Republic of Moldova

CONSTITUTIONAL COURT

JUDGEMENT

ON CONSTITUTIONAL REVIEW

of the Decree of the President of the Republic of Moldova No. 1877-VII dated 21 December 2015 on appointing a candidate for the position of Prime-minister

(*Complaint No. 59a/2015*)

CHISINAU

29 December 2015

In the name of the Republic of Moldova,
the Constitutional Court composed of:
Mr. Alexandru TĂNASE, *President*,
Mr. Aurel BĂIEŞU,
Mr. Igor DOLEA,
Mr. Tudor PANȚÎRU,
Mr. Victor POPA, *judges*,
with the participation of Mrs. Sorina Munteanu, *registrar*,

given the complaint lodged on 28 December 2015
and registered on the same date,
having examined the complaint referred to in a plenary public sitting,
given the file documents and proceedings,
deliberating in closed plenary sitting,

Delivers the following Judgement:

PROCEEDINGS

1. The case originates in the complaint lodged with the Constitutional Court on 28 December 2015, according to articles 135 para. (1) let. a) and b) of the Constitution, 25 let. g) of the Law on the Constitutional Court, and 38 para. (1) let. g) of the Constitutional Jurisdiction Code, by the Members of Parliament, Violeta Ivanov, Victor Mîndru, Galina Balmoş, Alexandr Bannicov, Boris Golovin, Anatolie Gorilă, Elena Gudumac, Corneliu Mihalache, Petru Porcescu, Artur Reşetnicov, Sergiu Stati, Vladimir Vitiuc, Igor Vremea and Anatolie Zagorodnîi, on the interpretation of article 98 para. (1) of the Constitution of the Republic of Moldova and review of constitutionality of the Decree of the President of the Republic of Moldova No. 1877-VII dated 21 December 2015 on appointing a candidate for the position of Prime-minister.

2. The authors of the complaint requested the Constitutional Court to interpret the provisions of article 98 para. (1) of the Constitution and to explain:

> "1. How to understand the phrase «***consultation of*** *parliamentary factions*»?
>
> 2. Is it a **discretionary** right of the Head of the State to appoint a candidate for the position of Prime-minister regardless of the existence or inexistence of a parliamentary majority?
>
> 3. If the Head of the State obliged, during the consultation process, to take into account the existence of a **parliamentary majority** disposed to support a candidate for the position of Prime-minister?
>
> 4. Is the President obliged to have consultations only with the factions, or also with the **parliamentary groups of non-affiliated MPs**?"

3. On 29 December 2015, based on article 31 para. (3) of the Constitutional Jurisdiction Code, the authors of the complaint (Vladimir Vitiuc, Petru Porcescu, Galina Balmoş, Boris Golovin, Victor Mîndru) have

supplemented the basis and object of the complaint, requesting additionally the interpretation of the notion "*appoints*", provided in article 98 para. (1) of the Constitution, the Constitutional Court to explain if:

> 5. "The President of the Republic of Moldova should appoint the candidate or one of the candidates proposed by the **majority parliamentary faction (factions)** [***party with the biggest number of mandates*** *– clarification of the author during the public sitting*] during the consultations, who is assumed to get the vote of confidence?"

4. In this context, the authors of the complaint alleged that the Decree of the President of the Republic of Moldova No. 1877 dated 21 December 2015, being issued without consultation of all the parliamentary factions, and appointing a candidate that was not proposed by the consulted factions, contravenes the articles 6, 60, 77 para. (2) and 98 para. (1) of the Constitution.

5. Based on the Constitutional Court Decision of 28 December 2015, the complaint was declared admissible, without prejudicing the merits of the case. At the same time, the Court rejected the request to suspend the action of the Decree of the President of the Republic of Moldova No. 1877-VII dated 21 December 2015 on appointing a candidate for the position of Prime-minister, in favor of examining the complaint in a priority regime, before the meeting of the Parliament for the Government investiture vote.

6. In the process of preparing the examination of the complaint, the Constitutional Court requested the opinions of the Parliament and the President of the Republic of Moldova.

7. In the public hearing of the Court, the complaint was supported by Mr. Eduard Răducan, representative of the complaint's authors. The Parliament was represented by Mr. Ion Creangă, head of the General Legal Division of the Parliament Secretariat. The President of the Republic of Moldova was represented by Mr. Valentin Țîmbaliuc, advisor in the legal area and institutional relations, President's representative in the relations with the Parliament and Government, and Alexandru Ohotnicov, head of the General Legal Division of the Apparatus of the Republic of Moldova President.

IN FACT

8. Based on its Decision No. 181 dated 29 October, 2015, the Parliament expressed its vote of no confidence (motion of censure) for the Government of the Republic of Moldova, and as a result it has been dismissed.

9. Based on the Decree No. 1877-VII dated 21 December 2015, the President of the Republic of Moldova appointed Mr. Ion Sturza as candidate for the position of Prime-minister and authorized him to develop the Activity Program and the list of the Government, submitting them to the Parliament for review.

RELEVANT LEGISLATION

10. The relevant provisions of the Constitution (M.O., 1994, No. 1) are as follows:

Article 1
The State of the Republic of Moldova

„[…] (3) Governed by the rule of law, the Republic of Moldova is a democratic State in which the dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values that shall be guaranteed."

Article 2
Sovereignty and State Power

"(1) National sovereignty resides with the people of the Republic of Moldova, who shall exercise it directly and through its representative bodies in the ways provided for by Constitution.

(2) No private individual, no national segment of population, no social group, no political party or other public organization may exercise state power on their own behalf. The usurpation of state power shall constitute the gravest crime against people."

Article 5
Democracy and Political Pluralism

"(1) Democracy in the Republic of Moldova shall be exercised under the conditions of political pluralism, which is incompatible with dictatorship or totalitarianism."

Article 7
Constitution – the Supreme Law

"The Constitution of the Republic of Moldova shall be the Supreme Law of the State. No law or other legal act which contravenes the provisions of the Constitution shall have legal force."

Article 60
Parliament – the Supreme Representative and Legislative Authority

"(1) Parliament is the supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the State.

(2) Parliament is composed of 101 members."

Article 77
President of the Republic of Moldova – Head of the State

"(1) The President of the Republic of Moldova shall be the Head of the State.

(2) The President of the Republic of Moldova shall represent the State and shall be the guarantor of national sovereignty, independence, of the unity and territorial integrity of the State."

Article 78

Election of the President

"(1) The President of the Republic of Moldova is elected by the Parliament via secret suffrage."

Article 98
Investiture

"(1) **The President of the Republic of Moldova designates a candidate for the office of Prime-Minister following consultations with parliamentary fractions**.

