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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**DRAFT REPORT  
ON CONSTITUTIONAL REFORM  
IN THE REPUBLIC OF MOLDOVA**

**prepared by the Secretariat**

## **I. Introduction**

1. In April 1999, following the consultative referendum on the possible amendment of the Constitution of Moldova organised by President Lucinschi, the Committee on the Honouring of Obligations and Commitments by Member States of the Parliamentary Assembly of the Council of Europe, decided to ask the Venice Commission to follow constitutional developments in the Republic of Moldova. The Venice Commission was informed of this decision by letter of 3 May 1999. Furthermore, on 25 May 1999, the Commission was also asked to look at the question of constitutional reform by the Parliament of Moldova.

2. On 9 June 2000, the Parliamentary Assembly of the Council of Europe asked the Venice Commission to examine all projects currently examined by the Constitutional Court and by the Parliament.

## **II Cooperation between the Venice Commission and the Moldovan authorities in 1999**

3. On 1 July 1999, following the consultative referendum on the possible modification of the Constitution, the President of the Republic of Moldova, Mr P. Lucinschi, signed a decree setting up a National Committee to draft a law amending the Constitution of the Republic of Moldova (Constitutional Committee). Its aim was to propose changes which would reinforce the role of the executive. In the space of two months, the Constitutional Committee presented the Venice Commission with 4 versions of draft constitutional modifications, all of which aim to establish a presidential régime in Moldova.

4. Another draft reform aimed at setting up a parliamentary régime in Moldova was also presented (the text proposed by 38 Parliament deputies). The Venice Commission was asked to examine the draft on 9 June 2000. The opinion of the Venice Commission is attached to this report in Appendix III.

5. At its 41<sup>st</sup> plenary meeting in December 1999, the Venice Commission adopted an interim report on constitutional reform in the Republic of Moldova and transmitted it to the Parliamentary Assembly of the Council of Europe (CDL (99) 88). The Venice commission had expressed the desire that all parties concerned continue to seek a consensus on the methods of constitutional reform.

6. As explained in the introduction to this text, the Venice Commission examined the proposal of the 39 deputies (the opinion of the Venice Commission appears in Appendix II to this report) and had stated in its Interim Report that the text was in conformity with democratic standards.

7. On the other hand, the Venice Commission considered that the Constitutional Committee's draft contained a number of elements which did not allow confirmation that it was in conformity with European democratic standards<sup>1</sup>. At the same time, the

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<sup>1</sup> See pages 4-6 and 10 of the *Interim Report on the constitutional reform in the Republic of Moldova prepared by M. Serihy HOLOVATY (Member, Ukraine), Mr Giorgio MALINVERNI (Member, Switzerland), Mr vital MOREIRA (Member, Portugal), Mr Kaarlo TUORI (Member Finland), Mrs*

draft in its entirety was unacceptable to the Parliament. The observations by the Venice Commission are outlined in the Interim Report presented to the Parliamentary Assembly in December 1999.

### III. The work of the Mixed Committee

8. During his official visit to Moldova from 6 to 7 December, the President of the Parliamentary Assembly of the Council of Europe, Lord Russel-Johnston made an urgent appeal to the President of Moldova and to the Parliament, urging them to reach a compromise on the subject of constitutional conflict which opposes both sides on the manner of reinforcing the executive. Furthermore, he suggested “that a committee of wise persons, comprising members of the Moldovan parliament and personalities nominated by the President of the Republic, could, with the help of the Venice Commission of the Council of Europe, draw up such a compromise”<sup>2</sup>.

9. Following this appeal, the President and the Parliament of the Republic of Moldova decided to create, in February 2000, a Mixed Committee who would elaborate a single draft of constitutional amendments. This Committee would comprise three representatives of the President and three of the Parliament. The two sides had asked that this committee be chaired by Mr G. Malinverni, member of the Venice Commission, who had accepted this proposal.

10. The Mixed Committee would meet three times, on 9 and 10 March, on 26 and 27 May in Chisinau and on 7 and 8 April in Strasbourg. The Mixed Committee had prepared a draft proposal of the revision accepted by all the members (the text appears in Appendix I to this report). The final text was signed by the members of the Mixed Committee<sup>3</sup>.

