President of the Republic of Moldova becomes vacant or the President has been removed, or finds himself in temporary impossibility to execute his duties, the interim office shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister.”

Article 135

Powers

“(1) The Constitutional Court:

[...]”

f) ascertains the circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova or the interim office of the President, as well as the impossibility of the President of the Republic of Moldova to fully exercise his functional duties for more than 60 days;

[...]”

THE FACTS

6. On 9 March 2019, by Judgment no. 4, the Court confirmed the results of the parliamentary elections of 24 February 2019 and validated the mandates of the elected MPs of 10th legislature.

7. In three months (90 days) from validation, the Parliament had to establish the leading units of the Parliament and to form the Government.

By the date of 7 June 2019, inclusive of, neither Parliament's leading units, nor the Government were formed.

8. On 8 June 2019, after the expiry of the three-month constitutional time-limit, a number of 61 MPs convened in a sitting and voted a number of legislative acts.

THE LAW

A. The applicants' submissions

9. The applicants contended that the Head of State is bound to commence without delay the proceedings for Parliament's dissolution and to set the date for snap parliamentary elections, as 8 June 2019 is the date when, following the expiry of the three-month constitutional time-limit (90 days), the Parliament did not have Parliament's leading units established, and the Government was not formed.

10. Therefore, the President's failure to act regarding the proceedings for Parliament's dissolution amount to a temporary impossibility to exercise his duties, which is a circumstance triggering the interim office of the President for ensuring the exercise of this constitutional duty.

B. The Court's assessment

(a) On President's competence to dissolve the Parliament

11. The Court notes that under Article 85 para. (1) of the Constitution, following consultations with parliamentary factions, the President of the Republic of Moldova may dissolve the Parliament in the event of an impossibility to form the Government or a deadlock in adopting laws during three months.

12. Article 85 para. (1) of the Constitution has been previously interpreted in the constitutional case-law, imposing in fact a duty on the President of the Republic of Moldova to initiate Parliament's dissolution, when circumstances arise, *i.e.* when the three-month term is exceeded.

13. Thus, in Judgment no. 30 of 1 October 2013, the Court highlighted this duty at §§ 75, 76 and 77. Irrespective of the circumstances triggering a no confidence vote, the failure to form the new Government in three months inevitably leads to Parliament's dissolution.

14. In Judgment no. 29 of 24 November 2015, the Court noted that the powers of the President of the Republic of Moldova to dissolve the Parliament represent a constitutional guarantee which enables the resolution and unlocking of the institutional crisis (§ 35).

15. By the Decision no. 13 of 16 December 2015, which originated in an application lodged with the Court by Mr. Igor Dodon, who was an MP at the material time, the Court reiterated that the three-month term is a general time-limit to form a Government, which runs from the date

circumstances triggering the need to form a new Government arise, and that the President of the Republic of Moldova is under the duty to dissolve the Parliament after this term is exceeded (§§ 16-17).

16. Undoubtedly, Mr. Igor Dodon, the President of the Republic of Moldova, was aware of this duty imposed by the Constitution, as interpreted by the Constitutional Court. The Court underscores that the interpretations it renders enjoy the binding force of the Constitution. Otherwise, the Basic Law could not enjoy effectivity in a democratic society.

17. The constitutional time-limits were established in order to be observed, and the formation of governments or their appointment in disregard of these terms, following proceedings lacking good-faith, plenary consultations, *e.g.* transparency, may not justify any exceptions from them.

(b) On the effects of President's refusal to meet his constitutional duties

18. The Court notes that in situations of institutional deadlocks, when the powers of an authority are not exercised by the incumbents, irrespective of the reasons of such deadlocks, constitutional provisions impose sanctions.

19. By the Judgment no. 28 of 17 October 2017, the Court noted that failures to act of the presidential institution, by deliberate refusal to exercise powers, be it from objective reasons or subjective, results in identical consequences, that leading to a deadlock of other institutions. Thus, the Court noted that in case of deliberate refusal of the President to exercise his powers, the consequences are identical to those in case of an impossibility to exercise powers out of objective reasons, so that the resolution of such situations must be identical, by establishing the interim office. The deliberate failure to act of the President of the Republic of Moldova is not a novelty, from a constitutional perspective. The President Igor Dodon has been previously suspended from office for his refusal to appoint the Defence Minister (Opinion of the Constitutional Court no. 2 of 20 October 2017), for the refusal to appoint a deputy minister and more ministers (Opinion no. 1 of 2 January 2018), for the refusal to promulgate a law amending the Broadcasting Code (Opinion no. 2 of 5 January 2018), for the refusal to appoint ministers (Opinion no. 4 of 24 September 2018) and, again, for the refusal to promulgate a number of laws (Opinion no. 5 of 10 December 2018).

(c) Ascertaining the circumstances justifying the interim office

20. The Court finds that the President of the Republic of Moldova declined to dissolve the Parliament of 10th legislature, in violation of the conditions prescribed by Article 85 para. (1) of the Constitution.

21. Therefore, having regard to the fact that the President has deliberately declined to exercise his constitutional duty to dissolve the Parliament, the Court holds that, within the meaning of Article 91 of the Constitution, the President of the Republic of Moldova is found in the temporary impossibility, due to subjective reasons, to exercise the power in question, which justifies the interim office for ensuring the exercise of this constitutional duty.

22. The Court also holds that under Article 91 of the Constitution, in the event the President of the Republic of Moldova is found in a temporary impossibility to exercise his duties, the interim office shall be ensured in compliance with the following order: by the Speaker of Parliament or by Prime Minister.

23. Accordingly, under Article 91 of the Constitution, given that the decision on the election of the Speaker of Parliament was deemed unconstitutional by the Judgment of the Constitutional Court no. 14 of 8 June 2019, the interim office of the President of the Republic of Moldova shall be ensured by the Prime Minister in office, Pavel Filip, who shall apply before the Constitutional Court for the circumstances justifying the dissolution of the Parliament of 10th legislature to be ascertained.

Considering the foregoing, pursuant to Articles 85 para. (1), 135 para. (1) let. f) and 140 of the Constitution, and to the Judgment of the Constitutional Court no. 13 of 8 June 2019, the Constitutional Court is issuing the following

OPINION:

1. It is ascertained as a circumstance justifying the interim office of the President of the Republic of Moldova within the proceeding of Parliament's dissolution the deliberate refusal of the President to comply with his duty to notify the Constitutional Court on ascertaining the circumstances justifying the dissolution of the Parliament of 10th legislature, followed by a Decree on Parliament's dissolution and setting of the date of snap parliamentary elections, a fact which represents, under Article 91 of the Constitution, a temporary impossibility to exercise his powers in this respect.

2. Under Article 91 of the Constitution, in line with the order on exercising interim office, the Prime Minister in office, Mr. Pavel Filip, in his capacity of interim President of the Republic of Moldova shall notify the Constitutional Court on ascertaining the circumstances justifying the dissolution of the Parliament of 10th legislature and, where appropriate, shall issue the decree on Parliament's dissolution and setting the date of snap parliamentary elections.

3. This Opinion is final, cannot be appealed, entering into force on the date of adoption and shall be published in the Official Journal of the Republic of Moldova.

President

Mihai POALELUNGI

Chişinău, 9 June 2019
Opinion of the Constitutional Court no. 1
Case no. 113f/2019