[…]

(3) The programme of activity and the list of the members of Government are subject to parliamentary debates in session. It shall grant confidence to the Government with **the vote of majority of the elected members of Parliament**. […]"

11. The relevant provisions of the Rules of Procedure of the Republic of Moldova Parliament, adopted via the Law No. 797-XIII dated 2 April 1996 (republished in M.O., 2007, no.50, art. 237), are as follows:

Article 146
Appointing the candidate for the position of Prime-minister

"(1) **After consulting the parliamentary majority**, the President of the Republic of Moldova appoints a candidate for the position of Prime-minister. […]"

IN LAW

12. Having examined the content of the present complaint, the Court notes that it refers, in essence, to the conditions of exercising the duty of the President of the Republic of Moldova regarding the appointment of the candidate for the position of Prime-minister. As well, it is requested to verify the constitutionality of appointing Mr. Ion Sturza as candidate for the position of Prime-minister.

13. Hence, the complaint refers to a set of elements and principles of related constitutional values, such as democracy, the representative mandate and the relations between the Parliament and the President of the Republic of Moldova when appointing a new Prime-minister.

A. ADMISSIBILITY

14. According to its Decision of 28 December 2015, the Court held that based on article 135 para. (1) let. b) of the Constitution, article 4 para. (1) let. b) of the Law on Constitutional Court and article 4 para. (1) let. b) of the Constitutional Jurisdiction Code, the Constitutional Court is competent to examine a complaint relating to the interpretation of the Constitution.

15. As well, the Court notes that based on article 135 para. (1) let. a) of the Constitution, article 4 para. (1) let. a) of the Law on Constitutional Court and article 4 para. (1) let. a) of the Constitutional Jurisdiction Code, the Constitutional Court is competent to review the complaint on constitutional review of decrees of the President of the Republic of Moldova.

16. Article 25 let. g) of the Law on Constitutional Court and article 38 para. (1) let. g) of the Constitutional Jurisdiction Code empower the members of the Parliament to lodge complaints to the Constitutional Court.

17. The Court mentions that it had previously interpreted article 98 of the Constitution via its Judgment No. 16 of 24 April 2000 on interpretation of some provisions from art.73, 82, 86, 94, 98, 100 and 101 of the Constitution of the Republic of Moldova.

18. The Court notes that the issues challenged by the authors of the complaint have never been subject to interpretation by the constitutional control institution.

19. As well, the Court notes that via the Law No. 1115-XIV dated 5 July 2000, the Parliament reviewed the Constitution of the Republic of Moldova, modifying among others, article 98.

20. The Court established that the authors of the complaint request the interpretation of article 98 para. (1) of the Constitution and constitutional review of a presidential decree in the light of this interpretation.

21. The Court reiterates that, **every time when it is requested to verify the constitutionality of some legal acts at the same time with the interpretation of some constitutional provisions, the constitutionality verification includes implicitly the interpretation of the given provisions.**

22. In these conditions and based on article 6 para. (2) of the Constitutional Jurisdiction Code, the Court retains that in the present case, the request for constitutional review absorbs the request to interpret the constitutional norms.

23. The Court holds that the complaint cannot be dismissed as inadmissible and there are no other grounds to discontinue the proceedings under Article 60 of the Constitutional Jurisdiction Code. The Court holds that the complaint was lodged legally and it is competent to decide on the constitutionality of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015.

24. Therefore, the Court will further examine the merits of the complaint. The two issues lodged to the Court for settlement are interdependent. Taking into account the fact that the explanation of the conditions in which the President of the Republic of Moldova exercises his duty to appoint the candidate for the position of Prime-minister influences the rationale regarding the constitutionality of the contested act, some of the aspects will be tackled together.

25. To elucidate the aspects tackled in the complaint, the Court will operate, especially, with the provisions of articles 78, 98 para. (1) and (3) of

the Constitution, its previous case-law, as well as the principles enshrined in the international law, using all the methods of legal interpretation.

B. THE MERITS

THE ALLEGED VIOLATION OF ARTICLE 98 PARA. (1) OF THE CONSTITUTION COMBINED WITH ARTICLES 98 PARA. (3) AND 78 PARA. (1)

26. According to the authors of the complaint, the contested act was adopted by violating article 98 para. (1) of the Constitution, according to which:

> "(1) The President of the Republic of Moldova **designates** a candidate for the office of Prime-Minister **following consultations with parliamentary fractions**."

1. Arguments of the complaint's authors

27. The authors of the complaint assert that in a parliamentary republic, the consultations of the President with the parliamentary factions for appointing a candidate for the position of Prime-minister are binding and cannot be formally conducted.

28. Hence, in the opinion of the complaint's authors, in the situation when certain parliamentary factions come to a consensus regarding the establishment of a majority in the Parliament to grant the vote of confidence to the Government and submit to the Head of the State a candidate for the position of the Prime-minister, the President is obliged to appoint this candidate based on the provisions of art. 98 para. (1) of the Constitution. In a contrary case, the ignoring of the will of the parliamentary majority means the intentional instigation of an institutional conflict between the Parliament and the President, deliberate induction of the legislative body's dissolution and initiation of anticipated elections.

29. According to the opinion of the complaint's authors, the President has the discretion to appoint a candidate for the position of Prime-minister only in case when after consultations, he has noted a political blocking between the parliamentary factions, not able to come to a consensus regarding the formation of the Government.

30. However, in this case as well, according to the authors of the complaint, the President should appoint the candidate proposed by the parliamentary factions, so as not to imply institutional blocking because of his fault.

31. In this respect, in the opinion of the complaint's authors, the President of the Republic appoints as candidate for the position of the Prime-minister the representative proposed by the political party, respectively the political alliance, which has the **biggest number of parliamentary mandates**.

32. In this context, the authors of the complaint argue that the President has to hold consultations with all the parliamentary groups, including the non-affiliated members of the Parliament.

33. According to the complaint's authors, during the months of November and December 2015, the President of the Republic of Moldova held several rounds of consultations with the parliamentary factions for the purpose of appointing the candidate for the position of the Prime-minister. However, they, representing 14 members of the Parliament, ex-members of the factions of the Party of Communists of the Republic of Moldova (hereinafter referred to as the PCRM), were not consulted in relation to the candidate for the position of Prime-minister neither before nor after leaving the faction, although they have announced about their availability to participate in the creation of the parliamentary majority, capable to invest the Government. To support these allegations, the authors of the complaint mention the fact that they have announced about leaving the PCRM faction at 9.00 o'clock on 21 December 2015, and during the same day, at 14.00 o'clock, the President held consultations with other factions, and at 16.00 o'clock appointed the candidate for the position of Prime-minister.