11. As already stated above, the draft constitutes a compromise between the Parliament and the Constitutional Committee. Nevertheless, the participants were unable to agree on the two following important points: the right of the President to dismiss the Prime Minister and the organisation of the electoral system. On the first question the parliament categorically refused to concede this right to the Head of State. As for the electoral system, the parliamentarians considered that this reform should be made at a later date by way of changes to be made to the Electoral code.

12. In this connection it is necessary to mention, at a time when the work of the Mixed Committee was still in progress, the President of the Republic had submitted a new draft reform for examination by the Constitutional Court. The authors of the draft indicated that they had based themselves on the results of the work of the Mixed Committee who were working under the aegis of the Venice Commission. When examining this text, one can establish that there are important differences between the

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*Florence BENOÎT-ROHMER (Expert, France, Mr Joan VINTRO (Expert, Spain) adopted by the Venice Commission at its 41<sup>st</sup> Plenary meeting (Venice, 10-11 December 1999), Doc. CDL (99) 88.*

<sup>2</sup> *Press Release of 7 December 1999; Strasbourg, Council of Europe.*

<sup>3</sup> *Mrs Postoiko, Member of the Mixed Committee had decided not to sign the text before consulting her Parliamentary Group (Communist Group), even though she personally was in agreement with the drafting of such a text.*

text proposed by the Mixed Committee and the text prepared by the President (the opinion of the Venice Commission appears in Appendix IV to this report). Following the request from the President of the Mixed Committee and the Secretary of the Venice Commission, the President of the Republic of Moldova accepted to respect a moratorium on all the work in the field of constitutional reform until the Mixed Committee had finished its work. The Parliament did likewise for the proposals made by 39 and 38 parliamentarians already presented to the Parliament.

13. In accordance with the provisions of the Moldovan Constitution, all draft constitutional reforms must first be examined by the Constitutional Court. It is now up to the President or to the Moldovan Parliament to submit the draft prepared by the Mixed Committee to the Constitutional Court. Moreover, the drafts of the 39 and 38 members of the Parliament, already presented to the Constitutional Court, are with the Parliament, whilst the Presidential draft is still subject to examination by the Constitutional Court. None of the texts have been formally withdrawn. It is therefore uncertain that the text established by the Mixed Committee would be accepted.

14. As it has been already mentioned, opinions of the Venice Commission on other projects appear in Appendix 2 to 4. In these opinions the Commission limited itself to highlight, often in a very concise way, the most important problems. This approach can be justified by the fact that the Parliamentary Assembly transmitted its request only a few days before the meeting of the Commission and that the existence of a text of compromise would make void all other projects.

#### **IV. Conclusions**

The Venice Commission is extremely proud that the members of the Mixed Committee were able to agree on a compromise text for the constitutional reform. The amendments proposed taken into account the experience of different European States and the needs of Moldova, and at the same time considerably reinforce the Executive without undermining the principle of separation of powers. The Venice Commission is hopeful that the text, which is the result of joint work by the representatives of the Parliament and the Constitutional Commission, will have the support of the authorities and the different political forces represented in Parliament.

**APPENDIX I**

Chisinau, 27 May 2000

**JOINT COMMITTEE**  
**RESPONSIBLE FOR PROPOSING A DRAFT REVISED**  
**CONSTITUTION FOR THE REPUBLIC OF MOLDOVA**

**PROPOSALS**  
**FOR THE AMENDMENT**  
**OF THE CONSTITUTION**  
**OF THE REPUBLIC OF MOLDOVA**  
**ADOPTED IN CHISINAU ON 27 MAY 2000**

**CHAPTER IV**  
**PARLIAMENT**

1. The Joint Committee has examined two proposals for reforming the electoral system, one from the Constitutional Committee which would entail electing 70 members of Parliament on a single-seat majority basis and 31 by proportional representation, and another which would entail electing all the members of Parliament by proportional representation in the constituencies. The Joint Committee has not been able to agree on either of these systems.
2. Letter "b" of Article 66 will read as follows:  
  
"b) To call referendums within the meaning of Article 75."
3. The Third Section will be headed as follows: "Legislative procedure and referendums".
4. Article 72 is maintained in its 1994 version.
5. Article 74 will read as follows:

Article 74

**The passing of laws and resolutions**

- 1.) Constitutional laws shall be passed in accordance with the procedure provided for under Title VI of the Constitution.
- 2) Organic laws shall be passed by majority vote of majority of elected deputies based on at least two ballots.
- 3) Ordinary laws and resolutions shall be passed by the majority of the votes cast by the members present in session except where otherwise provided for in the Constitution. However, for such acts to be passed at least half of the members must be present.
- 4) Parliament shall examine bills introduced by the Government, as well as bills accepted by the latter in accordance with the order and priorities established by the Government. The Government may decide to ask that its bills be examined under urgent procedure.

