



Republic of Moldova

CURTEA CONSTITUȚIONALĂ

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

JUDGMENT

ON THE CONSTITUTIONAL REVIEW

**of the Decrees of the President of the Republic of Moldova of 8 June 2019
on the nomination of the candidate to the office of Prime Minister of the
Republic of Moldova and on the appointment of the Government of the
Republic of Moldova**

(Application no. 112a/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, Serghei Sîrbu, and Igor Vreamea, 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 Decrees of the President of the Republic of Moldova no. 1171-VIII and no. 1172-VII of 8 June 2019 on the nomination of the candidate to the office of Prime Minister of the Republic of Moldova and, correspondingly, on the appointment of the Government of the Republic of Moldova.

2. The applicants asked the Constitutional Court to apply a constitutional review of these decrees.

3. At the public sitting of the Court appeared the MP Igor Vreamea, one of the applicants.

THE FACTS

4. On 24 February 2019, in the Republic of Moldova were held parliamentary elections based on a mixed voting system.

5. 9 March 2019, the Court confirmed the results of the parliamentary elections of 24 February 2019 and confirmed the mandates of the elected MPs (Judgment of the Constitutional Court no. 4 of 9 March 2019).

6. Within the three months following the confirmation, by 7 June 2019, the Parliament of 10th legislature had to establish the leading units of the Parliament and to form the Government of the Republic of Moldova. However, on 7 June 2019, the Parliament of 10th legislature did not have established any leading units of the lawmaking authority and it did not form either the Government of the Republic of Moldova.

RELEVANT LEGISLATION

7. Relevant provisions of the Constitution:

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.”

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.

(2) The candidate for the office of Prime-Minister shall request, within 15 days following the designation, the vote of confidence of the Parliament over the programme of activity and the entire list of the members of the Government.

(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.

(4) On the basis of the vote of confidence granted by the Parliament, the President of the Republic of Moldova shall appoint the Government.

(5) The Government shall enter into the exercise of its powers on the very day of taking the oath by its members before the President of the Republic of Moldova.

(6) In the event of the governmental reshuffle or vacancy of office, the President of the Republic of Moldova shall revoke and appoint, upon the proposal of the Prime-Minister, some members of the Government.”

THE LAW

A. ADMISSIBILITY

8. The Court noted that pursuant to Article 135 para. (1) let. a) of the Constitution, the application on the constitutional review of the Decrees of the President of the Republic of Moldova no. 1171-VIII and no. 1172-VII of 8 June 2019 on the nomination of the candidate to the office of Prime Minister of the Republic of Moldova and, correspondingly, on the appointment of the Government of the Republic of Moldova, falls into its *ratione materiae* competence.

9. It also noted that under Article 25 let. g) of the Law on the Constitutional Court, members of Parliament are conferred the competence to apply before the Constitutional Court.

B. THE MERITS

1. The applicants' submissions

10. According to the applicants, on 8 June 2019, following the expiry of the three-month constitutional term (90 days) whereby the Parliament of 10th legislature had the opportunity to establish 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 for the leading units of the legislator to be established; and they also voted the Decision of the Parliament of the Republic of Moldova on electing the Speaker of Parliament.

11. At the same time, the President of the Republic of Moldova nominated the candidate to the office of Prime Minister by the Decree of 8 June 2019. Subsequently, after a group of MPs cast a vote of confidence for the candidate to the office of Prime Minister, the President of the Republic of Moldova appointed the Government of the Republic of Moldova by another Decree dated on 8 June 2019.

12. The applicants contended that the Decrees of the President of the Republic of Moldova of 8 June 2019 violate the requirements of Articles 1, 2, 7, 63, 64, 74, 85 and 98 of the Constitution.

2. The Court's assessment

13. The Court observes that the three-month term imposed 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 and must be dissolved.

14. In its well-established case-law, the Court indicated the existence of a constitutional duty of the President of the Republic to dissolve an inactive Parliament upon the occurrence of circumstances imposing the dissolution thereof, *i.e.* upon the expiry of the three-month term (see, Judgment of the Constitutional Court no. 30 of 1 October 2013, § 75; Judgment of the

Constitutional Court no. 29 of 24 November 2015, § 37; Decision of the Constitutional Court no. 13 of 16 December 2015, § 17). The provisions of Article 85 para. (1) and para. (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).

15. The delay in Parliament's actions do not permit the Court, as a guardian of the Constitution, to ignore the three-month time-limit imposed by the Basic Law.

16. The set of formalities and time-limits established by the Constitution aims at ensuring the well-functioning of political life. The Parliament elected by the citizens in order to form a Government and to make laws, which however chose to be inactive, must be sanctioned, correspondingly, by dissolution and by organising early parliamentary elections.

17. Nominating a candidate to the office of Prime Minister and appointing a Government as a result of proceedings which were not followed in good-faith, with plenary consultations or *e.g.*, with transparency, may not justify possible exceptions from exceeding the time-limit imposed by the Constitution, a term which represents a legitimate restriction of the presidential power.

18. Consequently, the disregard of the President of the Republic of Moldova of his constitutional duty to dissolve an inactive Parliament and to issue decrees which oppose this duty render these Decrees unconstitutional. Moreover, the Government was appointed based on a Parliament decision that the President was or had to be aware of, in that it had been declared unconstitutional by the Judgment of the Constitutional Court no. 14 of 8 June 2019.

19. Therefore, the Decree of the President of the Republic of Moldova no. 1171-VIII and on the nomination of the candidate to the office of Prime Minister of the Republic of Moldova and the Decree no. 1172-VII on the appointment of the Government of the Republic of Moldova, of 8 June 2019, have been issued in disregard of the constitutional requirements imposed both by the text of the Constitution and by the constant case-law of the Court.

Pursuant to Articles 135 para. (1) *lat. 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 Decree of the President of the Republic of Moldova of 8 June 2019 on the nomination of the candidate to the office of Prime Minister of the Republic of Moldova.
2. *Declares unconstitutional* the Decree of 8 June 2019 on the appointment of the Government of the Republic of Moldova.
3. This judgment is final, cannot be appealed, entering into force on the date of 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. 15
Case no. 112a/2019