



**Republic of Moldova**  
**CONSTITUTIONAL COURT**

JUDGMENT

ON THE INTERPRETATION

**of article 101 para. (2) and (3) of the Constitution**  
*(Effects of Moldova's Prime Minister resignation)*

*(Complaint No. 26b/2015)*

CHISINAU

17 June 2015

In the name of the Republic of Moldova,  
Constitutional Court composed of:  
Mr. Alexandru TANASE, *president*,  
Mr. Aurel BAIESU,  
Mr. Igor DOLEA,  
Mr. Victor POPA, *judges*,  
With participation of Mr. Eugeniu Osipov, *registrar*

given the application lodged on 16 June 2015  
and registered on the same date,  
having examined the application referred to in a plenary  
public sitting,  
given the file documents and proceeding,  
deliberating in the council room,

Delivers the following Judgment:

## PROCEEDINGS

1. The case originated in the complaint lodged with the Constitutional Court on 16 June 2015 under articles 135 para. (1) let. b) of the Constitution, 25 para.(1) let. a) of the Law on the Constitutional Court and 38 para.(1) let. a) of the Code of Constitutional Jurisdiction by the President of the Republic of Moldova, Mr. Nicolae Timofti, on the interpretation of article 101 para. (2) and (3) of the Constitution.

2. The author of the application requested the interpretation of constitutional provisions with regard to the following aspects:

*'a) What is the moment of entry into force of the resignation of the Prime Minister in case of his resignation and, consequently, of the entire Government, under Art. 101.3 of the Constitution, and what is the form of the act of resignation pursuant to Art. 6 of the Law on Government, which provides that the resignation of the Prime Minister and the entire composition of the Government shall be submitted to the Parliament? Does the resignation request of the Prime Minister automatically mean the resignation of the entire Government, in case there is no Government Decision in this regard?*

*b) What is the deadline for the Parliament to adopt a position on the resignation request of the Prime Minister and the entire composition of the Government, considering the principle of ensuring continuity in the exercise of the executive power?*

*c) In case of approval of the resignation of the Prime Minister and the Government, is the President of the Republic Moldova under the constitutional duty, pursuant to Art. 101.2 of the Constitution, to appoint an interim Prime Minister until the formation of the new Government?*

*d) What are the situations, which would fall within the definition of Prime Minister's impossibility to perform his/her functional duties, except for decease and functional incompatibility?*

e) *In terms of Art. 101.3 of the Constitution, what is the term of formation of the new Government in case of resignation of the Prime Minister?*

3. By the decision of the Constitutional Court of 16 June 2015, the application had been declared admissible, without any prejudices to the merits.

4. Within the public plenary sitting of the Court, the application has been presented by Mr. Ion Paduraru, General Secretary of the President's Office of the Republic of Moldova, representative of the author of the complaint. The Parliament was represented by Mr. Ion Creanga, Head of General Legal Department of the Parliament Secretariat.

## THE FACTS/CONTEXT

5. On 12 June 2015, during a press conference, the Prime Minister, Chiril Gaburici announced his resignation.

6. During the meeting held on 16 June 2015, the Government adopted the Decision No.370, according to which, the Prime Minister and the entire Government resigned, in accordance with the provisions of art.100, 101 para.(3) and 103 of the Constitution of the Republic of Moldova and art.6 of the Law on the Government and resignation of the Prime Minister.

7. According to Government Decision No. 370 of 16 June 2015, the letter of resignation of the entire Government due to the resignation of the Prime Minister was submitted to the Parliament '*for consideration*'.

## PERTINENT LEGISLATION

8. The relevant provisions of the Constitution (M.O., 1994, No. 1) are the following:

### Article 100 Termination of Office of the Member of Government

'The office of the member of Government shall cease in the event of resignation, revocation, incompatibility or death.'

### Article 101 Prime Minister

'(1) The Prime-Minister exercises the leadership of the Government and coordinates the activity of its members, abiding by the powers delegated to them.