34. Additionally, according to the complaint's authors, the candidate Ion Sturza was not proposed by the factions present during the consultations with the President of the Republic. They consider that as the President did not take into account the candidates suggested by the parliamentary factions invited to consultations, the candidate Ion Sturza represented the effect of a "nomination" and not an "appointment".

35. According to this rationale, the complaint's authors allege that a the President omitted to consult them in relation to the candidate for the position of the Prime-minister, and appointed a candidate which was not proposed by the parliamentary factions, the contested Decree was issued violating the requirements provided in article 98 para. (1) of the Constitution.

2. Arguments of authorities

36. The written opinion of the President of the Republic of Moldova mentions that after the adoption by the Parliament on 29 October 2015 of the motion of censure and dismissal of the Government, the President of the Republic of Moldova has consulted a number of times the parliamentary factions, including the PCRM faction (from which the complaint's authors were part until 21 December 2015), so as to appoint a candidate for the position of the Prime-minister.

37. Thus, on 9 November 2015 the PCRM faction, including the authors of the complaint, has participated in consultations and expressed its option for investing a technocrat Government, and this opinion was made public. Thus, the group of those 14 members of the Parliament, the authors of the complaint, have participated in consultations through the parliamentary faction of the PCRM.

38. On the other hand, the representative of the President has invoked as well the fact that the group of those 14 members of the Parliament who have left the PCRM faction, the authors of the complaint, did not request to participate in the consultations held on 21 December 2015, the day when the separation from the faction and the appointing of the candidate for the position of Prime-minister were made public, unlike another group composed of non-affiliated members of Parliament. According to the representative of the President, in case when such an interest had been expressed, the group of those 14 members of the Parliament would have been invited for consultations, opining that not only the factions should be consulted, but also the groups of members of the Parliament.

39. According to the President, during the consultations held on 21 December 2015, the parliamentary factions did not agree about either the candidate for the position of the Prime-minister or the creation of a parliamentary majority. In such a situation, using the right provided via article 98 para. (1) of the Constitution, but also taking into account that the constitutional deadline for investing the new Government was expiring, the President of the Republic of Moldova issued the Decree No. 1877-VII on appointing Mr. Ion Sturza as candidate for the position of Prime-minister.

40. The Parliament mentioned that the constitutional procedure for preliminary consultation of the parliamentary factions started on 6 November 2015 and ended with the appointment on 21 December 2015 of the candidate for the position of Prime-minister.

41. In relation to the group composed of those 14 members of the Parliament, who have left the PCRM faction, the Parliament considers that this group has a doubtful status. According to article 4 para. (11) of the Parliament's Rules of Procedure "*any change occurred in the composition of the parliamentary faction should be informed to the Parliament in a plenary sitting*". Hence, as no plenary sitting were organized, the fact of those 14 MPs leaving the PCRM faction was not informed to the Parliament.

42. In the part related to the procedure for consulting the parliamentary factions, the Parliament mentions that before appointing a candidate for the position of the Prime-minister, the President of the Republic is obliged to submit this candidate for review to the parliamentary factions, so as to obtain the support of the parliamentary majority or to request the parliamentary factions to suggest through consultations other candidates, that they are willing to support.

43. According to the Parliament, the candidate for the position of Prime-minister should be reviewed by all the parliamentary factions. If the parliamentary factions do not constitute the necessary majority for granting the vote of confidence to the Government, then the consultation of the entire legislative body, including the independent MPs, becomes absolutely necessary, especially taking into account that during the legislature period they may represent a significant number.

44. In this context, the Parliament considers that in case a parliamentary majority cannot be identified, the Head of the State should take into account a candidate who could represent a factor of consolidation of a parliamentary majority for voting the Government.

3. Findings of the Court

3.1. General Principles

3.1.1. Jurisdictional interpretation

45. In the part related to formal and informal modification of the Constitution, the Venice Commission mentioned:

> "109. Formal amendment is not the only form of constitutional change, and in some systems not even the most important. Leaving aside revolutionary or unlawful acts, the two most important alternative ways of legitimate constitutional change are through judicial interpretation and through the evolvement of unwritten political conventions supplementing or contradicting the written text. How this functions in a given constitutional system influences the need for formal amendment."
>
> [*Report on Constitutional Amendments, adopted by the Venice Commission, within the 81st Plenary Session (CDL-AD(2010)001, 11-12 December 2009)*]

46. In relation to the role of jurisdictional interpretation, the Venice Commission mentioned:

> "110. It is well known from many constitutional systems that even quite substantial change can take place without altering the text, through judicial interpretation. The classic example is the way in which the US Supreme Court has developed the contents of the 1787 constitution over the years, far beyond the 27 formal amendments made. While there are no European examples of courts playing quite such a prominent role in constitution shaping, there are clearly also in Europe a number of courts that have substantially contributed to developing their constitutions through dynamic interpretation and application. This in particular applies to countries with "constitutional courts" – a model that in recent years has been adopted by almost all the countries of Central and Eastern Europe.
>
> […]
>
> 112. The Venice Commission has repeatedly welcomed and endorsed the model of "constitutional courts" which is now widespread in Europe. This is a model that in general is favorable to judicial constitutional interpretation. Such courts may legitimately contribute to developing their national constitutional systems. Nevertheless, the Venice Commission still holds that for major constitutional change, a deliberative and democratic political procedure following the prescribed procedures for constitutional amendment is clearly preferable to a purely judicial approach. […]"
>
> [*Report on Constitutional Amendments, adopted by the Venice Commission, within the 81st Plenary Session (CDL-AD(2010)001, 11-12 December 2009)*]

47. Hence, the interpretation of the Constitution text by the constitutional jurisdiction authority, which may deduce from the express provisions of the Constitution new principles of constitutional value, is one of the modalities to perform the multiplication of constitutional norms.

48. The prerogative the Court was endowed with through article 135 para. (1) let. b) of the Constitution implies the establishment of the **authentic and full meaning of the constitutional norms**, which may be performed through textual or functional interpretation, to the extent in which it can be deduced from the text of the Constitution, **taking into account the generic nature of the norm**, the specific situations the legislator could not envisage when developing the norm, the subsequent regulations (related or even contradictory), complex situations in which the norm should be applied, etc.

49. As well, the Court determines the authentic and full meaning of the constitutional norms **in correlation with other constitutional provisions, to ensure the unity of the constitutional matter, rationality and functionality of the institutions, as well as the balance of powers**.

50. The different categories of constitutional provisions raise different questions and frequently need a rather different approach in relation to the interpretation and application.

