



Republic of Moldova
CONSTITUTIONAL COURT

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

OPINION

**on ascertaining the circumstances justifying
Parliament's dissolution**

(Application no.114f/2019)

CHIȘINĂU

9 June 2019

OPINION ON ASCERTAINING
THE CIRCUMSTANCES JUSTIFYING THE DISSOLUTION
OF THE PARLIAMENT OF 10TH LEGISLATURE

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,
Sitting in full Court and 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 on 9 June 2019 by Mr. Pavel Filip, the Interim President of the Republic of Moldova, under 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 Constitutional Court in Judgment no. 28 of 17 October 2017.

2. The applicant requested the Constitutional Court:

“to ascertain the circumstances justifying the dissolution of the Parliament of 10th legislature following the impossibility to form the Government within the time-limit provided by Article 85 para. (1) of the Constitution.”

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

4. The applicant asked for the application to be assessed in his absence.

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

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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. By the Judgment no. 4 of 9 March 2019, 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.

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THE LAW

A. The applicants' submissions

8. The applicant contended that where circumstances arise for the mandatory dissolution of Parliament following the lawmaking deadlock and/or the impossibility to form a Government in three months (90 days), the Parliament may not conduct lawmaking activity, nor perform the duties provided by Article 66 of the Constitution, or establish its leading units.

9. And where circumstances for Parliament's dissolution arise under Article 85 para. (1) of the Constitution, the President of the State is under the duty to apply before the Constitutional Court, without delay, for the circumstances for dissolution to be ascertained, with the subsequent issuing of the decree on Parliament's dissolution and setting of the date of snap elections. Any action and/or legislative act of the Parliament following the emergence of the circumstances of mandatory dissolution amount to a serious violation of constitutional provisions, being null *ab initio*.

B. The Court's assessment

10. The Court notes that under Article 85 para. (1) of the Constitution, the Parliament may be dissolved by the President of the Republic of Moldova in case of an impossibility to form the Government or a three-month lawmaking deadlock.

11. 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 require it, *i.e.* when the three-month term is exceeded.

12. The Court recalls its holdings from the Judgment no. 29 of 24 November 2015, providing 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 an institutional crisis (§ 35).

13. By the Decision no. 13 of 16 December 2015, the Court reiterated that the three-month term is a general time-limit to form a Government, which shall run from the date the 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).

14. At the same time, by the Opinion no. 1 of 9 June 2019, the Court ascertained the interim office of the President of the Republic of Moldova for Parliament's dissolution procedure, given the deliberate refusal of the President-in-office, Mr. Igor Dodon, to perform his constitutional duty to notify the Constitutional Court for the circumstances justifying the dissolution of the Parliament of 10th legislature to be ascertained.

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15. The Court notes that under Article 135 para. (1) let. f) of the Constitution, ascertaining the circumstances justifying Parliament's dissolution falls into the ambit of the Constitutional Court.

16. In line with constitutional provisions, the President of the Republic of Moldova shall issue a decree on Parliament's dissolution and set the date of the elections of the new Parliament based on the opinion of the Constitutional Court on ascertaining the circumstances justifying Parliament's dissolution.

17. The Court finds that that the three-month term provided by Article 85 para. (1) of the Constitution has been exceeded, without the Government being appointed. It follows that there exist circumstances justifying Parliament's dissolution.

Considering the foregoing, pursuant to Articles 135 para. (1) let. f) and 140 of the Constitution, 26 of the Law on the Constitutional Court, 62 let. b) and 66 para. (1) of the Code of Constitutional Jurisdiction, as well as pursuant 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 dissolution of the Parliament of the Republic of Moldova of 10th legislature the impossibility to form the Government within the time-limit provided by Article 85 para. (1) of the Constitution.

2. 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. 2
Case no. 114f/2019*