



**Republic of Moldova**

**CONSTITUTIONAL COURT**

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

**JUDGMENT**

**ON THE INTERPRETATION**

**of the provisions of Articles 63 and 85 of the Constitution of the  
Republic of Moldova**

*(Application no. 110b/2019)*

**CHIȘINĂU**  
**8 June 2019**

JUDGMENT ON THE INTERPRETATION  
OF ARTICLES 63 AND 85 OF THE CONSTITUTION

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

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

Considering the application lodged with the Court on 7 June 2019,  
and registered on that date,  
Examining the application in closed session,  
Considering the case-files,  
Having deliberated in closed session,

Delivers the following judgment:

## PROCEDURE

1. The case originated in an application lodged with the Constitutional Court on 7 June 2019 pursuant to Articles 135 para. (1) let. b) of the Constitution, 25 let. g) of the Law on the Constitutional Court and 38 para. (1) let. g) of the Code of Constitutional Jurisdiction, by the Members of Parliament Vladimir Cebotari and Serghei Sîrbu, asking for an interpretation of Articles 63 and 85 of the Constitution of the Republic of Moldova.

2. The applicants requested the interpretation of the aforementioned articles, seeking answers to the following questions:

*(1) May the legal status and the scope of powers of a Parliament with an expired term of office and the legal status and the powers of a dissolved Parliament be regarded as identical?*

*(2) Is the Parliament of the Republic of Moldova entitled to resume its legislative activity and to perform its powers as provided by Article 66 of the Constitution, if circumstances of mandatory dissolution of the Parliament arose, as a result of the legislative deadlock and/or of the impossibility to form the Government during three-months a period, which has correspondingly been found by the Constitutional Court?*

3. By the Decision of 7 June 2019 of the Constitutional Court, the application was declared admissible with no prejudice to the merits.

4. At the public sitting of the Court, where the operative part of the judgment was delivered, the applicant, MP Seghei Sîrbu, had pleaded before the Court.

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## RELEVANT LEGISLATION

### 5. Relevant provisions of the Constitution:

#### Article 63 Term of office

“(1) The Parliament shall be elected for a 4-year term of office, which may be extended by organic law, in the event of war or national disaster.

(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.

(4) The draft laws or legislative initiatives contained in the agenda of the previous Parliament shall be carried on by the new Parliament.”

#### 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.

(3) The Parliament may be dissolved only once in the course of one year.

(4) The Parliament may not be dissolved within the last 6 months of the term of office of the President of the Republic of Moldova nor during a state of emergency, martial law or war.”

## THE LAW

### A. ADMISSIBILITY

6. By its Decision of 7 June 2019, the Court noted that the application on the interpretation of the Constitution falls into the ambit of its *ratione materiae* jurisdiction under Article 135 para. (1) let. b) of the Constitution.

7. Furthermore, under Article 25 let. g) of the Law on the Constitutional Court, Members of Parliament are entitled to apply before the Court.

## B. MERITS

### 1. The applicants' submissions

8. The applicants alleged that interpretation of Articles 63 and 85 of the Constitution is needed in order to know whether a Parliament with expired term of office and a dissolved Parliament have the same legal status and identical powers. The applicants alleged that in the first case, there is no conflict between authorities or political parties and that it represents a common procedure of transfer of power from one Parliament to another. In the second case, it would be an institutional and political conflict and an inoperative Parliament. In the latter case, the institutional conflict is generated by a political irresponsibility of the parties and of the MPs.

9. The applicants maintained, as well, that there is a need for the exact meaning of constitutional provisions concerning the status and the powers of the Parliament to be elucidated, as the latter is responsible for legislative deadlock and for obstruction to form a Government.

### 2. The Court's assessment

10. When assessing the circumstances contended by the MPs, the Court finds that the Articles relied on by the applicants need to be interpreted. An interpretation would shed light on the raised issues.

11. The applicants alleged that there is a difference between the expiration of the four-year term of office of the elected Parliament, a time-limit provided by Article 63 para. (1) of the Constitution, and the dissolution of the Parliament in the event of the impossibility to form the Government or in case the proceedings of adopting the laws for a three-months time-limit are blocked, a time-limit set out in Article 85 para. (1) of the Constitution. The Court observes that the Constituent Assembly did not provide with precision, as it did in case of the 45-days term from the same constitutional provision, the number of days where the sanction of dissolution of the Parliament shall intervene. In the event of two processes of dissolution of the Parliament, the three-months period may differ due to the variations in the number of days the months of the year may have. In applying a systemic approach, the Court will consider as well the fact that Article 386 para. (1) of the Civil Code provides that "half a year or half a semester represent 6 months, a trimester – 3 months, half a month – 15 days, a decade – 10 days." If half a month has 15 days, it results that a month has 30 days. When applied in relation to the Constitution, the solution provided by the Civil Code precludes possible length differences between the three months term for the dissolution of the Parliament, in the event of two hypothetical processes of dissolution.

12. The Court notes that in parliamentary democracies, the responsibility of the elected representatives of the citizens may be determined by legislative

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elections. Early elections is an option in almost every parliamentary system. Early elections may take place by having the lawmaking authority dissolved. In a Note on the issue of dissolution of Parliament, prepared by the Secretariat of the European Commission for Democracy through Law (“the Venice Commission”) in November 2007 (Study No. 426/2007), it indicated that there only two countries in Europe, – *i.e.* Norway and San Marino – where the parliaments cannot be subject to dissolution.