51. Unlike the provisions on human rights, which are more general and more flexible, the institutional rules regulating a specific procedure of governance or competence should be clear, with the aim to create political stability and predictability.

52. The interpretation of institutional rules is focused on the balance of the executive, legislative, and judicial powers set by the Constitution, in the light of European and international standards regarding democracy and rule of law state, as well as common constitutional patrimony regarding the European governance forms, taking into consideration national peculiarities.

3.1.2. Practice of other states on appointing the candidate for the position of Prime-minister and formation of the Government

53. This process is specific for every society separately, but it is influence by certain factors, such as:

- nature of the political regime and constitutional system;
- form of government;
- place and role, duties and prerogatives of the other institutions of the state power in the system of political life, especially those of the Parliament and the Head of the State institution.

54. A diversity of situations, roles of the Head of State and Parliament exists in democratic societies in relation to the establishment of the Government.

55. In the *parliamentary republics*, the legislative body has a major role in appointing the Head of the Executive power and other members of the Government (Germany, Italy). The President has the role to mediate the

political conflicts and to represent the country at the international level, having no executive duties.

56. In the *semi-presidential republics* (France, Russia), the Head of the State exercises an important role in the establishment and functioning of the Government, without eluding or violating the power of the legislative body. The President proposes to the Parliament the Prime-minister for validation and appoints the ministers upon the proposal of the Prime-minister.

57. In the states with *presidential* form of government (USA), there is no Prime-minister, the function of the Head of Government and the function of the Head of State is performed by the President of the State. In presidential republics, the President of the country (elected directly by the citizens) exercises the entire executive power, the President is the Head of the executive, he forms the team and leads the Government, but his actions are strongly controlled by the Parliament, thus preventing the abuses.

58. **The principle which serves as a start in the democratic states, regardless of the form of government, is that the Government should express the will of the political majority in the Parliament, and to govern it should have the support of this parliamentary majority**.

59. This is the democratic practice, not only in the parliamentary republics. In *France*, for instance, the Constitution mentions about the appointment (nomination) of the Prime-minister only the following: "*The President of the Republic appoints the Prime-minister*", without consultations, without other constraints. Theoretically, the President of France could appoint anyone as Prime-minister, someone from his party, notwithstanding the parliamentary majority. But in practice, the French President has never appointed someone else than the candidate proposed by the parliamentary majority, even when he belonged to his opponents or in spite of the fact that the presidential party was represented by most of the MPs, and the parliamentary majority was formed of two smaller parties.

60. This happened three times over the last 30 years, the most notable case being in 1986, when the socialist François Mitterrand appointed his opponent Jacques Chirac as Prime-minister (subsequently he also appointed Eduard Balladur, and several years later, the President Chirac appointed the socialist Lionel Jospin as Prime-minister). This practice was justified based on the following constitutional arguments:

> "Why do we have co-habitation or co-existence? What does actually this thing tell us? **Whenever there is a new majority**, which is imposed on 16 March 1986, **the President of the Republic resigns or gives up** ("*se demet ou se soumet*"). Or which is my role? Why the French people elected me? It goes without saying that in 1981 I was in the front of a wide left-side movement; because I was and because I am still socialist and because people wanted to see the socialists in work, but also **because a President of the Republic becomes immediately something else than the representative of a party or of a faction of French opinion: he becomes the President of all the French people**. And the **Constitution, which is our supreme law, obliges the President to a certain role**.

I will be brief: **first of all the President of the Republic should ensure – I have to ensure – the continuity of the State and the correct functioning of the public powers, and this is noted in article 5 of our Constitution**. One cannot ensure the continuity of the state, if he leaves when an electoral event occurs. This thing is not acceptable. Thus, **ensuring the continuity of the State is what I did on 17 March, when I announced the French people that I will resort to an eminent representative of the new majority**, and this I did on 18 March.

Secondly, in article 5, the Constitution requests the President of the Republic to be the guarantor of the national independency and territorial integrity, meaning that the President has an eminent role, not exclusive, but eminent, primordial, in the areas of foreign affairs and defense, being the Chief of the Armies.

And I will finish by saying that there is also a third point, which is in the preamble of the Constitution, as well as in article 2: the President should watch upon enforcement of the big principles on which the indivisible, secular, democratic, and social republic is based on. **I respect the role of the government**. **I will intervene only if I find involved one of the three responsibilities I just referred to**."

[Interview offered by Mitterrand (TF1, 29 March 1987)]

61. In parliamentary republics in which the President is elected by the Parliament (Estonia, Germany, Greece, Italy, Latvia, Malta, Hungary), the competences for appointing the Prime-minister and dissolving the Parliament vary.

62. In *Hungary*, the Constitution provides that the Prime-minister is elected by the National Assembly upon the proposal of the President of the Republic (art. 16 para. (3)). But in practice, the President appoints the leader of the political party which obtained the majority of mandates in the Hungarian National Assembly for the position of the Prime-minister. If no party obtains the majority, the President asks the leader of the biggest party to try to form a coalition government. Hence, the choice of the members of a party in the Parliament equates with a vote for the leader of the party to become Prime-minister.

63. In *Greece*, the Constitution provides that the President of the Republic appoints the Prime-minister and upon the proposal of the last one, appoints and revokes the other members of the Government and the State Secretaries. The head of the party holding the absolute majority of mandates in the Parliament is appointed as Prime-minister. If no party holds the absolute majority, the President of the Republic will grant the head of the party with a relative majority an exploratory mandate so as to assess of there is a possibility to form a Government which would enjoy trust from the Parliament (art. 37).

64. In *Estonia*, according to the Constitution, the President of the Republic appoints a candidate to the position of the Prime-minister who is authorized by the Parliament via a vote to form the Government. In case when the candidate does not succeed to form the Government, under the

provided conditions and terms, the right to appoint a candidate to the position of the Prime-minister belongs to the Parliament (art. 89).

65. In *Latvia*, according to the Constitution, the Government is formed of the Prime-minister, to whom the President assigned this task (art. 56). To fulfill his duties, the Prime-minister and other ministers should enjoy the confidence of the Parliament to which they are responsible for their activity (art. 59). On the other hand, the President has only the right to propose the dissolution of the Parliament, organizing a national referendum in this respect (art. 48).

66. In *Malta*, according to the Constitution, the President of the Republic appoints in the position of the Prime-minister a member of the Chamber of Representatives, who, in his opinion, is the most competent to request for the support of the majority of members of the respective Chamber and, acting based on the recommendation of the Prime-minister, will appoint other ministers from the members of the Chamber of Representatives (art. 80).