(2) In case of impossibility of the Prime-Minister to exercise his/her functional duties or in case of his/her death, the President of the Republic of Moldova shall designate another member of the Government to fulfil the interim office of Prime Minister until the formation of the new Government. The interim office for the period of impossibility to perform functional duties shall cease whether the Prime Minister resumes his/her activity within the Government.

(3) In the event of resignation of the Prime-Minister, the entire Government leaves the office.'

9. The relevant provisions of Law No. 64-XII of 31 May 1990 on the Government (republished in the OG, 2002, No. 131-133, art. 1018) are the following:

Article 6  
Resignation of the  
Government

'The Government shall have the right to resign by its own initiative.

Every member of the Government shall also have the right to resign.

**Resignation of the Prime Minister shall entail abdication of responsibility by the Government *in corpore*.**

Letters of resignation of the Prime Minister and abdication of the Government *in corpore* shall be submitted to the Parliament that shall express its opinion in this regard.

Letters of resignation of separate members of the Government shall be submitted to the Prime Minister and brought to the notice of the President of the Republic of Moldova.

The Government shall resign in cases of:

- 1) the Parliament passing a vote of non-confidence to the Government in compliance with Articles 106 and 106/1 of the Constitution;
- 2) **resignation or death of the Prime Minister;**
- 3) election of the new Parliament (at convocation of its first session).'

## IN LAW

10. Given the content of the application, the Court noticed that in essence it refers to effects of resignation of the Prime Minister, especially at the moment when the resignation of the Prime Minister happens, procedure and form, as well as its effects on the activity of the entire Government.

11. Therefore, the application refers to a set of elements and principles having interconnected constitutional value, such as continuity of public service, excluding the power vacuum, full functionality of state institutions, legal certainty and collective constitutional and political liability of the Government.

## A. ADMISIBILITY

12. According to its decisions of 16 June 2015, the Court noted that, under Article 135 para. (1) let. b) of the Constitution, Article 4 para. (1) let. b) of the Law on the Constitutional Court and Article 4 para. (1) let. b) of the Code of Constitutional Jurisdiction, the given application falls under the competence of the Constitutional Court.

13. Articles 25 let. a) of the Law on the Constitutional Court and Art. 38 para. (1) let. a) of the Code of Constitutional Jurisdiction grants the President of the Republic of Moldova the right to submit applications to the Constitutional Court.

14. The Court notes that the provisions of Article 101 of the Constitution have been previously interpreted in Judgment No. 18 of 27 April 1999, but the wording of this article has been amended by Law No. 1115-XIV of 5 July 2000.

15. The Court notes that the aspects raised by the author of the application have not previously been a matter of interpretation in the court of constitutional litigation.

16. The Court considers that the application cannot be rejected as inadmissible and that there is no ground for ceasing the process, according to the provisions of Art. 60 of the Code of Constitutional Jurisdiction. The Court notes that the application has been lodged within the legal framework and that it is in its competence to rule on the interpretation of Article 101 para. (2) and (3) of the Constitution. Therefore, the Court will further examine the merits of the application.

17. The Court holds that its power conferred by Art. 135 par. (1), p. b) of the Constitution involves the establishment of the true and full meaning of constitutional norms, which can be achieved by the textual or functional interpretation of the text, to the extent to which it can be deducted from the text of the Constitution, considering the generic character of the norm, concrete situations which the legislator had no chance to foresee at the moment of norms development, further regulations (connected or even contradictory), complex situations to apply the norm, etc.

18. To elucidate the aspects addressed in the application, the Court will operate especially with provisions of Article 101 of the Constitution in corroboration with Articles 98, 99, 100 and 103 of the Constitution, using all methods of legal interpretation, previous case-law and constitutional principles that ensure full balanced functionality of democratic institutions.

