



Republic of Moldova

CONSTITUTIONAL COURT

DECISION

ON INADMISSIBILITY

of application no. 102b/2019

**on the interpretation of Article 85 para. (1) in conjunction with
Articles 63 paras. (2) and (3), 69 para. (2) and 103
of the Constitution of the Republic of Moldova**

*(Date of Reference For the Three-Month Term
of Parliament's Inactivity Triggering Its Dissolution)*

CHIȘINĂU
7 June 2019

DECISION ON INADMISSIBILITY OF APPLICATION NO. 102B/2019 ON THE INTERPRETATION
OF ARTICLE 85 PARA. (1) IN CONJUNCTION WITH ARTICLES 63 PARAS. (2) AND (3), 69
PARA. (2) AND 103 OF THE CONSTITUTION 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 22 May 2019,
and registered on that date,
Assessing the admissibility of the application,
Considering the case-files,
Having deliberated on 7 June 2019 in closed session,

Delivers the following decision:

MERITS

1. The case originated in an application lodged with the Constitutional Court on 22 May 2019 by the President of the Republic of Moldova, Mr. Igor Dodon, asking for the interpretation of Article 85 para. (1) in conjunction with Articles 63 paras. (2) and (3), 69 para. (2) and 103 of the Constitution of the Republic of Moldova, raising the following issue:

“Shall the three-month term, provided by Article 85 para. (1) of the Constitution, a term where the newly elected Parliament faces the impossibility to form the Government or in case of a lawmaking deadlock, be calculated from the date the parliamentary elections were validated or from the date the Parliament was formed/convened for the first time?”

A. Relevant legislation

2. Relevant provisions of the Constitution:

Article 63 Term of office [of the Parliament]

“[...]

(2) Parliament convenes in session upon the summons of the President of the Republic of Moldova within 30 days at the most from the election date.

(3) The mandate of the Parliament shall be prolonged until the legal convocation of the newly-elected composition. During this period no amendment may be brought to the Constitution and no organic law may be adopted, amended or repelled.

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PARA. (2) AND 103 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

[...]"

Article 69
Mandate of the Members of Parliament

"(1) The members of Parliament start exercising their mandate under the condition of prior validation.

(2) The powers ascribed to any Member of Parliament cease with the lawful assembly of the newly-elected Parliament, on resignation on the part of that member, on withdrawal of the mandate, in cases of incompatibility or death."

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 103
Termination of office [of the Government]

"(1) The Government shall exercise its mandate up to the date of validation of the election of the new Parliament.

(2) In cases where the Parliament cast a vote of no confidence against the Government, or the Prime Minister resigned, or as provided for by para. (1) above, the Government shall only manage the administration of public affairs, pending the oath-taking by the members of the new Government.

[...]"

THE LAW

A. The applicant's submissions

3. The applicant alleged that according to Constitutional Court's case-law, the three-month term provided by Article 85 para. (1) of the Constitution is applicable to both reasons justifying the dissolution of the Parliament, *i.e.* the impossibility to form the Government and the lawmaking deadlock.

4. The President of the Republic of Moldova maintained that, in the event of the impossibility to form the Government, the aforementioned term shall run from the date the circumstances arise for a new Government to be formed. One of these circumstances is the expiry of Government's term of office which,

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OF ARTICLE 85 PARA. (1) IN CONJUNCTION WITH ARTICLES 63 PARAS. (2) AND (3), 69
PARA. (2) AND 103 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

pursuant to Article 103 para. (1) of the Constitution, occurs on the date of validation of the election of the new Parliament. At the same time, according to Article 63 para. (3) of the Constitution, the term of office of the Parliament shall be extended until the legal convocation of the newly elected composition, and under Article 69 para. (2) the capacity of an MP shall cease upon the lawful assembly of the newly-elected Parliament.

5. Therefore, in light of these constitutional provisions, in the event of the impossibility of a newly elected Parliament to form the Government, it is not clear whether the three-month term, which when expired confers upon the President the power of dissolving this Parliament shall be calculated from the date the elections were validated or from the date the Parliament convened for the first time. The applicant also contended that in the event the newly-elected Parliament faces the impossibility to adopt laws, the calculation method for the aforementioned term is insecure, too.

B. The Court's assessment

6. Assessing the admissibility of the application, the Court determines the following.

7. According to Article 135 para. (1) let. b) of the Constitution, the interpretation of the Constitution falls into the ambit of Constitutional Court's jurisdiction.

8. The Court notes that under Article 25 let. a) of the Law on the Constitutional Court, the President of the Republic of Moldova is entitled to apply before the Constitutional Court.

9. The Court observes that the applicant requested the interpretation of Article 85 para. (1) in conjunction with Articles 63 paras. (2) and (3), 69 para. (2) and 103 of the Constitution of the Republic of Moldova, in light of the question indicated in § 1 of this Decision.

10. Assessing the circumstances provided by the President of the Republic of Moldova, the Court holds that the answer to the question raised in the application stems from the previous interpretation of the Court on the articles relied on and from the very text of the Constitution.

11. The Court held that in line with the procedures provided by the Constitution, the dissolution of the Parliament is permitted in the event the supreme legislative and representative authority is no longer able to perform its powers and cannot thus express the voters' will. Due to these reasons, by Parliament's dissolution and organisation of snap elections, the voters are given the opportunity to settle by constitutional way the conflict between authorities. At the same time, the power of the President of the Republic of Moldova to dissolve the Parliament represents a constitutional guarantee allowing the

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OF ARTICLE 85 PARA. (1) IN CONJUNCTION WITH ARTICLES 63 PARAS. (2) AND (3), 69
PARA. (2) AND 103 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

institutional crisis to be settled and unlocked (Judgment of the Constitutional Court no. 30 of 1 October 2013, §§ 41-41).

