



Republic of Moldova

CONSTITUTIONAL COURT

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

JUDGMENT

ON THE CONSTITUTIONAL REVIEW

**of the legislative acts adopted
by the Parliament of 10th legislature on 8 June 2019**

(Application no. 111a/2019)

CHIȘINĂU

8 June 2019

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 8 June 2019
and registered on that date,
Examining the application in a public hearing,
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 8 June 2019, by the Members of Parliament of the Republic of Moldova, Vladimir Cebotari and Serghei Sîrbu, pursuant to Articles 135 para. (1) let. a) 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 on the constitutional review of the law adopted by the Parliament of the 10th legislature on 8 June 2019.

2. The MPs asked the Constitutional Court to apply a constitutional review of the legislative acts adopted by the Parliament of 10th legislature on 8 June 2019, as well as of the Decision of the Parliament of the Republic of Moldova on the election of Speaker of the Parliament.

3. At the public sitting of the Court appeared Mr. Serghei Sîrbu, the applicant.

THE FACTS

4. Under Article 83 para. (2) of the Electoral Code, the Parliament of the Republic of Moldova established by the Decision of no. 197 of 27 July 2018 the date of parliamentary election (*i.e.* 24 February 2019).

5. On 24 February 2019, in the Republic of Moldova were held parliamentary elections under a mixed voting system (proportional and majoritarian), in a nationwide constituency and 51 uninominal constituencies.

6. On 9 March 2019, the Court confirmed the results of parliamentary elections of 24 February 2019 and validated the mandates of the elected MPs (Judgment of the Constitutional Court no. 4 of 9 March 2019).

7. In a 3-month term following validation, the Parliament of 10th legislature had to establish the leading units of the Parliament, to form the Government of the Republic of Moldova and to adopt laws. At the end of the day of 7 June 2019, the Parliament of 10th legislature had neither established yet leading units, nor had it formed the Government or adopted laws.

RELEVANT LEGISLATION

8. Relevant provisions of the Constitution:

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 61

Parliament elections

“(1) The members of Parliament shall be elected by universal, equal, direct, secret and freely expressed ballot.

(2) The organic law shall establish the procedure for organising and holding elections.

(3) The election of members of Parliament is hold no later than within 3 months following the expiration of the mandate or the dissolution of the previous Parliament.”

Article 64

Internal organisation

“(1) The structure, organisation and functioning of Parliament is established by internal regulations. The financial resources of Parliament are foreseen in the budget approved by the latter.

(2) The President of Parliament shall be elected by secret ballot with the majority of votes cast by members elected for the tenure of the mandate of Parliament. The President of Parliament may be revoked any time by secret ballot of Parliament, with a majority of at least two-thirds of votes of all its members.

(3) Vice-presidents of Parliament are elected upon the proposal of the President of Parliament upon consultations with parliamentary fractions.”

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

9. The Court held under Article 135 para. (1) let. a) of the Constitution that the application on the constitutional review of the legislative acts adopted by the Parliament of 10th legislature on 8 June 2019 falls within its *ratione materiae* jurisdiction.

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

B. THE MERITS

1. The applicants' submissions

11. According to the applicants, on 8 June 2019, following the expiry of the three-months (90 days) constitutional term, when the Parliament of 10th legislature had the opportunity to form the leading units of the lawmaking authority and to form the Government of the Republic of Moldova, a number of 61 MPs convened in a sitting and voted a number of legislative acts, in breach of constitutional and regulatory procedures.

12. The applicants also contended that in breach of constitutional provisions and the Decision of the Constitutional Court no. 83 of 7 June 2019, a group of MPs voted, in disregard of the constitutional and regulatory procedure, the formation of the leading units of the Parliament and adopted the Decision of the Parliament of the Republic of Moldova on the election of the Speaker of Parliament.

13. They also maintained that the legislative acts adopted by the Parliament of 10th legislature on 8 June 2019 are in breach of the requirements provided by Articles 1, 2, 7, 63, 64, 74 and 85 of the Constitution.

2. The Court's assessment

14. By Judgment no. 3 of 8 June 2019, the Court held that the three-months term for Parliament's dissolution provided by para. (1) of Article 85 of the Constitution represents a time-limit (a limitation period), which when expired,

the Parliament may not continue its activity, not even in what regards the passing of ordinary laws, as it would the case of a Parliament with an expired term of office (§ 18).

15. By the same judgment, the Court noted that the legal status and the scope of the powers of the Parliament where the circumstances for dissolution have intervened are not the same as those of a Parliament with an expired mandate. A Parliament which is to be sanctioned by dissolution cannot perform the same duties in a manner similar to that of a Parliament with an expired term of office. Furthermore, a Parliament which was not established may not continue its activity, as it did not commence it. Where a Parliament with an expired term of office may adopt under Article 63 para. (3) of the Constitution only ordinary laws, as it is not culpable for its inactivity, a Parliament where the circumstances for dissolution are present may not pass any laws and may not discharge any duties provided by Article 66 of the Constitution. This latter Parliament had the opportunity to adopt laws in the first three months of its activity. It however chose not to abide by the procedures prescribed by Constitution. The sanction to follow in its case is the dissolution and the ban on exercising the powers provided by Article 66 of the Constitution, in favour of a future Parliament complying with constitutional procedures (§ 21).

16. Moreover, the Court observes that in three months, the Parliament of 10th legislature did not form its leading units, which are crucial in commencing the legislative process in the Parliament.

17. Due to its inactivity, a Government could not be formed and the lawmaking work was blocked, and following the expiry of the three months provided by Article 85 para. (1) of the Constitution, the circumstances for Parliament's dissolution emerged, a situation where the President of the Republic was bound to notify the Court. Given these facts, the decision on electing Ms. Zinaida Greceanîi as Speaker of 10th legislature Parliament, as well as the other legislative acts of the Parliament of 10th legislature (laws or decisions) have, *eo ipso*, flaws of unconstitutionality.

Pursuant to Articles 135 para. (1) let. a) and 140 of the Constitution, 26 of the Law on the Constitutional Court, 6, 61, 62 let. a) and 68 of the Code of Constitutional Jurisdiction,

THE CONSTITUTIONAL COURT:

1. *Declares unconstitutional* the Decision adopted by the Members of Parliament of the Republic of Moldova of 10th legislature on 8 June 2019 on electing Ms. Zinaida Greceanîi as Speaker of Parliament.

JUDGMENT ON THE CONSTITUTIONAL REVIEW OF THE LEGISLATIVE ACTS ADOPTED BY THE
PARLIAMENT OF 10TH LEGISLATURE ON 8 JUNE 2019

2. *Declares unconstitutional, ab initio*, the legislative acts (laws, decisions) adopted by the Members of Parliament of the Republic of Moldova of 10th legislature on 8 June 2019 and subsequently.
3. This judgment is final, cannot be appealed, entering into force on the date of adoption, and it 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. 14
Case no. 111a/2019