## B. THE MERITS

### 1. Arguments of the author of application

19. In the opinion of the author of application, the provisions of Article 101 para. (2) and (3) of the Constitution are ambiguous, which makes it difficult to apply them.

20. According to the author of application, the resignation is a unilateral legal act of the holder of the position and does not need control and approval. The resignation is only noted; it produces legal effects without

the need to approve it. On the other hand, Article 6 of the Law on the Government stipulates that the letters of resignation of the Prime Minister shall be submitted to the Parliament that **shall express** its opinion in this regard. Hence, in the opinion of the author of the application, there is an uncertainty regarding the moment when the resignation of the Prime Minister and the entire Government comes into effect. It is not clear whether the resignation of the Government produces effects at the moment of its announcement or at the moment the Parliament adopts the decision on the resignation of the Government.

21. As for the part that defines the final impossibility to hold the position of the Prime Minister, the author of the application refers to any circumstance incompatible with continuing to hold the position, other than death.

## 2. Arguments of the Parliament

22. In public sitting of the Constitutional Court, the representative of the Parliament mentioned that in the case of resignation of the Prime Minister, the Parliament has to take note of it only.

23. At the same time, the President of the Republic of Moldova cannot oblige the resigning Prime Minister to fulfil all the duties until the new Government is appointed. Hence, after the resignation of the Prime Minister, the President shall appoint an acting Prime Minister.

## 3. Findings of the Court

### 3.1. General Principles

24. In essence, the norms of the Constitution form an integral, logical and legal relation. The Constitution enshrines a threefold division of the duties of the state, which is a fundamental principle of state's organization. The constitutional text reflects the image of the state as a structure of bodies, among which the Government led by a Prime Minister. In the spirit of the Constitution, the functionality of all state institutions shall be ensured.

25. The norms and the spirit of the Constitution aim at ensuring the perpetuation of power exercise by state institutions, established in accordance with the provisions of the Constitution, and the temporary situations such as acting as intermediary or extending the mandate until the new successors are sworn in meant to avoid the creation of power vacuum should be removed as soon as possible.

26. Articles 98 para. (5) and 103 para. (1) of the Constitution establish the general timeframe for the Government mandate and namely, from the day of taking the oath by its members before the President and until the date of validation of the new parliament's elections.

27. Thus, **termination of Government mandate** may intervene either in a **typical situation** of the termination of Parliament's mandate that granted the vote of investiture by validating general parliamentary elections of the new Parliament, or in the following **atypical situations** and namely:

- 1) *Withdrawing the confidence provided to the Government*, by introducing a motion of censure (art. 106 of the Constitution) or in case of assumption of responsibility by the Government (art.106/1 of the Constitution), if a motion of censure was filed and was approved;
  - 2) *The Prime Minister is in the impossibility to fulfil his duties in case of his **resignation** or death* (art. 101 of the Constitution).

### ***3.2. Application of principles described in this case***

#### *3.2.1. As for the effects produced by the resignation of the Prime Minister*

##### *a) Moment of entry into force*

28. According to Article 100 of the Constitution, the office of the member of Government shall cease in the event of **resignation**, revocation, incompatibility or death.

29. The Court observes that the resignation is a unilateral legal act of the holder of the position, an act through which the person based on personal beliefs and free consent announces the termination of his/her activity. The resignation is not liable to control or approval, it is only taken note of.

30. At the same time, the Court observes that the position of the Prime Minister is a position of high public dignity and is involved in a specific public legal relationship, which cannot apply fully the rules related to labour relations, including those related to the resignation.

31. In case of resignation of the Prime Minister, the resignation action does not have any conditionality toward the legal nature of the resignation, so it can be communicated in a public announcement or written letter addressed to the Parliament.

32. The Constitution does not stipulate a deadline by which the letter of resignation becomes final and nor the Law No.64/1990 on the Government stipulates a deadline in this regard.

33. The situation when it is necessary to institute a deadline for the author to revise, withdraw the resignation, has to be considered exclusively by the Parliament.

