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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

OPINION

**ON THE CONSTITUTIONAL SITUATION WITH PARTICULAR
REFERENCE TO THE POSSIBILITY OF DISSOLVING PARLIAMENT**

**Adopted by the Venice Commission
at its 119th Plenary Session
(Venice, 21-22 June 2019)**

on the basis of comments by:

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I. Introduction

1. On 12 June 2019, the Secretary General of the Council of Europe requested an opinion of the Venice Commission on the situation in the Republic of Moldova from a constitutional point of view, including on the conditions for the dissolution of parliament. He asked that this opinion be prepared by way of urgency.
2. Messrs P. Dimitrov, M. Frendo, E. Holmóvik and K. Tuori acted as rapporteurs.
3. Representatives of the Democratic Party, the Socialist Party and the ACUM coalition were invited to participate in a meeting with the Rapporteurs in Venice, on 20 June 2019. Mr Radu MARIAN, member of the ACUM coalition (PAS), Mr Liviu VOVC, member of the ACUM coalition (DA), Mr Maxim LEBEDINSCHI, Advisor to the President of the Republic and Mr Fadei NAGACEVSCHI, legal advisor to the Socialist Party accepted this invitation and met with the rapporteurs on 20 June 2019.
4. The present opinion was drawn up on the basis of their comments. It was examined by the Sub-Commission on Democratic Institutions on 20 June 2019 and was subsequently adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019).

II. The facts

5. Three new members of the Constitutional Court were simultaneously appointed in December 2018, following the resignation of the previous members.
6. Parliamentary elections were held in Moldova on 24 February 2019. On 3 March, within the legal deadline, the CEC summarized the results of the elections in the national constituency and approved the allocation of mandates based on the outcome of the elections in national and 51 single member constituencies. On 4 March, the CEC submitted "the report on the organization of elections" together with protocols on election results with relevant election documentation to the Constitutional Court, which on 9 March validated the results.¹
7. Four political parties entered the Parliament: the Socialist Party, led by Zinaida Greceanii - 35 seats out of a total 101; the Democratic Party, led by Vladimir Plahotniuc - 30 seats; the ACUM block, led by Maia Sandu and Andrei Nastase - 26 seats and the Shor party - 7 seats.
8. On 21 March 2019, the new Parliament held its first session, during which it was unable to vote for the new Speaker. The Parliament remained non-functional, with a care-taker Government, led by the outgoing Prime Minister Pavel Filip.
9. On 22 May 2019, President Igor Dodon (Socialist Party) lodged an application (No. 102b) to the Constitutional Court seeking an interpretation as to whether the three-month deadline for dissolving parliament in Article 85 §1 of the Constitution² runs from the date of the validation of the election results or from the date of the first session of the newly-elected parliament.
10. On 7 June 2019, ACUM leader Maia Sandu, followed by the other main ACUM leader, Andrei Nastase, announced that they were ready to vote for the Socialist Greceanii as the new Speaker, opening the way to form a pragmatic coalition. The Socialist party first indicated that snap elections were highly possible, but eventually decided to re-entered coalition negotiations.

¹ <https://www.osce.org/odihr/elections/moldova/420452?download=true>

² For the text of this Article see Part III.A below

11. On the same day, the Constitutional Court rejected President Dodon's application no. 102b (decision of 7 June 2019)³. The Court said that the wording of the Constitution and its previous judgments already provided the reply to the question: the three month deadline (which the Court equaled to 90 days, § 16) runs from the validation by the Constitutional Court of the election results, "regardless of the start of the procedures for the formation of the new Government and/or performing the procedures provided by the paragraph 2 of Article 85 of the Constitution, including periods of time consultation of parliamentary factions and other legal proceedings (HCC No. 30 of 1 October 2013, § 64)". As the Constitutional Court had validated the election results on 9 March 2019, the term of ninety days was considered to expire on 7 June 2019.

12. Also on 7 June 2019, two MPs from the Democratic Party (Cebotari and Sirbu) lodged an application (No. 110b/2019) to the Constitutional Court putting two questions: whether the legal status and scope of powers of a parliament with an expired mandate can be considered as the same of those of a dissolved parliament; and whether parliament may resume its legislative activity and fulfil the duties provided for by Article 66 of the Constitution if the circumstances of obligatory dissolution of parliament have occurred due to the legal blockage or to the inability to form a government within three months, as ascertained by the Constitutional Court.

13. On 8 June 2019 the Constitutional Court held a hearing at which only Mr Sirbu was present, while neither parliament (nor the President) were summoned; in the Court President's view, the parliament had not been established yet in accordance with the Constitution. On the same day, the Court issued a judgment (no. 13) interpreting Articles 63 and 85 of the Constitution,⁴ ruling that:

- The Parliament to be dissolved under Article 85 of the Constitution does not have the same status and competence as a Parliament whose mandate expired in accordance with the provisions of Article 63 of the Constitution.
- In the event of the circumstances of compulsory dissolution of the Parliament as a result of a legislative blockage and / or the impossibility of forming the Government for "3 months (90 days)", Parliament is not entitled to carry out legislative activity and perform its tasks provided for by Article 66 of the Constitution, and to constitute the governing bodies of the Parliament.
- Upon the occurrence of the circumstances of dissolution of the Parliament under Article 85 (1) of the Constitution, the President of the country is obliged, without delay, to refer to the Constitutional Court in order for it to ascertain the circumstances of the dissolution, to the subsequent issuance of a decree of dissolution of Parliament and to the establishment of the date of early parliamentary elections.
- Any action and / or legislative act that has the purpose of carrying on the activity of the Parliament after the occurrence of the mandatory dissolution circumstances constitutes a serious violation of constitutional provisions and is null ab initio.