67. In *Czech Republic*, the President of the Republic appoints the Prime-minister and based on the proposal of the last one, the other members of the Government and empowers them with administration of ministries or other departments. If the Government does not receive in the second tentative the vote of confidence of the Chamber of Deputies, the President of the Republic appoints the Prime-minister based on a proposal of the President of the Chamber of Deputies (art. 68).

68. In *Italy*, the President of the Republic appoints the President of the Council of Ministers and, upon his proposal, the ministers (art. 92). In practice, the President consults the presidents of the two chambers, delegations of the parliamentary groups and lifetime senators. The President of the Republic may dissolve one or both Chambers of the Parliament only after consulting the presidents of the Parliament (art. 88).

69. In *Germany*, the Federal President appoints the Federal Chancellor elected by the Bundestag (art. 63).

70. **In none of the parliamentary republics, the President elected by the parliamentary majority does not have the right to dissolve the Parliament because the absolute majority of MPs does not accept his candidate to be the Head of the Government.**

71. There is no example in the European Union in which a country cannot appoint a government because of a blocking, caused by the fact that the President ignores the will of the parliamentary majority.

3.1.3. Form of government

72. The form of government assigns the modality for exercising and manifesting the State power, establishing and functioning of its bodies.

73. In relation to choosing a form of government, the Venice Commission constantly underlines the need for some clear and predictable rules to exist, so as to exclude political conflicts:

"Since new constitutions were first adopted in most of Eastern and Central Europe in the mid-1990s, there have been later amendments in several countries further strengthening the national parliaments. In this regard, the Commission has repeatedly stated that the choice between a presidential and a parliamentary system is a political one to be freely made by each single state. However, the system chosen should be as clear as possible, and the provisions should not create room for unnecessary complications and political conflicts. In a parliamentary system, fundamental requirements arising from the principle of the separation of powers should be respected. If a presidential system is chosen, in turn, certain minimum requirements of parliamentary influence and control should be fulfilled."

[*Report on Constitutional Amendments, adopted by the Venice Commission, within the 81st Plenary Session (CDL-AD(2010)001, 11-12 December 2009), § 143*]

74. In relation to the form of government in the Republic of Moldova, the Court recalls the findings stated in its case-law related to the constitutional reform in 2000:

"According to art.1 para. (2) of the Constitution, the form of government of the State is the republic. According to the legal doctrine, the modality of electing the Head of the State determines the form of government: parliamentary republic or presidential republic, and places the Head of the State, from legal point of view, on a certain position in relation to the Parliament and, especially, to the people.

In the presidential republic, the Head of the State is elected by citizens and from legal point of view, is placed on the same position as the Parliament, having wider prerogatives, as a result of the fact that his mandate comes from the entire nation, from the people.

The parliamentary republic is characterized by election of the Head of the State by the Parliament and due to this fact, the legal position of the Head of the State in inferior and subordinated to the Parliament. [...]

In the context of the mentioned facts, the Court mentions that until 05.07.2000, according to art.78 of the Constitution, the President of the Republic of Moldova was elected by citizens and from the representativeness point of view, had the same position as the legislative authority, having wide prerogatives. The President had the right to initiate the revision of the Constitution (art.141 para. (1) let. c)), to appoint the candidate for the position of the Prime-minister without consulting the parliamentary factions (art. 98 para.(1)), to take part in the Government's meetings, to chair the Government's meetings attended by him, to consult the Government in urgent problems and matters of special importance (art.83 of the Constitution) etc.

The second period of the constitutional development, according to the legal doctrine, has the characteristics of a parliamentary republic, in which the prerogatives of the President of the country are more restrained. The modification of the form of government imposes another legal status for the presidential decrees and respectively, other objects (areas) of regulation.

Based on the Law No. 1115-XIV dated 05.07.2000 the legislator modified art.78 of the Constitution, attributing the Parliament the prerogative to elect the President of the country. As a consequence, the legal position of the Head of the State became inferior to the position of the Parliament, at the same time the President was deprived of a number of previously mentioned prerogatives. [...]

> The Constitutional Court considers within the parliamentary republic, in which the Head of the State is inferior to the status of the Parliament, the President exercises his function as guarantor of sovereignty, national independence, territorial unity and integrity of the country, being guided by the constitutional norms which set the duties of the President and the acts of the supreme representative body in the respective areas."
>
> [*Judgement No. 17 of 12 July 2010, Judgement No. 30 of 1 October 2013*]

75. Hence, in relation to the legal status of the President of the Republic of Moldova, a distinction must be operated between the mandate before and after the constitutional reform mentioned above.

76. Therefore, the Court notes that the interpretation of article 98 para. (1) of the Constitution has to be performed taking into account the parliamentary form of government in the Republic of Moldova. In this respect, any interpretation should take into account the balance of powers and the institutional architecture of the state, as well as the constitutional obligation of the state authorities to exercise in good faith and in the spirit of loyal cooperation the competences set by the fundamental Law.

3.2. Application of the principles mentioned in the present case

77. According to article 60 para. (1) of the Constitution, the Parliament is the supreme representative body of people of the Republic of Moldova.

78. According to article 77 of the Constitution, the President of the Republic of Moldova represents the State and is the guarantor of national sovereignty, independence, unity and territorial integrity of the State.

79. This constitutional norm attributes to the Head of the State a double role, and namely: 1) to represent the State and 2) to be guarantor of national sovereignty, independence, territorial unity and integrity of the State.

80. Based on the constitutional construction of the rule of law states, the heads of state do not express a political will, as this would be inevitably confused with the subjective will, hence discretionary will, of the holder of the respective function.

81. In the Judgment No. 7 of 18 May 2013, the Court noted:

> "106. Based on the mutual control of the powers in the state, based on the system of "brakes and counterbalances", the executive power cannot be instituted without an expressly expressed will of the legislative power, through the Parliament, exercised in the process of investing the Government. According to the constitutional procedures, the Government, as the exponent of the executive power, is the joint work of the legislator, as supreme representative authority, to which the people delegated the highest value – sovereignty and state power (art.2 of the Constitution) and the Head of the State, as guarantor of sovereignty (art.77 of the Constitution)."

82. The Court that from the provisions of Article 98 of the Constitution results that the President should cooperate with the Parliament in appointing the Government, both authorities having their constitutional role to start the formation of the Government.

3.2.1. Relation between the Parliament and the President of the Republic in the process of forming the Government

83. The Court notes that the process of establishing the Government is complex and includes a number of stages:

a) appointment of the candidate for the position of Prime-minister;

b) development of the governance program and establishment of the governmental team;

c) obtaining the investing vote from the Parliament;

d) taking the oath of trust.