34. In the absence of express legislative regulation, in case of the Prime Minister, the resignation is made public or in written letter addressed to the Parliament and becomes final at the moment of its announcement/submission. Its final character means that the author cannot withdraw his/her resignation.

##### *b) Effect on the Government*

35. In its case-law, the Court mentioned that although the vote of confidence is provided to the entire Government and although its investiture is made in block, and not per member of the Government in part, the vote of confidence granted to the Prime Minister has a special character, because he/she as the candidate to this position asked for a confidence vote for the Government and succeeded to obtain the vote of confidence in accordance with constitutional provisions. Or, in the last instance, the **structure of the Government is the expression of confidence which the Parliament**

**grants to candidate to the position of the Prime Minister** (Judgment No. 16 of 24.04.2000 on the interpretation of some provision of art. 73, 82, 86, 94, 98, 100 and 101 of the Constitution of the Republic of Moldova and Judgment No.18 of 27.04.1999 on the interpretation of some provisions of art.101 of the Constitution of the Republic of Moldova).

36. Based on this, the resignation of the Prime Minister draws the resignation of the entire Government [art. 101 para. (3) of the Constitution]. In this sense, the resignation of the Government operates under law, **without being necessary to fulfil any other textual or procedural conditions**, or this is an automatic and final process, and the Parliament does not have the discretion to accept or not the resignation of the Government which Prime Minister resigned.

37. The resignation of the Prime Minister and, consequently, of the entire Government shall enter into force upon its communication:

- In case of a written request addressed to the Parliament - upon presentation;
- In case of a public announcement - upon the time of issue.

38. From this moment and until taking the oath by the members of the new Government, the resigning Government fulfils only administrative duties of public affairs, in the sense of articles 101 para. (3) and 103 para. (2) of the Constitution, as these were explained in Judgment of the Constitutional Court No. 7 of 18 May 2013.

39. Also, this is when the deadline to form a Government begins, in accordance with Article 85 of the Constitution, as it was interpreted in Judgment No. 30 of 1 October 2013:

‘48. In the meaning of articles 101, 103, 106, 106/1 of the Constitution, the need to form a new Government appears when: 1) the mandate of the Government legally expires; 2) the Parliament expresses the vote of no confidence; 3) the Prime Minister cannot fulfil his/her duties; 4) in case of death or **resignation of the Prime Minister**.

[...]

53. [...] the 3-month period stipulated in Article 85 para.(1) is a deadline to dissolve the Parliament, and shall cover both cases when a crisis or conflict arises and namely: impossibility to form the Government or blocking up the procedure of adopting the laws.

[...]

64. Hence, the 3-month general period to form the Government starts from the date of the circumstances occurrence that have determined the need to form a new Government; it starts irrespective of the procedures to form the new Government and/or procedures stipulated in Article 85 paragraph (2) of the Constitution, it includes consultation periods with the Parliamentary factions and other legal procedures and constitutes the deadline to form the new Government.’



40. The Constitution does not stipulate a deadline for the Parliament to exercise the duty to take note of the resignation and to initiate the formation of the new Government, neither the Law No.64/1990 on the Government nor the Parliament Regulation stipulates such deadline.

41. When it is considered necessary to institute a deadline for the Parliament to exercise this duty, it is ascertained that such resolution is exclusively the prerogative of the Parliament as supreme representative body of the people and the only law-making authority of the state, in accordance with Article 60 of the Constitution. The Constitutional Court does not have the competence to appreciate, by interpretation, the eventual deadline in this regard nor to censor the motivational acts regarding the settlement date.

42. Hence, the Court notes that the decision of the Parliament to take note of the resignation is an activity that is not conditioned by the validity of the resignation and its effects. Therefore, the decision of the Parliament to take note of the resignation of the Prime Minister, and respectively, of the entire Government, does not influence the act of resignation, process of forming the new Government, as well as constitutional terms necessary for this process.