14. The Court argued with respect of the three-month term-limit in Article 85 §1 of the Constitution that "*the Constituent Assembly did not precisely establish the number of days after which the sanction of the dissolution of Parliament intervenes, as it does for the 45-day term of the same constitutional norm. In the case of two dissolution processes, the three-month period may vary due to the different number of days that the months of the year may have. The Court will also consider, in its systemic approach, that Article 386 (1) of the Civil Code states that "half a year or a semester means 6 months, a trimester, three months, half a month - 15 days, a decade [decadă] - 10 days". If half a month is 15 days, it turns out that a month has 30 days. Applied with respect to the Constitution, the Civil Code solution*

³ https://www.constcourt.md/public/ccdoc/decizii/d_83_2019_102b_2019_rou.pdf

⁴ https://www.constcourt.md/public/ccdoc/hotariri/h_13_2019_110b_2019_rou.pdf

eliminates the possible differences in the duration of the three-month period for the dissolution of the Parliament, in the case of two hypothetical dissolution processes.”

15. A parliamentary sitting was held on Saturday 8 June 2019, in the presence of Socialist and ACUM MPs (61 out of 101 MPs). The Parliament decided to form a parliamentary majority with the Socialist Party and the members of ACUM. Being able to form a quorum, the parliamentarians voted:

- Socialist Party leader Grecianii as the new Speaker of the Parliament;
- a new Government with Maia Sandu as its new Prime Minister
- a package of the so called "*de-oligarchization*" laws with a view to redress the balance of power in the country, reestablish 'checks and balances" bases on rule of law and regain trust of citizens into state institutions (among other, the Parliament dismissed the heads of some anticorruption bodies, head of Supreme Court).

16. The Democratic Party announced that they deemed the Parliamentary session as illegal (as the Constitutional Court had said that the deadline had expired on 7 June) and called again on President Dodon to dissolve the parliament. They did not recognize the new PM and her government.

17. Also on 8 June 2019, the same two MPs from the Democratic Party (Cebotari and Sirbu) lodged an application (No. 111a/2019) to the Constitutional Court seeking a declaration of unconstitutionality *ab initio* of all legislative acts voted in parliament on 8 June 2019, including the election of the Speaker.

18. On the same day, the Constitutional Court held a public hearing at which only Mr Sirbu was present and, referring to its previous judgment (no. 13) of the same day, issued a judgment (No. 14) declaring the unconstitutionality of the parliament's act of nomination of Zinaida Greceanii as Speaker, and the unconstitutionality *ab initio* of all legislative acts and decisions voted by the new parliament as of 8 June 2019.⁵ The Court referred to the arguments of the applicant but not to any arguments by representatives of the Parliament or the President. It argued that the newly-elected parliament had failed to observe the constitutional procedure and to adopt ordinary laws within the first three months of its existence; according to the Court, "the sanction in this case is the dissolution and prohibition of the exercise of the duties laid down in Article 66 of the Constitution in favour of a future Parliament that will observe constitutional proceedings". In addition, parliament had failed to form the government within the set time-limit of three months, which was a cause of dissolution of parliament which the President ought to have referred to the Constitutional Court.

19. Still on 8 June, the same two MPs from the Democratic Party (Cebotari and Sirbu) and a third MP (I. Vreamea) lodged another application (No. 112a/2019) to the Constitutional Court seeking a declaration of unconstitutionality *ab initio* of the Presidential decree of 8 June 2018 on the appointment of the candidate for the post of Prime Minister and of the Presidential decree of 8 June 2018 on the appointment of the government.

20. On the same day, the Constitutional Court held a public hearing in the presence of only Mr Vreamea. The President of the Republic was not represented. On that same day, the Court issued its judgment (no. 15) declaring the unconstitutionality of both Presidential decrees.⁶ The Court recalled its established case-law that there was a constitutional

⁵ https://www.constcourt.md/public/ccdoc/hotariri/h_14_2019_111a_2019_rou.pdf

⁶ <https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=701&l=ro>

obligation on the President of the Republic to dissolve an inactive parliament with the occurrence of circumstances requiring dissolution. The parliament had opted for parliamentary inactivity and had to be duly sanctioned by dissolution and by holding early elections. The failure of consultations which are not characterized by good faith, plenary consultations or, for example, transparency may not represent an exception to the three-month time-limit set by the Constitution to limit the Presidential prerogatives. The President had disregarded his constitutional obligation to dissolve an inactive Parliament and had issued decrees that take a direction opposite to this obligation; this made these decrees unconstitutional. Moreover, the appointment of the Government was based on a decision of the Parliament which the President knew or ought to have known was declared unconstitutional by the Constitutional Court's Decision no. 14 of 8 June 2019. The judgment does not contain any reference to any arguments submitted by the President.

21. Also on 8 June, three MPs, Serghei Sîrbu, Igor Vreamea and Vladimir Cebotari, applied (application no.113f/2019) to the Constitutional Court, seeking: 1) the ascertainment of the circumstances justifying the nomination of an interim President of the Republic of Moldova to ensure the exercise of his constitutional attributions in order to establish the circumstances justifying the dissolution of Parliament and to sign the Decree on dissolving Parliament and setting the date of the early parliamentary elections and 2) the appointment of the interim President for the exercise of the above constitutional powers.