84. The Court establishes that article 98 para. (1) of the Constitution provides for the exclusive competence of the President of the Republic to appoint a candidate for the position of the Prime-minister. At the same time, the Court notes that although it is exclusive, the competence to appoint cannot be discretionary, as the President will appoint a candidate for the position of Prime-minister only after consulting the parliamentary factions.

85. As well, the Court notes that the constitutional text does not stipulate, after the appointment of the Prime-minister, the right of the President of the Republic to express his reserves towards the government team accepted by the Parliament or towards the governance programme. Thus, from the moment of appointing the candidate for the position of PM, the President of the Republic has no responsibility, neither political nor legal, regarding how this person obtains the support of the majority of the Parliament.

86. From the moment of appointment by the President of the Republic, the PM candidate has the power to include any person in the list of members of the Government, which is submitted to the Parliament. This is a discretionary right of the PM candidate, which he/she may exercise by assuming the responsibility for not being approved in the Plenum of the Parliament, including of the governance programme, because the list of members of the Government is supported as a bloc, and the Parliament will vote for the integral list and not for the persons on the list.

87. If the programme and list of members of the Government are accepted by the Parliament, the procedure to form the Government is opened; the President of the Republic of Moldova has an active, but at the same time, formal and strictly protocol role that is resumed to issuing the Decree and take the oath.

88. Thus, **the vote of the Parliament is essential in forming and investing in the Government.** The Government will be politically accountable only to the Parliament, who can dismiss it.

89. Based on the above-mentioned rationale, analyzing the weight of both public authorities in forming the Government, the Court establishes that the role of the Parliament is decisive with regard to the role of the President of the Republic of Moldova. This difference in weight is due to the parliamentary essence of the form of governance.

3.2.2. Relation between the Parliament and the President of the Republic in appointing the candidate for the position of Prime-minister

a) Consultation with the parliamentary factions

90. For the purpose of determining the meaning of the "consultations" of the President with the parliamentary factions, the Court will analyze the reason of this institution in relation to appointing the candidate for the position of Prime-minister.

91. The Court notes that the purpose of consultations is to identify political support of the parliamentarians for a certain person capable to form the Government that would enjoy the trust of the Parliament. What really matters in these consultations is receiving political support for a person who might be appointed as candidate for PM position. This is the main goal of the consultations used by the President of the state.

92. For the same purpose, the President may attend the consultations with own candidate, who might be accepted. It is also possible that the candidate suggested by the President for Prime-minister position may not be accepted in the political consultation by the attending partners.

93. In this context, the Court notes that the President may not subordinate his partners in the political dialogue he is consulting. In this role, the President of the Republic of Moldova acts only as the representative of the state, who has the right and responsibility to find a way of the dialogue and to evaluate the will and capacity of consulted parliamentarians to support a parliamentarian opinion about a certain candidate.

94. Appointing the PM candidate, as a result of consultations mentioned in Article 98 of the Constitution, the President of the Republic of Moldova should show his political impartiality and neutrality, equidistance toward all parliamentary groups. The President does not have the constitutional right to overlap the parliamentary groups.

95. At the same time, The President cannot deny his right to evaluate skills, competence, experience and, in fact, the ability of a person, whether politically or not, to run the Government and to attract the political support of the majority of the Parliament, who will support him during his mandate, but does not have a constitutional support to impose his own candidate. Thus, the President may intervene exclusively as the representative of the state to establish and formalize based on the importance and solemnity of his position and to maintain with his authority the balance between the Parliament and a possible future Government.

b) Parliamentary factions and independent or non-affiliated members of the Parliament

96. The Court notes that a series of constitutional provisions make reference to parliamentary factions. Thus, besides article 98 para. (1), the Constitution also provides in article 64 para. (3) that the Vice-presidents of

the Parliaments are elected upon the proposal of the President of Parliament upon consultations with parliamentary factions. As well, according to art. 85 para. (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 factions, may dissolve the Parliament.

97. At the same time, the constitutional norms do not regulate the modality of establishing, operation and termination of these entities.

98. In this context, the Court notes that according to the regulation provisions, the parliamentary factions represent the main form of political organization of the parliamentary parties in the Parliament and are established through the association of the MPs who have ran in the elections on the lists of the same political party, the same political formation, political alliance or electoral alliance. These groups, factions, according to the functions they fulfill, are part of the organizational structure of the Parliament based on political affiliation and are not its working bodies.

99. In the absence of constitutional regulations for establishment and termination of parliamentary factions, the provisions of the Parliament's Rules of Procedure regulating the parliamentary factions should be analyzed in the light of the constitutional provisions regarding the MP's status, from the point of view of his/her relations with the parliamentary faction or the party whose member he/she is.

100. The Court recalls that article 68 of the Fundamental Law sets forth the characteristics of the parliamentary mandate and namely that "in the exercise of their mandate the members of Parliament are in the service of the people" and "any imperative mandate is deemed null and void". This article harnesses without limits the representative mandate and represents the start point in explaining the constitutional relations between the MP and his/her voters, the political party that has promoted him/her.

101. To interpret these constitutional provisions, via its Judgment No. 8 of 19 June 2012, the Court stated:

> "34. In the Court's vision, the MP mandate expresses the relation between the parliamentary and all the people, in whose service he is, not only the voters who have voted for him, although they benefit from the parliamentary presence in the virtue of his/her obligation to keep in touch with the voters. Thus, the phrase "to be in the service of the people" from article 68 para. (1) of the Constitution means that since his/her election and until his/her mandate comes to an end, every MP becomes the representative of the people in its integrity and has the mission to serve the common interest of the people, and not only that of the party he/she comes from. [...]
>
> 35. When defining these interests, the option of the parliamentary is free, even if he/she is part of a party which he/she represents in the Parliament. In line with article 2 para. (2) of the Constitution, no private individual, no national segment of population, no social group, no political party or other public organization may exercise state power on their own behalf. In this respect, the fundamental principles of the rule of law state should be respected with sanctity so as to hamper the temptation that one or more political parties could have, when becoming part of the majority in the Parliament, to transform the "elected MPs"

in "activists of the party" or the structures of the central or local public administration structures in central or local "party organs". [...]

43. Hence, because they are not representatives of a faction of the population, the parliamentarians cannot be defenders of some individual interests, they are absolutely free in exercising their mandate and do not have the obligation to fulfill the commitments he/she could have assumed before the election or the eventual instructions from the voters formulated during the mandate. The elected parliamentarians do not have the legal obligation to support the party or the decision of their group in the Parliament. Moreover, if the MP, through his/her behavior, provokes damages to the respective group or party, it can exclude him/her, but this exclusion does not imply the loss of the parliamentary mandate. Obviously this does not impede the MP, when elected, to honor his/her commitments and to comply with the voting discipline of the parliamentary group he/she is a part of. [...]