### *3.2.2. On exercising the interim position*

43. The Court mentions that in order to ensure the continuity of public services, the resigning Government including the resigning Prime Minister continues to fulfil the administrative duties of public affairs until the oath is taken by the members of the new Government.

44. Hence, the activities implied by the position resigned may keep the resigning person for a reasonable period, based on the **agreement between parties**.

45. The Court notes that according to provisions of art. 101 para. (2) of the Constitution, in case of **impossibility for the Prime-Minister to exercise his/her functional duties** or in case of his/her death, the President of the Republic of Moldova shall designate another member of the Government to fulfil the interim office of Prime Minister until the formation of the new Government.

46. In the Judgment No. 4 of 22 April 2013, the Court explains the impossibility of the Prime Minister to exercise his duties, stating the following:

‘95. The Constitution provides rules for temporary or definitive impossibility to discharge a mandate or a high office. In constitutional law the cases of impossibility to discharge a mandate relate, in a broad sense, to the Head of State, to candidates running for President, to the members of Parliament and to the Government.

96. The Constitution does not list the circumstances under which such impossibility may intervene.

97. It follows from the content of Article 101 para. (2) of the Constitution that the Supreme Law distinguishes two different situations of impossibility to discharge a mandate of Prime Minister: (a) **temporary impossibility**, when the Prime Minister may resume the Government activity; (b) **definitive impossibility** (other than demise), **where the dismissed Prime Minister may not resume Government activity** “until the formation of the new Government”.

98. Logically, **the definitive impossibility to discharge a mandate of Prime Minister is generated by any circumstance incompatible with the continuation of the discharge of duties, other than demise.**'

47. Based on its previous case-law, the Court notes that the 'definitive impossibility to exercise the duties of the Prime Minister', in the sense of Article 101 para. (2) of the Constitution, covers the situation generated by any circumstance that impedes the continuation of exercising the duties, other than death, **including the situation of the express refusal of the Prime Minister, who submitted his resignation, to act until the new Government is formed.**

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

#### **RULES:**

1. For the purposes of Article 101.3 of the Constitution:

- a) The resignation of the Prime Minister and, consequently, of the entire Government shall enter into force upon its communication:
  - In case of a written request addressed to the Parliament - upon presentation;
  - In case of a public announcement - upon the time of issue.
- b) The resignation of the Prime Minister entails a *de jure* resignation of the Government, without fulfilling any other formal or procedural conditions.
- c) The Parliament takes note of Prime Minister's resignation and, consequently, of the entire Government. The Parliament Decision whereby it takes note of Prime Minister's resignation and, consequently, of the entire Government, does not affect the act of resignation, the process of forming a new Government as well as the constitutional limits inherent to this process.

2. For the purposes of Article 101.2 of the Constitution:

- a) The President is under constitutional duty to designate an interim Prime Minister until the formation of the new Government, in case of a definitive impossibility of the resigning Prime Minister to exercise his/her functional duties.

b) The definitive impossibility of a Prime Minister to exercise his/her functional duties signifies the situation generated by any circumstance which prevents the continuation of exercising his/her duties, other than decease, including the express refusal of the resigning Prime Minister to continue exercising office until the formation of the new Government.

3. For the purpose of Art. 85 of the Constitution, the deadline for setting up the Government is three months, including Prime Minister's resignation under Article 101 para (3) of the Constitution, this period commencing with the moment of communication of Prime Minister's resignation, in line with paragraph 1 of this operative part.

4. For the purpose of Articles 101 para (3) and 101 para (2) of the Constitution, starting with the moment of communication of Prime Minister's resignation, in line with paragraph 1 of this operative part, the Government shall only fulfil the duties of administering public affairs, until the new Government is sworn in.

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 TANASE**

*Chisinau, 17 June 2015*  
*JCC No. 16*  
*Complaint No. 26b/2015*