22. On 9 June 2019, the Constitutional Court issued Opinion no. 1⁷ (on application nr.113f/2019) "on the determination of the circumstances justifying the interim position of President of the Republic of Moldova for the exercise of the constitutional obligation to dissolve Parliament and establish the date of early parliamentary elections". A public hearing was held in the sole presence of one of the applicants, I. Vreamea. The President of the Republic was not represented. The Court joined the admissibility and the merits of the application. The Court held that the deliberate refusal by President Dodon to fulfil his constitutional obligation to refer to the Constitutional Court for it to ascertain the circumstances justifying the dissolution of Parliament, with the subsequent issue of the decree of dissolution of the Parliament and of the setting the date of early parliamentary elections, amounted to a temporary impossibility of exercising the institutional powers within the meaning of Article 91 of the Constitution and was a circumstance justifying the attribution of an interim function of President of the Republic of Moldova. The Court further instructed that pursuant to Article 91 of the Constitution, according to the order of interim exercise, the Prime Minister in office, Mr. Pavel Filip, acting as Interim President of the Republic of Moldova should refer the matter to the Constitutional Court to determine the circumstances that justify the dissolution of Parliament and, as the case may be, should issue the decree on the dissolution of the Parliament and the date of the early parliamentary elections.

23. In this opinion, the Court referred to its decision of 1 October 2013 on application 22b/2013, in which it had found that:

"71. The Court notes that, further to the constitutional amendments (Law No 1115-XIV of 5 July 2000), pursuant to the provisions of Article 78 (5), the acting President is obliged to dissolve Parliament if, after repeated elections, the President of the Republic of Moldova has not been elected.

72. The Court notes that, given the position of the President of the Republic of Moldova as the guarantor of the sovereignty, national independence, unity and territorial integrity of the state (Article 77 of the Constitution), the mandatory

⁷ https://www.constcourt.md/public/ccdoc/avize/a_1_2019_113f_2019_rou.pdf

dissolution of Parliament, as laid down in Article 78.5 shall apply mutatis mutandis to the situations specified in Article 85 of the Constitution.

73. The Court notes that overall Article 85 has the function of a balancing mechanism in the exercise of state power, which is applied in order to avoid or overcome an institutional crisis or a conflict between the legislative and executive.

74. The Court finds that the Head of State may exercise his or her discretionary right to dissolve or not to dissolve Parliament if it has rejected the vote of confidence for forming the new government, only after 45 days from the date of the first proposal and following the rejection of at least two investiture proposals in the period up to the expiration of the stipulated three months.

75. If Parliament fails to form a Government within three months, the Head of State is obliged to dissolve Parliament, and accordingly, his or her discretionary right to dissolve Parliament becomes an obligation imposed by the will of the drafters of the constitution. Based on the principle of co-operation and reciprocal oversight between the legislative and the executive, the Head of State's task is to help overcome the political crisis and the conflict between the powers and not to perpetuate the crisis for an indefinite period, which would not be in the general interests of citizens, holders of national sovereignty.

76. The Court reiterates that, regardless of the circumstances giving rise to the vote of no-confidence, the failure to form a new Government within three months inevitably leads to the dissolution of Parliament. The government that has submitted its resignation, headed by a caretaker Prime Minister cannot last for an unlimited period of time, in accordance with the reasoning set out above (§ 56), given that it performs only the functions of managing public affairs.

77. The Court notes that the provisions of Article 85 (1) and (2) of the Constitution are designed to ensure the functioning of the constitutional bodies of the state, and by granting the President the right to dissolve Parliament, it avoids obstructing the activity of one of the state powers.”

24. The Court further referred to its previous case-law according to which “*the three-month term is a general term of Government formation which starts to run from the date of occurrence of the circumstances that led to the formation of a new Government and that the President of the Republic of Moldova is obliged to dissolve the Parliament after exceeding this deadline (Decision no. 13 of December 16, 2015, §§ 16-17)*”.

25. Also on 9 June, upon an application (No. 114f / 2019) by Pavel Filip acting as interim President, the Constitutional Court issued Opinion no. 2⁸ on the determination of the circumstances justifying the dissolution Parliament. The Court joined the admissibility and the merits of the application. Upon the applicant's request, it held the public hearing in his absence. The Court determined that the impossibility to form a government within the timeframe foreseen by Article 85§1 of the Constitution represented a circumstance justifying the dissolution of the Parliament. In the factual part of the opinion (§ 7), the Court equaled the “three-month time-limit” to 90 days.

26. On 9 June 2019, Interim President Filip signed Presidential Decree 215 (published in Official Gazette on 10 June) on Parliament dissolution on 9 June 2019 and on scheduling early parliamentary elections for 6 September 2019.

