



Strasbourg, 9 February 2010

CDL(2010)005*

Opinion N° 565 / 2009

Engl. only

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

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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.*

1. Art. 78(5) of the Constitution of Moldova states that 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". On the other hand, Art. 85(3) of Constitution lays down that "the Parliament may be dissolved only once in the course of a year".
2. The Constitutional Court of Moldova has asked the Venice Commission for an *amicus curiae* opinion on the interpretation of the above constitutional provisions. The main questions posed the Commission are the following:
 - Is the restriction imposed by Art. 85(3) applicable also in situations covered by Art. 78(5)?
 - Does the expression "in the course of a year" in Art. 85(3) refer to a calendar year or to the time elapsed since the latest dissolution of the Parliament?
3. The background to the request by the Constitutional Court is the following. In April 2009, regular parliamentary elections were held in Moldova. In May and June 2009 two unsuccessful rounds of presidential elections were held, after which in June 2009 the Parliament was dissolved under Art. 78(5) of the Constitution. In November and December 2009, it again turned out that no candidate could obtain the 3/5 majority required for electing the President (Art. 78(3)). Thus, the issue is: is the Parliament to be dissolved immediately or only after a year has elapsed since the dissolution of June 2010.
4. The Constitution itself does not give any clear guidance as to the prevalence of Art. 78(5) resp. 85(3) in cases of conflict. Because no corresponding regulations can be found in other European states, no existing European standard can be invoked, either.
5. Hence, the issue must be settled on the basis of the purpose of the constitutional regulations. Obviously, Art. 78(3) aims at securing that the state possesses functioning constitutional bodies, which also reflect the current support of the various political forces. The objective of Art. 85(3), in turn, is to guarantee political stability, which repeated parliamentary elections would seriously jeopardize. Of these two objectives, prevalence should be accorded to guaranteeing political stability. Without a certain degree of political stability, no constitutional bodies can function properly. It should also be noted that other constitutional provisions ensure that the state is at no time without an acting president and that the presidential functions can always be accomplished.
6. The conclusion is that Art. 85(3) must be applied even in cases covered by Art. 78(5).
7. The interpretation of the expression "in the course of a year" in Art. 85(3) should also be based on the objective of the regulation, i.e., guaranteeing political stability. It is evident that only the interpretation according to which the Parliament cannot be dissolved before a year has elapsed from the latest dissolution corresponds to that objective. The one year's time starts from the date of the dissolution, and not from the date of the failed presidential election.
8. It obvious that a constitutional reform is needed in Moldova in order to prevent such political stalemates the country has repeatedly witnessed. Frequent dissolutions of the parliament, following each other in only a few months time, also impose obstacles to political negotiations necessary for a successful constitutional reform.