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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**

**ON THE INTERPRETATION OF ARTICLES 78.5  
AND 85.3 OF THE CONSTITUTION  
OF MOLDOVA**

***AMICUS CURIAE BRIEF***

**FOR THE CONSTITUTIONAL COURT  
OF MOLDOVA**

by

**Ms Angelika NUSSBERGER  
(Substitute Member, Germany)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

## Introduction

The Constitutional Court of the Republic of Moldova has asked for an amicus curiae opinion on problems connected with the interpretation of two specific articles (Article 78.5 and 85.3) of the Moldovan Constitution. The question has been brought up in a procedure of authoritative interpretation of the Constitution initiated by the Communist Party of Moldova.

The question is raised in the context of a political stalemate within the country. This political context is outside the scope of the present amicus curiae opinion.

## Contents of Article 78 of the Constitution

The first Article to be interpreted is Article 78 which figures in Chapter V “President of the Republic of Moldova”.

Article 78 para. 1 deals with the election of the President. It defines the procedure of election (“elected by Parliament by secret vote”), Article 78 para. 2 sets the prerequisites for being a candidate in presidential elections, Article 78 para. 3 defines the procedure for the first and second round of presidential elections. Article 78 para. 4 is of utmost importance for understanding the provision of Article 78 para. 5. It reads:

“If after the second ballot none of the candidates obtained the necessary number of votes, the election shall be repeated as many times as necessary.”

The provision of Article 78 para. 5 submitted to official interpretation reads as follows:

“If the President of the Republic of Moldova is not elected even after repeated elections, the current President shall dissolve the Parliament and shall set the date for the election of a new Parliament.”

The last part of Article 78 refers to an organic law regulating the procedure for the election of the President.

The provision regulating the election of the President by the votes of three fifths of the members of Parliament and not directly by the people was introduced only in 2001 on the basis of a constitutional amendment. From the point of view of comparative constitutional law the solution found in Moldova is not unique, but nevertheless shows some peculiarities. In the majority of European countries the Presidents are elected directly by the people.<sup>1</sup> Yet, there are also many countries in which the President is elected by Parliament.<sup>2</sup> For the election in some of the countries an absolute majority is required,<sup>3</sup> whereas in other countries a qualified majority is necessary;<sup>4</sup> only in Malta a relative majority is sufficient already in the first round. As a rule, the constitutions provide for regulations for subsequent rounds of presidential elections if the required quota is not achieved in the first round. In Moldova the number of candidates is reduced to two; yet the requirement of a 3/5-majority is not changed.<sup>5</sup>

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<sup>1</sup> Cf. the regulations in Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Poland, Romania, Russia, Serbia, Slovenia, Austria, Cyprus, Finland, France, Ireland, Portugal, Lithuania, Slovakia (after a pre-election by the National Council on the basis of a 3/5th majority).

<sup>2</sup> Albania, Hungary, Turkey, Greece, Italy Czech Republic, Estonia, Latvia.

<sup>3</sup> Czech Republic, Estonia, Latvia.

<sup>4</sup> Albania (3/5-majority), Hungary (2/3-majority), Turkey (2/3-majority), Greece (2/3-majority), Italy (2/3 majority).

<sup>5</sup> Comparison to other constitutions.

### **Contents of Article 85 of the Constitution**

The second Article to be interpreted is Article 85 which also figures in Chapter V “The President of the Republic”.

Article 85 deals with the dissolution of Parliament. Art. 85 para. 1 links the dissolution of the Parliament either to the failure to form a Government or to a deadlock in the legislation process.

Article 85 para. 2 defines the prerequisites and consequences of a presidential request for a vote of confidence.

In this context Article 85 para. 3 regulates:

“The Parliament may be dissolved only once in the course of a year.

Article 85 para. 4 provides for additional rules prohibiting the dissolution of Parliament.

“The Parliament may not be dissolved during the last six months of the mandate of the President of the Republic of Moldova, with the exception of the situation provided in clause (5), article 78, or during a state of emergency, martial law or war.”