27. On 14 June, Mr Pavel Filip resigned.

⁸ https://www.constcourt.md/public/ccdoc/avize/a_2_2019_114f_2019_rou.pdf

28. On 15 June 2019,⁹ the Constitutional Court revisited the decision, judgments and opinions it had rendered from 7 to 9 June 2019¹⁰ “considering the *de facto* situation in the Republic of Moldova, particularly the announced transfer of power to the Government of Prime Minister Maia Sandu and of the coalition forged in the parliament of the Republic of Moldova. By the repeal of the Court’s acts of 7-9 June, the parliament led by Ms Zinaida Greceanii acquired, *ope constitutionis*, the capacity of a constitutional parliament with the normative acts passed by it till the material time of the above acts of the Court, as well as the acts adopted by the Government of the Republic of Moldova, Ms Maia Sandu, being revitalized. That judgment was meant to be a source of social peace, rule of law, democracy, as well as a safeguard of a proper framework of human rights protection, by combating a political crisis of great magnitude”.¹¹

III. Relevant constitutional and legal provisions

A. Constitution of Moldova

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 89 - Suspension from Office

(1) *In the event of committing serious offenses infringing upon constitutional provisions, the President of the Republic of Moldova may be suspended from office by Parliament with the vote of two - thirds of MPs.*

(2) *The motion requesting the suspension from office may be initiated by at least one third of the MPs, and it must be brought to the knowledge of the President of the Republic of Moldova without delay. The President may give explanations before Parliament on the actions for which he is being censured.*

(3) *If the motion requesting suspension from office is approved, a national referendum shall be organized within 30 days to remove the President from office.*

Article 90 - Vacancy of Office

(1) *The vacancy of office of the President of the Republic of Moldova shall be declared as consequence of expiry of the mandate, resignation, removal from office, definite impossibility of executing his/her functional duties or death.*

(2) *The request for resignation of the President of the Republic of Moldova is brought before the Parliament, which shall express its opinion over it.*

⁹ <https://www.constcourt.md/libview.php?!=ro&idc=7&id=1509&t=/Media/Noutati/Revizuirea-actelor-Curtii-Constitutionale-din-perioada-7-9-iunie-2019>; the full text of this judgment has not been deposited yet.

¹⁰ Decision of the Constitutional Court no. 83 of 7 June 2019, Judgment of the Constitutional Court no. 13 of 8 June 2019, Judgment of the Constitutional Court no. 14 of 8 June 2019, Judgment of the Constitutional Court no. 15 of 8 June 2019, Opinion of the Constitutional Court no. 1 of 9 June 2019 and Opinion of the Constitutional Court no. 2 of 9 June 2019.

¹¹ Letter of the President of the Constitutional Court of Moldova to the Venice Commission Secretariat of 17 June 2019.

(3) *The impossibility of the President of the Republic of Moldova to exercise his/her duties for more than 60 days shall be confirmed by the Constitutional Court within 30 days from the date of the submission of application.*

(4) *Within 2 months following the date of vacancy of office of the President of the Republic of Moldova, new presidential elections shall be conducted, according to the law.*

Article 91 - Interim Office

In the event the office of the President of the Republic of Moldova becomes vacant or the President has been removed, or finds himself/ herself in temporary impossibility to execute his/her duties, the interim office shall be ensured, in the given order, by the President of the Parliament or by the Prime Minister.

Article 98 – Investiture [of the government]

(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.*

Article 135 – Powers [of the Constitutional Court]

(1) *The Constitutional Court:*

a) *exercises, upon appeal, the review of constitutionality over laws and decisions of the Parliament, decrees of the President, decisions and ordinances of the Government, as well as over international treaties to which the Republic of Moldova is a party;*

b) *gives the interpretation of the Constitution;*

c) *formulates its position on initiatives aimed at revising the Constitution;*

d) *confirms the results of republican referenda;*

e) *confirms the results of parliamentary and presidential elections in the Republic of Moldova;*

f) *ascertains the circumstances justifying the dissolution of the Parliament, the removal of the President of the Republic of Moldova or the interim office of the President, as well as the impossibility of the President of the Republic of Moldova to fully exercise his/her functional duties for more than 60 days;*

g) *solves the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice;*

h) *decides over matters dealing with the constitutionality of a party.*

(2) *The Constitutional Court carries out its activity on the initiative brought forward by the subjects provided for by the Law on the Constitutional Court.*

B. Law on the Constitutional Court

Article 4 - Jurisdiction

1. *The Constitutional Court:*

a) *shall, upon appeal, the constitutional review of laws, regulations and decisions of the Parliament, the decrees of the President of the Republic of Moldova, the decisions and orders of the Government, as well as the international treaties the Republic of Moldova is party to;*

b) *shall give the interpretation of the Constitution;*

c) *shall provide its opinion on initiatives of revising the Constitution;*

- d) shall confirm the results of the republican referendums;
 - e) shall confirm the results of parliamentary and presidential elections and shall validate the mandates of the Parliament's members and of the President of the Republic of Moldova;
 - f) shall determine the circumstances which justify the dissolution of the Parliament, the dismissal from office of the President of the Republic Moldova, the interim office or the impossibility of the President of the Republic of Moldova to fully exercise its powers for more than 60 days;
 - g) shall decide on exception of unconstitutionality of the legal acts, claimed by the Supreme Court of Justice;
 - h) shall decide on issues concerning the constitutionality of a political party.
2. The jurisdiction of the Constitutional Court is provided by the Constitution and may not be challenged by any public authority.

Article 25 - Subjects entitled to submit the application to the Constitutional Court

The following have the right to submit application to the Court:

- a) the President of the Republic of Moldova;
- b) the Government;
- c) the Minister for Justice;
- d) the Supreme Court of Justice; [e) deleted]
- f) the Prosecutor General;
- g) members of Parliament;
- h) Parliamentary fractions;
- i) Ombudsman;
- j) People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases of exercising the review of constitutionality over laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and provisions of the Government, as well as the international treaties the Republic of Moldova is party to, which infringes upon the powers of Găgăuzia.