47. These characteristics do not confer the MP a special regime of protection against the pressure of the voters and of the party with the support of which he/she became a part of the Parliament. […]"

102. The Venice Commission, in the Report No. CDL-AD(2009)027 regarding the imperative mandate and the similar practices, mentioned:

"[…] The Venice Commission did not stop to support that the loss of the quality of representative, because of the change of political affiliation is contrary to the principle of free and independent mandate. Although the pursued aim through this type of measure may be considered as being somehow justified, the fundamental constitutional principle which prohibits the imperative mandate or other similar practices regarding the deprivation of a representative of his/her mandate, should prevail as a cornerstone of European democratic constitutionalism."

103. In the context of the above-mentioned, the Court underlines that in the virtue of the representative mandate, the MP, when starting the exercise of the respective mandate does not have any more the legal obligation to support the party or the decision of his/her faction in the legislative forum.

104. Thus, in the light of the constitutional principles which reject any form of imperative mandate, the MP is not prohibited to change the political option and affiliation.

105. At the same time, the Court notes that a fundamental principle of the parliamentary procedure, which is rarely mentioned explicitly in the national constitutions, but which may be deduced through interpretation, is equality between the representatives in the Parliament. In this respect, the Venice Commission mentioned the following:

"110. […] As stated, a parliament is an institution consisting of the elected representatives, with the **representative as a main legal entity**, based on the idea that they should in principle all have the same rights and obligation, whether belonging to the governing party or the opposition.

111. This principle of equality is stated in Resolution 1601 (2008) of the Parliamentary Assembly: "**equal treatment of Members of Parliaments, both as individual members and as members of a political group, has to be ensured in every aspect of the exercise of their mandate and of the operations of parliament**". The Venice Commission, for its part has also in its

Code of Good Practice in the field of Political Parties recalled the necessity to respect the principle of equality.

112. Under EU law the principle of equality of the members of the European Parliament (MEPs) has been judicially recognized by the Court of First Instance, which in 2001 held that "the conditions under which Members who have been democratically vested with a parliamentary mandate must exercise that mandate cannot be affected by their not belonging to political group to an extent which exceeds what is necessary for the attainment of the legitimate objectives pursued by the Parliament through its organization in political groups".

113. To the extent that the principle of equality of MPs is limited, then that is normally for the sake of efficiency, since it would in many cases be impossible to get decisions adopted in an assembly with equal rights of procedural participation for all members. The principle of equality of MPs is therefore normally supplemented by a principle of proportional representation and participation by party groups."

[*Report regarding the role of the opposition in a democratic parliament*, adopted by the Venice Commission within the 84th plenary session (CDL-AD(2010)025, 15-16 October 2010)]

106. As well, the Court recalls that the process of consultation has to ensure the dialogue with all the parliamentary political parties, because only the political parties may ensure the political balance and stability.

107. Following these rationales, but also taking into account the principles mentioned in its previous case-law, the Court recalls that for carrying out its constitutional duty to propose a candidate for the position of the Prime-minister, the President of the Republic of Moldova, who is elected by the parliamentary majority, should ensure via the consultation of the parliamentary factions, both – the support of the parliamentary majority, as well as the possible constructive cooperation of the minorities in opposition.

108. Thus, in the constitutional meaning, the term of "consultation of parliamentary factions" covers the groups of non-affiliated groups, which envisage carrying out some common programmatic objectives and having the vocation to determine or to influence the course of the social-political events.

3.2.3 Principle of majority

109. Article 5 para. (1) of the Constitution states that democracy in the Republic of Moldova is exercised under the conditions of political pluralism, which is incompatible with the dictatorship or totalitarianism.

110. The main principle of democracy is the principle of majority. The decision is made by it (the majority) and by those who represent a majority of voters, irrespective of the number of parties this majority consists of or if there is a bigger party (but in minority) than the parties that form the majority in part. Ignoring the will of the majority is the characteristic of the dictatorship.

111. According to article 98 of the Constitution:

> "(1) **After consulting the parliamentary factions**, **the President of the Republic of Moldova designates a candidate for the office of Prime-minister.**
>
> […]
>
> (3) The programme of activity and the list of the members of Government are subject to parliamentary debates in session. It shall grant confidence to the Government with the **vote of majority of the elected members of Parliament**. […]"

112. The Court holds that provisions of Article 98 para.(3) of the Constitution describes the need to identify the parliamentary majority.

113. It is very clear that only the parliamentary majority may vest the Prime-minister and his/her activity program with confidence and the Government can be sworn in only by it. This is the role of consultations (see the above-mentioned §§ 91-97).

114. In this context, the Court cannot accept the claim of the complaint's authors, according to which the President of the Republic of Moldova should appoint the candidate or one of the candidates proposed by the majority parliamentary faction (factions) within consultations (*party with the biggest number of mandates in the Parliament*), about whom it is assumed to be granted the vote of confidence. In this matter, the Constitutional Court has stated previously that:

> "the phrase "*parliamentary majority*" means the **absolute majority** of the elected Parliament members who, based on constitutional provisions, can grant the vote of confidence to the Government and the Prime-minister, appointed by the President of the Republic" (Judgment No. 21 of 2 July 1998).

115. Thus, taking into account the provision of para. (3) of article 98, it stipulates **half plus one of the total number of elected MPs**.

116. Following these reasoning, only the person proposed by the majority party or coalition may be appointed as Prime-minister, irrespective of the fact who this person is: independent, leader of a bigger party or another member, and irrespective of the fact, if the person comes from the party with the biggest number of parliamentarians (if the party with the biggest number of parliamentarians does not have the absolute majority in the Parliament). This is the democratic, constitutional procedure to appoint.

117. Hence, the interpretation in the sense of existence of discretionary right of the President to appoint the candidate for the position of the Prime-minister lacks and reduces much legal logics, because the President may not require the Parliament to accept a certain option regarding the person who would hold the position of the Prime-minister, this fact having the nature to create preconditions for artificial institutional conflicts.

118. For these considerations, the Court holds that **there is not constitutional and democratic motive for the President not to appoint the person who has the majority support in the Parliament as the Prime-minister, even if it is opposite to the President.**

119. In this context, the Court holds that when no party has an absolute majority in the Parliament, the President must consult with the

parliamentarians not only *pro forma*, but appoint the candidate supported by the majority, even if the party supported by the President does not have a majority.

120. Thus, the President shall appoint the candidate, who meets the requirements for proposal and appointment and enjoys the support of the parliamentary majority, for the position of the Prim-minister.