13. In constitutional democracies, the dissolution of the Parliament occurs from either a political necessity or from reasons of political opportunity. In light of the Constitution of the Republic of Moldova, the dissolution of the Parliament is regarded as a political necessity. Such a political need is justified by the impossibility to form the Government of by a deadlock in the lawmaking process for a three-months period. Apart from these two reasons, it does not amount to an agreement of dissolution of the Parliament between political forces represented in the Parliament, for reasons of political opportunity, in order to check or to confirm, for instance, their popular support.

14. The distinction between the expiration of the term of office of the Parliament and the dissolution of the Parliament is rooted in the very text of Article 61 para. (3) of the Constitution. The aforementioned normative text provides that the election of the Members of Parliament is to be held no later than within three months following the expiration of the mandate or the dissolution of the previous Parliament.

15. The dissolution of the Parliament is a constitutional sanction for the lawmaking inactivity, an antidote for the rigidity of the legislator. On the one hand, it is the lack to grant a vote of confidence for the Government which is sanctioned. On the other hand, it is the three-months period deadlock in the lawmaking process which is sanctioned. In this respect, in the Judgment no. 40 of 24 December 1998, the Court held that “by the dissolution of the Parliament and organisation of elections, the voters are given the opportunity to settle by constitutional way the conflict between authorities.” By contrast, organisation of elections because of the expiration of the term of office does not amount to a sanction, it being an expression of the natural course of democracy, which implies a periodical organisation of parliamentary elections.

16. By the Judgment no. 40 of 24 December 1998, the Court also 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. 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 group of MPs aimed at the procrastination or thwarting of the procedure of voting the legislative drafts.

17. In the Judgment no. 30 of 1 October 2013, the Court noted at § 53 that the three-months term provided by para. (1) of Article 85 is a deadline for dissolution of the Parliament, applicable to both cases when a crisis situation or a conflict

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occur, *i.e.* the impossibility to form the Government or the deadlock in the lawmaking process. According to the same Judgment of 2013, the President is bound to dissolve the Parliament in case the circumstances for dissolution arise, thus contributing to the resolution of the political crisis in line with the general interest of the citizens (§ 75 of the Judgment no. 30 of 1 October 2013).

18. Therefore, as the three-months term for dissolving the Parliament, provided by para. (1) of Article 85 of the Constitution represents a deadline (limitation period), that when expired, the Parliament cannot continue its activity, not even for adopting ordinary laws, as it is in case of a Parliament whose term of office expired.

19. The constitutional duty of the President of the Republic to dissolve an inactive Parliament when circumstances which require the dissolution of the Parliament arise was reiterated in the Judgment of the Constitutional Court no. 29 of 24 November 2015, at § 37, and in the Decision of the Constitutional Court no. 13 of 16 December 2015, at § 17. The provisions of Article 85 paras. (1) and (2) of the Constitution are aimed at restricting the period of political and institutional crisis and at ensuring the functionality of constitutional authorities of the State; and by assigning to the President the prerogative to dissolve the Parliament, the obstruction of the activity of one of State powers shall be avoided (see § 41 of the Judgment of the Constitutional Court no. 29 of 24 November 2015).

20. The Court thus observes that there is a constant constitutional case-law on the duty of the President of the Republic of Moldova to dissolve the Parliament in the event of impossibility to form the Government or in the event of a deadlock in the lawmaking process.

21. Therefore, for these reasons, the legal status and the scope of the powers of a Parliament in case where dissolution circumstances arose are not the same with those of a Parliament with an expired term of office. A Parliament which is sanctioned by dissolution cannot perform the same powers as those of a Parliament with an expired term of office. Furthermore, a Parliament that is not formed cannot continue its activity, as it has never commenced it. Where a Parliament with an expired term of office may adopt, pursuant to Article 63 para. (3) of the Constitution, only ordinary laws, as it is not culpable for its inactivity, a Parliament in respect of which the dissolution circumstances arose cannot adopt any laws and it cannot either perform the other powers set out in Article 66 of the Constitution. The latter Parliament was given the opportunity to adopt laws during the first three months of its activity, but it has chosen not to comply with the procedures enshrined in the Constitution. The sanctions which intervenes in this case is the dissolution and the ban on performing the powers provided in Article 66 of the Constitution, in favour of a future Parliament which would comply with the constitutional procedures.

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For these reasons, pursuant to Articles 135 para. (1) let. b) and 140 of the Constitution, 26 of the Law on the Constitutional Court, 6, 61, 62 let. b) and 68 of the Code of Constitutional Jurisdiction,

**THE CONSTITUTIONAL COURT  
delivers the following interpretation:**

1. The Parliament which shall be dissolved pursuant to Article 85 of the Constitution does not have an identical status and competences as the Parliament whose term of office expired according to the provisions of Article 63 of the Constitution.
2. In case the circumstances of mandatory dissolution of the Parliament arise, as a result of a lawmaking deadlock and/or the impossibility to form the Government in a of 3 months (90 days) period, the Parliament is not entitled to perform lawmaking activity, neither to exercise the powers provided by Article 66 of the Constitution, nor to form the leading units of the Parliament.
3. When the circumstances of dissolution of the Parliament arise pursuant to Article 85 para. (1) of the Constitution, the President of the country is bound to apply without delay to the Constitutional Court in order for it to ascertain the circumstances justifying the dissolution to be found, with the subsequent issuance of the Decree on the dissolution of the Parliament and setting of the date of early parliamentary elections.
4. Any action and/or legislative act aimed at performing the activity of the Parliament after the circumstances of mandatory dissolution arise amount to a serious breach of constitutional provisions and are null *ab initio*.
5. This judgment 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, 8 June 2019  
Judgment of the Constitutional Court no. 13  
Case no. 110b/2019*