Article 26 - Acts of the Constitutional Court

1. The Constitutional Court adopts judgments, decisions and issues advisory opinions.
2. Judgments and advisory opinions are adopted in the name of the Republic of Moldova.
3. Following their adoption, decisions of the Court shall be delivered in plenary session.
4. Judgments and advisory opinions of the Court shall be published in the Official Journal ("Monitorul Oficial") of the Republic of Moldova in term of 10 days from the date of their adoption.
5. The acts of the Constitutional Court are final, cannot be appealed and shall enter into force from the date of their adoption. The Court may rule that certain decisions shall become effective from the date of their publication or from the date indicated in the decision itself.
6. The acts of the Constitutional Court shall be signed by the President of the Court or by the substitute judge.
7. The judgments of the Constitutional Court shall produce effect only for the future.

C. Law on Constitutional Jurisdiction Code

Article 11. Equality of the participants during the trial

The constitutional jurisdiction shall be exercised on the principle of equality of the parts and other participants during the trial, with regard to the Constitution and the Constitutional Court.

Article 12. Proper character of the hearings

1. The Constitutional Court shall directly examine the explanations of the parts, conclusions of the experts; it shall also read out the evidences and other official documents referred to the challenged case.
2. The written evidences handed in to all judges of the Constitutional Court and the participants in the proceedings may not be delivered in public, if their summary has been orally exposed during the session. Upon appeal of a judge or one of the parts, the Constitutional Court shall decide upon a complete or partial hearing of the written evidences.

Article 13. Publicity of the proceedings

1. *The trial debates during the Constitutional Court sessions shall be held in public, except for the cases when the publicity could threaten the State security and public order.*
2. *Amongst the participants, at the case examination in secret proceedings, there may assist other persons invited according to the Constitutional Court judgment. At the case examination in secret proceedings, there shall be observed the procedure of constitutional jurisdiction.*
3. *The acts of the Constitutional Court shall be delivered in public.*
4. *The date, hour and agenda of the Constitutional Court sessions shall be announced in public.*
5. *Having the authorisation of the Constitutional Court, the representatives of radio – television companies and other mass media means shall, partially or completely, broadcast the running of sessions and make reports.*

Article 29. Parties

1. *The parties in the constitutional jurisdiction proceedings shall be:*
 - a. *the official bodies or persons which, pursuant to Article 38, are entitled to lodge appeals with the Constitutional Court;*
 - b. *the official bodies or persons, the acts of which are disputed.*
2. *The official persons who are parties in the proceedings may exercise their procedural rights personally or through their representatives. [...]*

Article 31. Rights and obligations of the parties

1. *The parties in the constitutional jurisdiction proceedings shall enjoy equal procedural rights.*
2. *The parties shall have access to the file documents, may submit their arguments and take part at their consideration, raise questions to other participants at the trial, make statements, give explanations, either in writing or orally, object to the assertions, arguments and remarks of the other participants in the proceedings.*
3. *The appellant shall be entitled to modify the ground or object of the appeal, to waive it, partially or totally.*
4. *The parties shall independently submit their arguments referred in the appeal.*
5. *In case more representatives of a party with the same prerogatives attend the session, the Constitutional Court may request the initiative of a representative to state the final opinion and deliver the final speech.*

D. Rules of procedure of the Constitutional Court

39. *Following the preparation of the case for examination, with at least 10 days before the date of the public hearing, the author (s) of the complaint and the rest of participants in the hearing are informed about the place, the date and the time of the hearing. In cases of urgency the participants at the hearing can be informed within a more limited period.*

E. Civil Code

Article 386 § 1

Half a year or a semester means 6 months, a trimester, three months, half a month - 15 days, a decade [decadă] - 10 days.

Article 388 § 1

A period of time specified by weeks, by months or by a duration of time comprising more than one month (years, half-years, quarter-years) ends, in cases established at art. 385 par. 1, on the day of the last week, or the last month which in its designation or number, corresponds to the last day on which the event or the point of time occurs, or, in cases, established at art. 385 par. 2, it expires on the day of the last week or month, that precedes the day which corresponds in designation or number to the day in which the running of the period of time.

Article 389

If the last day of the term is a Sunday, Saturday or a day that, according to the law in force, is the day of rest at the place of performance of the obligation, the term expires on the next working day.

IV. Analysis**A. Procedure of adoption of decisions and opinions by the Constitutional Court**

29. According to the Law on the Constitutional Jurisdiction Code, the procedure before the Constitutional Court of Moldova is guided by the principles of equality of the parties and other participants during the trial. The official bodies or persons, the acts of which are disputed, are considered to be parties in the constitutional jurisdiction proceedings. The parties shall have access to the file documents, may submit their arguments and take part at their consideration, raise questions to other participants at the trial, make statements, give explanations, either in writing or orally, object to the assertions, arguments and remarks of the other participants in the proceedings. In the ordinary procedure, they should be informed about the place, the date and the time of the hearing with at least 10 days before the date of the public hearing. In urgent cases this term may be reduced.

30. As concerns the facts under consideration, the Constitutional Court of Moldova issued three judgments on the same day (8 June 2019), which was the day on which the complaints had been lodged. It was a Saturday, so the administrations and the Court's registry itself were not open. The text of the three judgments refers to a public hearing with the only presence each time of one of the applicants. In no judgment is there any reference or rebuttal of the arguments of the other parties, only of the applicants. The Court issued two opinions on 9 June 2019, which was a Sunday, upon two applications lodged on 8 and 9 June respectively. In both cases, a public hearing appears to have been held (on Sunday then) in the exclusive presence of one of the applicants. No reference to the arguments of the other parties is contained in the opinions.