121. If the Government is established as a result of the parliamentary elections, the President cannot fail to recognize the result of the people's vote, the appointment being carried out in the following way: the President takes note of the official results of the elections and entrusts the mandate for establishing the Government to a person who was proposed by the absolute majority in the Parliament. Thus, either a majority is established of the political forces in the Parliament, or the Parliament is dissolved and anticipated elections are organized.

122. In this respect, the Court starts from the assumption that the President should behave like an authority which establishes, but does not interpret or modify the result of elections, being constrained via a special article, to appoint a candidate for the position of the Prime-minister not according to his own will, but according to the will of the voters, to appoint the person proposed by the party or the coalition which won the absolute majority of mandates.

123. An opposite interpretation of the Constitution provisions would induce the idea among the citizens that they do not really exercise the national sovereignty, that their vote does not matter, and that the result of the elections may be anytime denied by the President.

124. In a similar way, when the Government is changed some time after the elections, and the correlation of the political forces changed, the President should restart the consultations with the parliamentary factions so as to identify a majority able to support the investing of the Government.

125. The Court considers that this solution is the only one able to eliminate, at least under this aspect, the risk of institutional conflict, being a natural act for clarifying the duties of the President in relation to the appointment of the Prime-minister, in conditions when the supremacy of the Parliament is ensured as a fundamental institution of democracy.

126. The Court underlines that the President of the Republic is the emanation of the parliamentary majority, and this fact does not allow him/her to ignore the eventual establishment of an absolute majority in the Parliament. This rationale is all the more pertinent, given the non-acceptance by the parliamentary majority of the candidate proposed by the President involves for the Parliament the sanction to be dissolved by the President (art. 85 para. (1) and (2) of the Constitution).

127. The principle of parliamentary majority is also confirmed by the fact that all the circumstances implying the dissolution of the Parliament are namely related to the non-functioning of the majority (the failure to form the Government, the blocking to vote the laws, the non-election of the President).

128. The Court considers important to underline the need to transparently form the parliamentary majority so the voter may identify the political actors who would have the political responsibility for governing. From these considerations, the parliamentary majority should be **formalized**, not only declared, by indicating the parliamentarians who form it and by specifying the availability to support a certain candidate for the function of the Prime-minister with the official notification of the President of the Republic of Moldova. In this context, the Court shall issue an address to the Parliament for regulating these situations in the spirit of the findings from this judgement.

Conclusions

129. In the light of a balanced perspective, the legislative forum, resulting from elections, and the President, emanation of the Parliament, it is understood that the Parliament could form a Government at his discretion. Here the role of the President intervenes, and namely to watch upon the efficiency and good structure of the team which will govern the country for the next mandate. Through the prestige and his representative authority, the President supports the establishment of the Government, which will be appointed only if it will obtain the support of the Parliament.

130. Hence, if an absolute parliamentary majority is formed, the President of the Republic of Moldova shall appoint the **candidate supported by this majority**.

131. Only if **an absolute parliamentary majority is not formed**, the President of the Republic of Moldova has the obligation, after consulting parliamentary factions to appoint a candidate for the position of the Prime-minister, even if the parliamentary factions do not agree to the proposal of the President.

132. The exercise namely in this way of the President's duty regarding the appointment of the candidate for the position of the Prime-minister, regulated by article 98 of the Constitution is of a nature to maintain the relations between the Parliament and the President in a balance envisaged in the Constitution for the parliamentary republic. The Court considers that this is the rationale for the interaction of the Parliament with the President, which derives from article 98 of the Constitution, both authorities contributing, through a set of political actions, to forming the future governing team. The Parliament acts based on authentic political criteria, in which the consent of the citizens is expressed indirectly for forming a Government led by a future Prime-minister who enjoys the confidence and the support of a parliamentary majority.

3.3. Constitutionality of Decree No. 1877/2015

133. The Court holds that in the absence of a parliamentary majority, the omission to consult a parliamentary faction or group or the refusal of some

factions to participate in consultations or to support a certain candidate cannot invalidate or cancel the constitutional right of the President to appoint a candidate for the position of the Prime-minister.

134. In these conditions, although the non-consultation of some parliamentary factions/groups represents an omission in the process of appointing the candidate for the position of Prime-minister, in this case this fact does not affect the substance of the right of the MPs from the factions/groups to express their attitude regarding the candidate proposed by the President of the Republic of Moldova via a vote in the plenary of the Parliament.

135. Therefore, in the part related to the **constitutionality of the Decree No. 1877-VII of 21 December 2015**, because of the fact that **an absolute parliamentary majority was not formed until the date of this decree's issuance, the President acted in line with his constitutional duties,** appointing a candidate for the position of the Prime-minister, even if his proposal was not agreed by some of the parliamentary factions.

Based on art. 140 of the Constitution, art. 26 of the Law on the Constitutional Court, art. 6, 61, 62 let. a) and 68 of the Constitutional Jurisdiction Code, the Constitutional Court

DECIDES:

1. *To reject as unreasoned* the complaint of a group of MPs for constitutional review of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointment of the candidate for the position of Prime-minister.

2. *To recognize as constitutional* the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointment of the candidate for the position of Prime-minister.

3. In the sense of article 98 para. (1), in corroboration with articles 98 para. (3) and 78 para. (1) of the Constitution:

a) the duty of the President to propose the candidate for the position of Prime-minister represents a constitutional obligation;

b) to fulfill his constitutional duty to propose a candidate for the position of Prime-minister, the President of the Republic of Moldova, who is elected by the parliamentary majority, should ensure through the consultation of the parliamentary factions the support of the parliamentary majority, as well as the possible constructive cooperation of the minority in the opposition:

- in case when **an absolute parliamentary majority is not formed**, the President of the Republic of Moldova has the obligation, after consulting parliamentary factions to appoint a candidate for the position of the Prime-minister, even if the parliamentary factions do not agree to the proposal of the President;

- **when an absolute parliamentary majority is formed**, the President of the Republic of Moldova shall appoint the candidate supported by this **majority**;

c) the parliamentary majority should be **formalized**, and not only declared, indicating the MPs constituting it, and specifying the availability to support a certain candidate for the position of Prime-minister and official notification in the address of the President of the Republic of Moldova;

d) in the constitutional meaning, the term "consultation with parliamentary factions" includes the groups of non-affiliated members of the Parliament.

4. The Judgment of the Constitutional Court is final, cannot be appealed, shall enter into force on the date of passing, and shall be published in the *Official Gazette of the Republic of Moldova*.

President **Alexandru TĂNASE**

Chisinau, 29 December 2015
JCC No. 32
Case file No. 59a/2015