12. Furthermore, the Court noted that the constitutional mechanism provided by Article 85, and designed to avoid a parliamentary crisis and a conflict between the legislative and executive powers, would be ineffective if lacking a certain term, which when expired the Parliament would be dissolved. The Court thus held that the three-month term provided by Article 85 para. (1) represents a time-limit for dissolution of the Parliament, applicable to both cases where a crisis situation or a conflict occur, *i.e.* an impossibility to form the Government or a lawmaking deadlock (Judgment of the Constitutional Court no. 30 of 1 October 2013, §§ 52-53).

13. As regards the impossibility to form the Government, the Court noted that the three-month term is a general term to form the Government, it running from the date the circumstances that determined the necessity to form a new Government arose; it runs regardless of whether the procedures to form a new Government and/or performing the procedures provided for in para. (2) of Article 85 of the Constitution were triggered; and it covers the periods of consultations of parliamentary factions and other legal procedures, it representing the deadline to form a new Government (Judgment of the Constitutional Court no. 30 of 1 October 2013, § 64).

14. Pursuant to Articles 101, 103, 106, 106¹ of the Constitution, the need to form a new Government intervenes in the case of: (1) legal expiry of the Government's term of office; (2) a vote of no confidence cast by the Parliament; (3) impossibility of the Prime Minister to exercise his functional duties; (4) death or resignation of the Prime Minister.

15. Further, Article 103 of the Constitution provides that the Government's term of office is **up to the date of validation of the election** for the new Parliament. These constitutional provisions were transposed also in Article 12 of the Law no. 136 of 7 July 2017 on the Government, which sets out in para. (1) that the mandate of the Government shall cease *de jure* on the date the results of a new Parliament election were confirmed and the mandates of the newly-elected MPs were validated.

16. Thus, the validation date of elections represents the date of expiry of the Government's term of office, a circumstance triggering the need to form a new Government. Therefore, it follows from the clear text of Article 103 para. (1) of the Constitution that the three-month term (90 days) whereby the newly-elected Parliament must form the Government shall run from the date the elections are validated. The Court observes in this case the applicability of the principle *in claris non fit interpretatio* (clear rules do not require interpretation).

17. As to the dissolution of the Parliament in case of a deadlock in the lawmaking process, the Court deems relevant to recall its case-law, where it held that no time segment between the period after the expiry of the previous Parliament's term of office and convocation of the newly-elected Parliament

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OF ARTICLE 85 PARA. (1) IN CONJUNCTION WITH ARTICLES 63 PARAS. (2) AND (3), 69
PARA. (2) AND 103 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

amounts to the extension of the parliamentary mandate, provided by Article 63 para. (1) of the Constitution. The text of Article 63 para. (3) of the Constitution provides for special interdictions, for this period, for the basic constitutional power of the Parliament, which is the lawmaking activity, limiting its right to amend the Constitution or to regulate legal relationships by adopting, amending or repealing organic laws (Judgment of the Constitutional Court no. 31 of 10 November 1997). In other words, after parliamentary elections, it is incumbent on the newly-elected Parliament to commence as soon as possible the procedure of examination and adoption of laws.

18. By the Judgment no. 40 of 24 December 1998, the Court observed that the notion of “adopting the laws” set out in Article 85 para. (1) of the Constitution shall be applicable to the final stage of the lawmaking process, it consisting of the voting of the draft law in order for it to be adopted by the Parliament as a law. In the same Judgment, the Court noted that in light of Article 85 para. (1) of the Constitution, the phrase “blocking up the procedure of adopting the laws for a period of three months” shall be construed as meaning the acts of certain MPs or groups of MPs aimed at the procrastination or thwarting of the procedure of voting the legislative drafts, which leads to the Parliament’s incapacity to adopt the laws of major importance for the State for a period of three months, laws regulating social relationships of considerable importance or which establish fundamental principles and provisions.

19. Therefore, the Court holds that the answer to the raised question derives from the text of the Constitution and from the previous interpretation of the constitutional provisions at issue. Furthermore, taking into account that Article 135 para. (1) let. f) of the Constitution provides that the circumstances justifying the dissolution of the Parliament must be firstly ascertained by the Constitutional Court, a fact which represents a guarantee meant to secure the respect of the Constitution, the Court concludes that the application is ill-founded.

For these reasons, pursuant to Article 26 of the Law on the Constitutional Court, Articles 61 para. (3) and 64 of the Code of Constitutional Jurisdiction,

THE CONSTITUTIONAL COURT:

1. *Declares inadmissible* the application of the President of the Republic of Moldova, Mr. Igor Dodon, on the interpretation of Article 85 para. (1) in conjunction with Articles 63 paras. (2) and (3), 69 para. (2) and 103 of the Constitution of the Republic of Moldova.

DECISION ON INADMISSIBILITY OF APPLICATION NO. 102B/2019 ON THE INTERPRETATION
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PARA. (2) AND 103 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

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

President

Mihai POALELUNGI

Chişinău, 7 June 2019

Decision of the Constitutional Court no. 83

Case no. 102b/2019