- 5) The rules of procedure of Parliament shall set forth the procedures for passing organic laws, ordinary laws and resolutions, including urgent procedure.
  - 6) The laws shall be submitted to the President of the Republic of Moldova for promulgation.
6. Article 75 will read as follows:

Article 75  
**Referendums**

- 1) Problems of utmost gravity or urgency confronting the Moldovan society or State may be resolved by a Republic-wide consultative referendum. A consultative referendum on matters of national interest may be called by the President or by Parliament following mutual consultation in accordance with the legislation in force.
- 2) Constitutional referendums shall be organised and run in compliance with Articles 142 and 143 of the Constitution and with the legislation in force.
- 3) Problems of major importance for a given locality may be submitted to a local referendum in accordance with the legislation in force.

**CHAPTER V**  
**THE PRESIDENT OF THE REPUBLIC**

7. Article 77 will be supplemented by a paragraph 3 reading as follows:

"The President of the Republic shall ensure respect for the Constitution and the proper functioning of the institutions. For this purpose, he shall act as a mediator between the state authorities and between the State and society."

8. Article 82 will read as follows:

Article 82  
**Nomination of Government**

- 1) Within no less than fifteen days and no more than thirty days of the convening of Parliament and following consultation with the parliamentary groups, the President shall propose to Parliament a candidate for the office of Prime Minister. The candidate must be elected by an absolute majority of elected members within ten days. The person thus elected must be appointed by the President of the Republic of Moldova.
- 2) If the proposed candidate is not elected within ten days, Parliament may elect a Prime Minister by a majority of its elected members within fourteen days of the ballot provided for in paragraph 1 above.
- 3) If no candidate is elected within this time limit, a new ballot shall be held immediately, following which the person obtaining the highest number of votes shall be deemed elected. If the person elected obtains a majority of votes of the elected members of Parliament, the President must appoint him within ten days of the election. If the person elected fails to obtain that majority, the President shall either appoint him within ten days or dissolve Parliament.

4) Ministers shall be appointed and dismissed by the President at the proposal of the Prime Minister<sup>4</sup>.

9. Article 85 will read as follows:

Article 85  
**Dissolution of Parliament**

1) In cases where it is impossible to elect the Prime Minister in accordance with Article 82 paragraph 3 and where a motion of no confidence within the meaning of Article 106(1) has been passed, the President of the Republic, following consultation with the parliamentary groups, may dissolve Parliament.

2) Parliament may not be dissolved during a state of emergency, martial law or war.

10. Article 88f) will read as follows:

"f) call referendums within the meaning of Article 75."

11. Article 93 will be supplemented by a paragraph 3 reading as follows:

"Laws amending the Constitution shall be promulgated by the President of the Republic of Moldova within 15 days following their approval by referendum or 100 days after the passing of the law if no constitutional referendum has been initiated within that period."

**Chapter VI  
GOVERNMENT**

12. The title of Article 96 will change to "The role of the Government and the responsibility of its members". The present paragraph 2 will be replaced by the following text:

"2) The members of the Government shall bear political responsibility for the management of their ministries within the terms established by the Constitution and the legislation in force."

13. Article 98 will be entitled "Taking up of office". The first three paragraphs will be deleted.

14. In Article 102 of the Constitution, "Acts of Government", the following amendments and additions will be made:

- a) In paragraph (1), incorporate the word "*ordinances*" after the word "*issues*".
- b) After paragraph (1), a new paragraph (2) will be inserted, reading as follows: "(2) The ordinances shall be issued in accordance with Article 106(2)."
- c) Previous paragraphs (2) and (3) become paragraphs (3) and (4) respectively.

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<sup>4</sup> *The members of the Constitutional Committee believe that the President must have the power to dismiss not only the members of the Government but also the Prime Minister. This point of view is not shared by the parliamentarians.*

15. Article 104 will read as follows:

"The Government shall supply Parliament with all the information and documents that it and its committees and individual members may request."