This means that according to the regulation in Moldova the Parliament can be dissolved not only if the Parliament fails to form a government (which is quite a common regulation in constitutional law), but also if the Parliament fails to elect the President. Combined with the high quota required for the election of the President this regulation provides for a relative instability of the Parliament unless there is a strong and stable political majority.

### **Questions raised by the Constitutional Court in its request for an amicus curiae opinion**

The Constitutional Court is confronted with three concrete questions on the interpretation of Article 78 para. 5 and Article 85 para. 3.

- 1) Is the constitutional norm of Article 85.3 applicable in the cases provided for in Article 78.5 of the Constitution?
- 2) The notion “in the course of a year” used in Article 85 para. 3 can be interpreted in the following ways: in the course of one calendar year (1 January 2009 – 31 December 2009) or within the time-frame of one year starting from the dissolution of Parliament (June 2009 – June 2010)?
- 3) If the President of the Republic is not elected in the course of the presidential election which takes place after the anticipated elections: Within which time-frame – having regard to the regulations contained in Article 85 para. 3 – after the circumstances laid down in Article 78 para. 5 of the Constitution have been confirmed the President on duty dissolves the Parliament and fixes the date for the elections of the new Parliament – starting from the date of the repeated presidential elections or starting from the last dissolution of the Parliament?

### **Answer to the first question**

The wording of the provision “the Parliament may be dissolved only once in the course of a year” is clear and categorical. It does not distinguish between different situations under which Parliament can be dissolved, but defines a general rule.

Nevertheless, it might be asked if, based on a contextual interpretation, this provision has to be read narrowly. In such a reading it would only relate to the circumstances of parliamentary dissolution enumerated in Article 85 (failure to form a government, legislative deadlock,

rejection of a presidential request for a vote of confidence). Such an interpretation might be based on the fact that Article 78 regulating the election of the President does not contain any restriction on the time-frame of parliamentary dissolutions. Yet, both articles are part of the same section of the Constitution; they both contain regulations on the President. Furthermore, Article 85 para. 4 explicitly refers to Article 78 para. 5 and thus establishes a link between the two articles.

In this context it is also necessary to take into account the aim of the regulations contained in Article 85 para. 5 and in Article 78 para. 3. They are set out to solve a dilemma. On the one hand it is the task of the Parliament to elect both the President and the government. If it fails to fulfil this duty it is necessary to give the citizens a chance to elect new members of Parliament better apt to fulfil this constitutional duty. On the other hand every political system needs stability. The dissolution of Parliament is detrimental to stability. Article 85 para. 5 tries to find a solution to this dilemma allowing for the dissolution of Parliament, but restricting it to one dissolution per year. Such a protection of political stability is necessary whatever might be the reason for the dissolution of Parliament.

Thus there are the better arguments for considering the rule contained in Article 85 to be applicable to Article 78 para. 4.

### **Answer to the second question**

The literal wording of Article 85 para. 3 (“The Parliament may be dissolved only once in the course of a year”) can be understood in two different ways. Either it can be read as related to the calendar year and thus comprise the time period from 1 January of a year up to 31 December. Or it can be understood as defining a time interval starting with the dissolution of Parliament.

As has been explained above the “telos” of the provision is to guarantee stability and the uninterrupted functioning of the legislative body. If the time period “once in the course of a year” were related to the calendar year, dissolutions of Parliament could occur in short intervals, e.g. just before the end of the calendar year and right at the beginning of the next calendar year again. Such an interpretation would lead to arbitrary results; the time period of parliamentary stability would be dependent on the period of the year in which the dissolution takes place. On the contrary, if the beginning of the time period is linked to the dissolution of Parliament, stability is always guaranteed for at least one year. This reading is therefore more in line with the idea behind Article 85 para. 3.

### **Answer to the third question**

Elections of Parliament are fixed in Chapter IV of the Constitution. According to Article 61 the election of Parliament members will be started not later than 3 months from the end of the previous mandate or from the dissolution of the previous Parliament. This regulation is clear in fixing the dates of parliamentary elections. There are no specific rules differentiating between the different situations under which Parliament can be dissolved. Re-elections have always to take place within a certain period of time linked to the moment of dissolution. The aim of the provision is to prevent long intervals without a functioning legislative body.