31. The judgments and opinions in question do not provide for the full references of the decisions and acts which they annul, probably because at the time when the Court issued them, the impugned acts had not yet been finalized and published.

32. The Venice Commission has previously expressed some views on the oral nature of constitutional court proceedings:

"The requirement of oral hearings can be justified by several considerations. It allows for the direct involvement of the parties, enables their direct contact with the judges and can accelerate the procedure. Oral hearings are an aspect of transparency, which is a core democratic value. Oral hearings can improve the quality of judicial decision-making because the judges obtain a more immediate impression of the facts, of the parties and of their divergent legal opinions. At the same time, oral hearings serve as a form of democratic control of the judges by public supervision. Oral hearings thereby reinforce the confidence of the citizens that justice is dispensed independently and impartially. They counteract the experience from previous times that the judgments are the results of secret contacts or even instructions. Therefore on the European continent a well-known reform movement emerged already in the early 20th century that aimed to foster the primacy of 'orality' in order to create an immediate contact between judges, parties, and witnesses. The

*desired aim of this reform movement was to make litigation procedures simple, inexpensive, and quick.*¹²

*“Article 22 establishes the principle of adversarial proceedings. While this principle certainly applies to civil and criminal proceedings, the nature of constitutional proceedings is different. While one party, the applicant, has a clear interest in the proceedings the identification of the other party is not straightforward. The simple fact that an act was issued by a state organ does not necessarily make that organ an appropriate adversarial party. Due to political reasons, the organ might not have a real interest in defending the constitutionality of the adopted act. Therefore, some constitutional justice systems work in an inquisitorial way, with the Constitutional Court establishing arguments in favour and against constitutionality of the challenged provision. Other adversarial systems provide that prosecution defends public interests as a party.”*¹³

*“In the light of the above, the Venice Commission does not find that the possibility for the Constitutional Court to decide a case under the 2015 amendments without holding a hearing jeopardises as such the respect for the original applicants’ right to submit arguments. However, in the light of the explanations provided by the Constitutional Court (see above paragraph 10), the Venice Commission recommends the inclusion of appropriate rules in the Rules of procedure of the Constitutional Court, to provide for the participation of the original applicants in the oral hearing, if there is one, or for their right to make written submissions, if no oral hearing is held.”*¹⁴

33. The Venice Commission has therefore recognized that an oral hearing in constitutional proceedings may be of importance not only for the parties but also for the transparency of the procedure, hence the confidence of the public in the constitutional court. It has nonetheless acknowledged that, besides the procedures dealing with individual fundamental rights complaints, a Constitutional Court should be free to decide on whether or not to hold a public hearing, relying on a variety of reasons of procedural economy. However, if no oral hearing is held, the parties should be given the full opportunity of presenting their arguments in writing, in an adversarial manner respecting the principle of equality.

34. In the present case, the procedural rights of both the President and of parliament have been severely affected by the number (five) and the extreme speed, and even rush (one day or two days during the weekend) with which the Court decided these extremely sensitive cases carrying potentially very significant repercussions on the state institutions. No representative of either the President or parliament (the respondent parties) was present, and there is no indication that they were given the possibility of submitting their arguments in reply to those contained in the applications. The Constitutional Court of Moldova informed the Commission that “on 8 and 9 June, representatives of parliament were not invited as the Parliament itself had not been established yet in compliance with the Constitution”. Yet, the parliament was only dissolved by Pavel Filip on 9 June; in addition, three of its members

¹² CDL-AD(2004)035 Opinion on the Draft Federal Constitutional Law ‘on modifications and amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation’, paragraph 4.

¹³ CDL-AD(2014)017 Opinion on the Draft Constitutional Law on the Constitutional Court, of Tajikistan, paragraph 35.

¹⁴ CDL-AD(2016)016, Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of Russian Federation, paragraph 37.

were considered to have locus standi before the Constitutional Court. In the Commission's view even if they and the President had been formally given the possibility of participating in the hearings or of submitting written arguments, it would not have been possible for them to prepare substantive arguments on five such cases within a time-span of a weekend. The five applications, all lodged by the same representatives of the Democratic Party, followed a clear strategy; the respondent institutions did not dispose of enough time and possibilities to counter such strategy. Moreover, nothing suggests that the situation prevailing in the country at that time was one of emergency: while the only argument given by the Court to justify its immediate decisions was the expiry of the three-month time-limit to form the government and the need to prevent the paralysis of state institutions, the developments in parliament suggested to the contrary that additional time would lead to a solution of the crisis. Indeed, the crisis deepened and instability was rather brought about by the coordinated action at lightning speed of the Democratic Party and the Constitutional Court as of 7 June.

35. It is striking in this respect that instead the Constitutional Court took 16 days to decide on the application which President Dodon had lodged on 22 May in order to know on what date the three-month time-limit to form the government would expire. The inadmissibility decision of the Constitutional Court was finally issued on the very same date which the Court indicated as the date of expiry of the time-limit. The President of the Constitutional Court of Moldova drew the Venice Commission's attention to the fact that according to the Law on the Constitutional Court, the latter disposes of a term of six months to decide on a claim. The Venice Commission, however, does not see any justification for the fact that the Moldovan Constitutional Court considered the President's application of 22 May not to be urgent, while it considered the applications by the MPs of the Democratic Party of 8 and 9 June to be of the utmost urgency.