**Chapter VIII**  
**RELATIONS BETWEEN PARLIAMENT AND GOVERNMENT**

16. Article 106 will read as follows:

Article 106  
**Positive motion of no confidence**

- 1) Parliament may carry a motion of no confidence in the Prime Minister if initiated by at least one-quarter of the members.
- 2) Parliament may express its opposition to the Prime Minister only by electing a successor by the majority of the members and by asking the President of the Republic to dismiss him. The President must accede to this request and appoint the person elected.
- 3) The motion of no confidence shall not be examined until at least 3 days have elapsed from the date when it was brought before Parliament.

17. An new Article 106(1) will read as follows:

Article 106(1)  
**Committal of responsibility by the Government**

- 1) The Government may engage its own responsibility before Parliament for a programme, a general policy declaration or a bill.
- 2) The Government shall be dismissed if a motion of no confidence tabled by at least one-quarter of the members within three days following the tabling of the programme, general policy declaration or bill, is passed by the majority of the elected members.
- 3) If the Government is not dismissed in accordance with paragraph (2), the bill tabled shall be deemed passed, and the Government shall be under obligation to implement the programme or general policy declaration.
- 4) If the motion of no confidence is passed, the President may dissolve Parliament within 21 days. The right of dissolution shall expire as soon as Parliament has elected a new Prime Minister by the majority of the elected members.

18. A new Article 106(2) will read as follows:

Article 106(2)  
**Delegation of legislative power**

- 1) The Government may ask Parliament, with a view to implementing its programme of activities, to authorise it to adopt ordinances in a given sphere, for a certain period of time.



2) Parliament grants the Government the authorisation provided for in paragraph (1) above by passing an organic law of authorisation, which must state the sphere and time limit in which such ordinances are to be issued.

3) Ordinances shall enter into force at the time of their publication. They are not to be promulgated. The bill approving the ordinance or ordinances shall be submitted to Parliament under the terms established by the law of authorisation. Any failure to comply with the time limit shall result in the ceasing of the effects of the ordinance. If Parliament does not reject the bill approving the ordinances, the latter shall remain in force. Following the expiry of the time limit mentioned in paragraph (2) above, the ordinances may be repealed, suspended or modified only by law."

#### **TITLE IV NATIONAL ECONOMY AND PUBLIC FINANCE**

19. Article 131 "**National public budget**" of the Constitution will be supplemented by a new paragraph 4, reading as follows:

"4) Any legislative initiative or amendment resulting in an increase or a reduction in budgetary income or borrowing, or an increase or reduction in budget expenditure, may be adopted only after such increases or reductions have been agreed to by the Government."

Paragraphs 4 and 5 will become paragraphs 5 and 6 respectively.

#### **TITLE V CONSTITUTIONAL COURT**

20. Article 135 a) and f) will read as follows:

"a) enforces on notification constitutional review of laws and orders of Parliament, Presidential decrees, ordinances and decisions of Government, as well as international treaties endorsed by the Republic of Moldova.

[...]

f) ascertains the circumstances justifying the suspension from office of the President of the Republic of Moldova or the interim office of the President of the Republic of Moldova."

#### **TITLE VI REVISING THE CONSTITUTION<sup>5</sup>**

21. Articles 142 and 143 will be supplemented as follows:

##### Article 142 **Limits of revision**

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<sup>5</sup> *The representatives of the Constitutional Committee believe that this title must include provision stipulating that Parliament may not refuse the holding of a constitutional referendum and constitutional amendment if initiated by 200,000 citizens. The representatives of Parliament do not agree with this proposal.*

- 1) The provisions regarding the sovereignty, independence and unity of the State, the provisions set forth in Articles 1 to 6 above, as well as those regarding the permanent neutrality of the State may be revised only by constitutional referendum by a majority vote of registered voting citizens.
- 2) No revision shall be allowed if it results in the suppression of the fundamental rights and freedoms of citizens or of the guarantees of those rights and freedoms.
- 3) The Constitution may not be revised in a state of national emergency, martial law or war.

#### Article 143

#### **The Law on Constitutional revision**

- 1) Parliament must vote on any revision of the Constitution within<sup>6</sup> no more than eighteen months following the date on which the draft was submitted. The law must be passed by a two-thirds majority of the members.
- 2) The law on constitutional revision shall enter into force 100 days after the passing of the law by Parliament and the publication of the draft in the *Monitorul oficial*, unless a constitutional referendum is initiated by 200,000 citizens or by the President of the Republic within the aforementioned period. If such a step is taken, Parliament, having first obtained the opinion of the Constitutional Court, shall organise the constitutional referendum in accordance with the law.
- 3) If the constitutional referendum provided for in Article 142 (1) yields a negative result, the law submitted to the referendum shall be deemed null and void.
- 4) If the constitutional referendum provided for in paragraph 2 above yields a negative result, the law submitted for approval shall be deemed passed.