36. The Venice Commission reiterates the importance of the role of constitutional courts in preventing conflict among state institutions, thus ensuring their smooth functioning. It is vital that constitutional courts enjoy the respect of all state institutions and of the public. In order to inspire such respect, constitutional courts, like ordinary courts, must in the first place respect their own procedures and the principle of equality of the parties. This has clearly not been the case during the recent events in Moldova.

B. Consultations prior to dissolution of parliament by the President

37. Article 85 § 1 of the Constitution of the republic of Moldova provides:

(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.

38. This provision sets out expressly that the President "may" dissolve parliament, not that it shall" do so. It is not obvious from the text whether the 3-month deadline applies to government formation or only to blocked legislation. In any case, the wording of Article 85 (1) implies a high threshold for dissolution of the parliament. Moreover, article 85 (1) also requires that parliamentary factions shall be consulted before dissolution, which clearly indicates that dissolution is a discretionary power for the President.¹⁵

¹⁵ The Venice Commission considered that these consultations are mandatory and indeed the role of the Constitutional Court to "ascertain the circumstances justifying the dissolution of parliament" (Article 135§1 of the Constitution) are limited to checking whether such mandatory consultations with parliamentary faction have taken place (see Opinion on the proposal by the President of the Republic to expand the president's powers to dissolve parliament, CDL-AD(2017)014 § 28).

39. According to the interpretation of the Constitutional Court, Article 85 §1 obliges the President to dissolve the Parliament, if the Parliament fails to form a Government within three months after the Court has validated the results of elections. The Constitutional Court justifies its interpretation with reference to its previous case law. The most pertinent decision is from 1 October 2013 on application 22b/2013 (quoted in para. 22 above).

40. That case however, differing from the present situation, concerned the formation of a new government after a vote of no-confidence. It should also be noted that the Court linked the right of dissolution to the President's task "to help overcome the political crisis and the conflict between the powers and not to perpetuate the crisis for an indefinite period, which would not be in the general interests of citizens, holders of national sovereignty". Moreover, the Court related the right to ensuring the functioning of the constitutional bodies and avoiding obstruction of the activity of one of the state powers. From the 2013 ruling, it is clear that dissolution of the Parliament is a last resort in case repeated attempts to form a government have failed. The Constitutional Court limited the President's obligation to dissolve parliament to the repeated failure to form a government in the investiture phase of government formation, and not in the preceding phase of negotiations as in the present case. This approach is logical: unless more than one formal vote of confidence has been made in the Parliament, there is no way of objectively deciding on whether or not it is impossible to form a government. As for the phase of negotiations preceding the investiture, the Constitutional Court emphasised in par. 73 that Article 85 has the function of a balancing mechanism to avoid or overcome an institutional crisis. This purpose of Article 85 explains why the President's powers to dissolve the Parliament are discretionary as this discretion is intended to prevent deadlock and to prevent institutional crisis by political negotiation.

41. On the other hand, as concerns the wording of Article 85 § that the President "may" and not "shall dissolve parliament, the Commission stresses that the distinction between "may" and "shall is well-established in law and is undoubtedly intended to provide the President with leeway to exercise his own judgment and discretion taking into account the circumstances of a particular situation in the interest of the country as a whole. Clearly the dissolution of Parliament, elected in a fair and free election in expression of the will of the people, is not something that should be tackled in an arithmetical way but in line with the spirit and wording of the Constitution which provides the Head of State with the necessary discretion to exercise good and wise judgment. Therefore, in the light of the purpose of Art. 85 of the Constitution, the duty of the President to have consultations with parliamentary factions should be seen as a means to exhaust all the possibilities to form the Government or unblock the procedure of adopting the laws after the expiration of the 3 months term, before deciding on the dissolution of the Parliament.

42. The right of dissolution is an *ultima ratio* means to solve a constitutional crisis, caused by the impossibility of forming a government or blockage of legislation. If no other means exists, dissolving the Parliament can even be considered a constitutional obligation of the President. On the other hand, if other means do exist, if, for instance, parties representing a parliamentary majority have come to an agreement of forming a government, no such obligation can exist. Dissolving the Parliament in such a situation and deepening the constitutional crisis or even creating a new crisis might even be considered a violation of the constitutional duties of the President as a *pouvoir neutre*. As subsequent events have shown, in the present case, the dissolution of the Parliament by the President would have contradicted the ratio of Art. 85(1), such as it was summarised in the Constitutional Court's 2013 ruling.

43. In the light of these arguments, the Venice Commission is of the view that a rule prescribing the automatic dissolution of the Parliament after three months regardless of whether or not formal votes of confidence have been made is incoherent with both the

wording of Article 85 and with its purpose as established by the Constitutional Court of Moldova in its 2013 ruling.

C. Calculation of the three-month time-limit

44. In its previous case-law, the Court referred to the term in Article 85§1 as “three months”. For the first time in its decision of 7 June, the Court added a non-reasoned indication in brackets that three months is equal 90 days. In its subsequent judgment of 8 June, the Court explained this novel calculation as follows: “Article 386 (1) of the Civil Code states that “half a year or a semester means 6 months, a trimester, three months, half a month - 15 days, a decade [decadă] - 10 days. If half a month is 15 days, it turns out that a month has 30 days.” Leaving aside the potential, absurd implications of this method of calculation on the duration of a year (one year=360 days), the Court did not refer to the more pertinent provisions in the Civil Code (Articles 388 § 1 and 389) that provide for the correct calculations of calendar years or months, and also provide that if the term expires on a non-working day, it is prolonged until the next working day. The Court’s manner of calculation, as of 7 June 2019, of calendar months was unprecedented. The method of calculation provided by Article 388 § 1 (a period of time specified by weeks, by months or by a duration of time comprising more than one month (years, half-years, quarter-years) ends [...] on the day of the last week, or the last month which in its designation or number, corresponds to the last day on which the event or the point of time occurs) does not appear to have ever been disputed in Moldova.¹⁶