Done in Chisinau on 27 May 2000 in triplicate in the presence of:

Giorgio MALINVERNI  
Chairman of the Joint Committee

Mihai PETRACHE (signature)  
Anatol PLUGARU (signature)  
Maria POSTOIKO  
Eugen RUSU (signature)  
Vladimir SOLONARI (signature)

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<sup>6</sup> The Parliamentary representatives propose that the words "no less than six months" be included at this point. The representatives of the Constitutional Committee do not agree with this proposal.

**APPENDIX II**

**REMARKS**

**ON THE PROJECT OF REVISION OF THE CONSTITUTION  
OF THE REPUBLIC OF MOLDOVA  
PRESENTED BY 39 DEPUTIES OF THE PARLIAMENT**

**by Mr V. MOREIRA  
(Portugal)**

1. The project of constitutional reform that has been presented by the Parliament of the Republic of Moldova aims at the strengthening of the constitutional position of the executive. The innovations that are sought after are four:

- (i) The government gets the power to establish priority for the parliamentary discussion of the governmental projects of legislation, or of other projects laid before parliament which it is interested in, as well as the adoption of an urgent procedure for the parliamentary discussion thereof (art. 74 of the Constitution).
- (ii) The government may engage its own responsibility before parliament by the way of the presentation of a political programme, a declaration of general political importance or – most importance of all – a project of legislation, which shall be considered as adopted unless a vote of no confidence is approved by parliament (art. 106<sup>1</sup>);
- (iii) The government may legislate through "ordinances", providing that it gets previously a legislative delegation from parliament (art. 106<sup>2</sup>);
- (iv) At last, no piece of parliamentary legislation shall be adopted by parliament when it implies the increase of the budget expenses or the decrease of budget revenues without the consent of the government.

All of the proposed changes to the Moldavian Constitution have their source in the democratic European constitutions, specifically the French Constitution of 1958. But this circumstance does not spare the necessary study of each one of the proposed changes.

2. The power of the government to establish priorities for the projects it is interested in upon the parliamentary agenda comes from art. 48 of the French Constitution. It states that the agenda of both chambers of parliament shall give priority, according to the preferences of the government, to the projects presented by itself or to the projects of the members of parliament that are accepted by the government.

There is no reason to think that such an executive privilege runs against the essential rules of parliamentary democracy. Of course provisions should be taken in order that this prerogative of the executive does not eliminate altogether the autonomy of

parliament to set its own agenda and to discuss legislative projects other than those presented or supported by the executive, specifically those that are tabled by the opposition parties. But apart from that prevention, one should accept that the government, which has been approved by parliament, is entitled to the actual means that it feels to be necessary to implement its legislative program.

3. The new article 106<sup>1</sup> has its recognisable source in the French Constitution too (article 39, §§ 1 and 3).

According to it, the government may decide to engage its own political responsibility before parliament upon a political program or declaration or upon a project of law. In that case those documents are considered to have been approved by parliament unless a vote of no confidence is proposed by a certain number of members of parliament and approved against the government.

The peculiarities of these rules are twofold: first, the government wins an implicit vote of confidence inasmuch as there is no actual vote of confidence but only the absence of a vote of no confidence; second, this "negative" vote of confidence may involve the automatic approval of a project of law without an actual discussion and vote of it by parliament. This scheme amounts to giving to the government a speedy way of forcing the approval of legislation that otherwise could meet the disapproval of parliament.

It is not difficult to raise a few objections against this rule that allows the government to pass important legislation without the need of an explicit approval by the representative assembly. May be that in this we are touching the very frontiers of the parliamentary prerogatives in a representative democracy. But the objections should not be overestimated. The French experience shows that this is not an unbearable sacrifice of parliamentary privilege.

4. The delegation of legislative powers by parliament upon the government is nowadays a very common feature of parliamentary democracies.

Typically we find two main ways of government legislation. One is the delegation of legislative powers by parliament, for a certain issue and on a temporary basis, and usually without the need for the parliamentary ratification of the law issued by the government. The other sources of government legislation are the situations of urgent necessity, in which there is no previous delegation, but that require parliamentary ratification within a short period of time. This is the system that is adopted for example by the Italian and the Spanish constitutions.

The Moldavian project is a very cautious one. The delegation should require:

- (i) A request by the government regarding the implementation of its own program of activities (which is submitted to parliament when the government is appointed);
- (ii) The approval of the delegation by parliament through an "organic law", that means a law approved according to the specific procedure of article 74(1) of

the Constitution, which requires a double vote of the majority of the members of parliament.

- (iii) The identification of the subject of the would-be "ordinance" of the government, as well as the time in which the government enjoys the delegated legislative powers;
- (iv) The eventual ratification of the ordinance by parliament.

Again, the main source of this constitutional proposition is the French Constitution (article 38). Nevertheless one should bear in mind that in France there is a separation between the domain of parliamentary law (art. 34) and the domain of the government regulation (art. 37), in which the government enjoys real primary normative powers, with no need of parliamentary delegation. On the contrary, in the domain of the government regulation parliament is not allowed to legislate. This is not the case in Moldova, where the government has no such para-legislative powers of its own, and where the regulation powers of the executive are meant only for the implementation of the parliamentary laws. In Moldova every issue belongs to the domain of parliamentary law. Thus, the proposal of constitutional change should be rephrased in order to take account of the different constitutional framework.

5. The prohibition of the adoption by parliament of legislation that could involve an increase in the government expenditure or the decrease of the government revenue is also very common nowadays in several constitutions of parliamentary democracies. Constitutional provisions to that effect may be found, for example, in the German Grundgesetz of 1949 (article 113) or the Spanish constitution of 1978 (article 134(6)). But the immediate source of the Moldovan project is once again the wording of the French Constitution (art. 40).

This limitation of the parliamentary prerogative is not incompatible with parliamentary democracy. It may be a necessary condition for the ability of the government to get along with its policies, especially under conditions of budget constrictions. There are no reasons whatsoever to condemn this solution.

6. The aim of the proposed constitutional changes in Moldova is confessedly the strengthening of the executive position in the framework of the constitutional system of government.

A strong executive is not necessarily against parliamentary democracy. On the contrary, it is weak executives and government instability that are very often a threat to parliamentary democracy.

A fair balance between parliamentary sovereignty and government strength is the main concern of the so called "rationalised parliamentarism" (*parlementarisme rationalisé*) since the earlier decades of this century, which has been the remedy indicated for the weaknesses of traditional parliamentarism in continental Europe, mainly the political instability brought about by the excessive dependence of the executive from parliament.

It needs no emphasis the assertion that parliamentary democracy should "deliver the goods" in order to ascertain its own legitimacy and acceptance. That means essentially to ensure efficient and stable governance of the polity. The "excess of parliament" is very seldom a virtue. Provided that the government remains accountable before parliament and cannot act against its will, parliamentary democracy leaves enough ground for a vast array of provisions with the aim of strengthening the constitutional and political position of the executive within the system of government.

No wonder that the changes which are being discussed in Moldova have their main source of inspiration in the French Constitution of 1958, which is without doubt where the executive enjoys the strongest position vis-à-vis the parliament.

6. A final remark is necessary to call the attention to the fact that the Moldovan Constitution, although belonging to the family of the parliamentary forms of government, has a few peculiar features that present some similarities with the French *semi-présidentialisme*.

It is indeed a parliamentary system of government. There is the political fiduciary relationship between parliament and the executive. The government is appointed according to the parliamentary majority (if there is one). The government needs a parliamentary vote of confidence to be confirmed in office, once appointed by the President of the Republic. Afterwards it can be sent away by the means of a vote of no confidence. On the other hand the President of the Republic may dissolve parliament if it becomes impossible to form an executive within the framework of the existing composition of the assembly or if there is a deadlock concerning the approval of legislation. All these are typical features of the parliamentary system of government.

But there is more to it. The President of the Republic is elected by direct popular vote and has a number of important powers of its own, which he can exercise without the need of ministerial countersignature. Among these powers may be counted those indicated in articles 83-88 of the Constitution. Most of these are not common in traditional parliamentary forms of government, where the chief of State, be it a king or a president, has mainly a representative role, not an actual intervention in the political process.

Thus, in Moldova (as well as in other European parliamentary democracies like Finland, Austria, Portugal, Ireland, Iceland, etc.) parliament is not the only constitutional organ of the State to represent directly the people. In Moldova, as well as in France, the executive power belongs not only to the government but also to the President. On the other hand the government is not only accountable before parliament but also, in a certain way, before the President.