45. According to the hitherto accepted calculation of the three months’ time-limit, the timeframe for forming the new government expired on 9 June 2019, three calendar months after the confirmation of the election results by the Constitutional Court on 9 March 2019. 9 June 2019 being a Sunday, the deadline was possibly Monday 10 June. As stressed above, the Venice Commission is of the view that dissolution of parliament should primarily be characterized as a power to be exercised only when overcoming a constitutional crisis so requires. At any rate, even assuming that the Constitution of Moldova prescribes that parliament must form a government within three months of the date of the validation of the election results, this deadline had been met with the investiture of a government with Maia Sandu as Prime Minister on 8 June 2019.

D. The temporary suspension of the President of the Republic

46. In its decision on the President’s temporary suspension from office, the Constitutional Court invoked Article 91 of the Constitution, the provision on the President’s temporary impossibility to exercise his/her duties. The only procedural provision concerns a situation where the impossibility to exercise presidential functions exceeds 60 day. Then, according to Article 90(3) of the Constitution, the impossibility shall be confirmed by the Constitutional Court. For the sake of legal certainty, the interpretation seems justified that even shorter impossibilities and the taking over of the office by an interim President should be confirmed by the Court.

47. The suspension of the President of the Republic is not unprecedented in the Republic of Moldova. The Constitutional Court in its ruling of 17 October 2017 decided that deliberate refusals to exercise one or more constitutional duties fall under Article 90 and the “impossibility of executing his/her office”. The Venice Commission however finds that the provision on interim office in case of a temporary impossibility is meant for situations where the impossibility is a

¹⁶ In its previous judgments, the Constitutional Court had referred to “calendar” months or years. For example, in 2011, the Court ruled that “one year” is calculated as a calendar year http://www.legis.md/cautare/getResults?doc_id=14132&lang=ru; this reasoning relied also on the Venice Commission’s amicus curiae brief [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)002-ej](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)002-ej).

consequence of factually verifiable circumstances, mainly illness. Suspension from office “in the event of committing serious offences infringing upon constitutional provisions” is addressed in Art. 89. The competent body is Parliament, where the decision on suspension requires a two-third majority (Art. 89(1)). In case “the motion requesting suspension from office is approved, a national referendum shall be organized within 30 days to remove the President from office” (Art. 89(3)). The Constitution does not provide for any other possibility of suspending the President from office.

48. Any breach of constitutional obligations by the president should be dealt with according to article 89, not article 90. The latter regulates the situation when the vacancy of office can be objectively determined, which is a different situation than confirming a breach of constitutional duties as in article 89.

49. Following the logic of the Constitutional Court, in order for the Court to confirm the impossibility for the president to exercise his duties, this impossibility must have been present for more than 60 days according to Article 90 (3). The fact that no government has been formed, is not automatically due to negligence from the president. If so, the procedure in article 85 for calling new elections would be irrelevant. Moreover, the 60-day criteria mean that the President could be considered not to have exercised his duties in relation to forming a government, even before the 3-month deadline in article 85 has expired. As a result, the application of Article 90 and the “impossibility” criterion on the President’s duties according to Article 85, lead to absurd results.

50. For these reasons, strong reasons exist for the view that the Constitutional Court’s decision on the temporary suspension of the President and the installation of the Prime Minister as an interim office holder is not grounded in the Constitution of the Republic of Moldova.

V. Conclusion

51. The Venice Commission stresses that an essential role of the Constitutional Court is to maintain equal distance from all branches of power and to act as an impartial arbiter in case of collision between them. One of the aims of any Constitution is to maintain the constitutional order and one of the main functions of any Constitutional Court is, by upholding the principles of the Law, to keep the constitutional system functioning. This function of arbitration presupposes by definition the use of economy as well as equity, and requires respect for the solutions reached by democratically legitimate institutions.

52. A constitutional court, like any other state institution and court, on the one hand deserves institutional respect but, on the other hand, must respect its own procedures when they provide for adversarial proceedings which guarantee the principle of equality of the parties.

53. For the sake of constitutional stability and legal certainty, a Constitutional Court should be consistent with its own case-law; it should only reverse its judgments when legally justifiable in exceptional cases, when new facts arise or when its reasoned appreciation of the law has evolved.

54. The dissolution of parliament elected in a fair and free election in expression of the will of the people is a measure of last resort which may not be tackled lightly but only in line with the spirit and wording of the Constitution. The Constitution of the Republic of Moldova provides the Head of State, as any constitution should, with the necessary discretion to exercise his good and wise judgment on the dissolution of parliament following consultation with the parliamentary factions. The conditions for the dissolution of parliament clearly did not exist on 7 or 8 June.

55. The temporary suspension of the President of the Republic may only be exercised if the Constitution expressly authorises and regulates it.

56. The Venice Commission reiterates that in a state governed by the rule of law, it is essential that constitutional bodies decide within the parameters of their legal authority and responsibility, lest the robustness of State Institutions in the country in line with the Constitution be seriously undermined and the democratic functioning of state institutions be irreparably compromised. Only in such a situation will the Venice Commission exceptionally accept to assess the judgments of a Constitutional Court