This is an additional reason why the proposed changes to the Constitution of Moldova do fit with the character of the constitutional system of government.

**APPENDIX III**

**REMARKS**

**ON THE PROJECT OF REVISION OF THE CONSTITUTION  
OF THE REPUBLIC OF MOLDOVA  
PRESENTED BY 38 DEPUTIES OF THE PARLIAMENT**

By Mr F. Luchaire (Andorra)

**Projet du Parlement**

Ce projet est très déséquilibré.

Article 73: il retire au Président de la République toute initiative en matière législative.

Article 78: élu par le Parlement et non par le peuple, le Président de la République perd beaucoup d'autorité.

Article 82: il n'intervient pas dans la désignation du Premier ministre.

Article 83: sa participation aux réunions du Gouvernement disparaît.

Article 89: le texte prévoit que la destitution du Président doit être confirmée par la Cour constitutionnelle ; or le texte actuel de la Constitution prévoit la confirmation par référendum.

Article 136: le texte retire au Président de la République le droit de désigner deux des juges de la Cour constitutionnelle.

Au total, la situation du Président de la République est considérablement diminuée.

**APPENDIX IV****COMMENTS ON THE PROPOSAL OF THE CONSTITUTIONAL  
COMMISSION ESTABLISHED BY THE PRESIDENT OF MOLDOVA****by Mr K. Tuori (Finland)**

## Art. 66

- according to the proposal, the power to declare total or partial mobilisation and the states of emergency, martial law and war would be transferred from the Parliament to the President (cf. Art. 87, paragraph 4); the former would only have the power to ratify the President's declaration (Art. 88, paragraph 1); however, there is no provision imposing a duty on the President to submit his/her declaration to the parliament within a given time, nor are there any provisions on the legal effects of the declaration as regards, e.g., the exercise of legislative powers or the protection of fundamental rights; the present Constitution mentions the states of national emergency, martial law and war as domains to be regulated by organic laws (Art. 72, paragraph 3m), but this provision has been deleted in the commission's proposal (Art. 72(4)); these issues have, however, been listed in Art. 72 paragraph 3s as belonging to the domain of legislation; taking into account the importance of the matter, basic provisions should be included in the Constitution and more specific provisions given by an organic law

## Art. 72

- according to the proposal, Art 72(3) would contain a list of the domains of legislation; the legal significance of such a list, however, remains unclear; according to paragraph t, the parliament could also pass legislation affecting domains that are not included in the list; this also corresponds to the status of the Parliament as the supreme legislative body; this provision, however, also accentuates the question of the legal significance of the list

- the present Constitution has an explicit list of issues to be regulated through organic laws; this list should, in my opinion, be retained

## Art. 73

the proposal for new Art. 73 seems to place the legislative initiative of the members of the Parliament wholly under the control of the Government: the Parliament is allowed to examine only proposals, which have been approved by the Government; thus, the members of the Parliament would have no independent legislative initiative

## Art. 77

- the formulation of Art. 77(1), proposed by the commission ("... and exercises the executive power ...") , would make the President the unquestionable head of the executive branch; this effect would be further enhanced by, e.g., Art. 83, according to which the President would preside the meetings of the Government, and Art. 96(1),



according to which the Government, as an organ of executive power, would be subordinated to the President; these and certain other proposals would transform the political system in the direction of a presidential system; however, also the office of a Prime Minister, politically responsible to the Parliament, would be retained; the role of the Prime Minister in the overall system remains unclear

Art. 85

- the dissolution of the Parliament is a political decision; the involvement of the Constitutional Court in such a decision is questionable

Art. 93

- the breaking of the (suspensive) veto of the President would, according to the proposal, require a qualified majority (Art 93(4)); this would considerably weaken the legislative power of the Parliament

Art. 105

- the scope of legislative delegation according to Art. 105 would be very broad, and the delegation could in principle cover the whole domain of legislation as defined in Art. 72(3); thus, through an organic law, the Parliament's legislative power could be transferred to the Government; the scope of delegation should be limited already in the Constitution and, in addition, the organic law should include precise provisions on the domains where the Government could exercise legislative functions

- the submission of the governmental orders issued on the basis of the delegation to the approval of the Parliament should be an absolute requirement set up by an explicit provision of the Constitution