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Civil Society demands the resignation without delay of the constitutional judges

Natalia ?eremet · Tuesday, June 25th, 2019

The signatory organizations and representatives deeply regret the manner in which the Constitutional Court acted between 7 and 9 June 2019, generating an unprecedented political crisis in the Republic of Moldova. The Constitutional Court issued a decision, three judgments and two opinions that failed to rely on the Constitution of the Republic of Moldova and its own case-law, as stated by the National Platform of the Civil Society Forum of the Eastern Partnership on 9 June 2019, and confirmed by the Venice Commission opinion published on 24 June 2019. By taking these decisions, the constitutional judges have caused an irreparable harm to the reputation of the Constitutional Court of Moldova. The only solution to restore the confidence and the authority of the Constitutional Court will be the immediate resignation of the constitutional judges Raisa APOLSCHII, Veaceslav ZAPOROJAN, Artur RE?ETNICOV and Corneliu GURIN.

The summary of the Constitutional Court acts undertaken between 7-9 June 2019

Between 7-9 June 2019, the Constitutional Court of the Republic of Moldova adopted a decision, three judgements and two opinions, thus creating an unprecedented constitutional crisis. Afterwards, on 15 June 2019, the Court revised all of its acts adopted between 7-9 June 2019. Initially, towards the end of the day on 7 June 2019, the Court issued a decision, providing without any reason, that the three-month term in which the Moldovan President can dissolve the Parliament, in case there is no possibility to form the Government or there is legislative blockage, is in fact 90 days. As a result, the Court has basically reduced the real time to allow the political parties from the Parliament to negotiate the formation of the Government. This decision was issued following an application lodged by the President Igor DODON on 22 May 2019.

On the second day, on Saturday, 8 June 2019, the Court adopted three judgments, concluding that the competence of a dissolved Parliament is different from the one of a Parliament with an expired mandate, therefore the dissolved Parliament cannot adopt any legislative act. Consequently, through another judgement issued on the same day, the Court declared as unconstitutional the act of the Parliament nominating Zinaida GRECEANII as Speaker and also declared unconstitutional *ab initio* all the acts voted by the newly-elected Parliament of 10th Legislature, that has been formed following the parliamentary elections from 24 February 2019. By its third decision, the Court declared as unconstitutional the President Igor DODON decree, on nominating Maia SANDU for the Prime Minister's office, as well as the decree to form the new Government and the government led by Maia SANDU, voted the same day by the Parliament. The main arguments

highlighted by the Court were based on the fact that the deadline to form the Government expired on 7 June 2019, calculating 90 days from the day of parliamentary elections' validation, meaning 9 March 2019. The Court explained the application of the 90 days' term by referring to an article from the Civil Code, which states that half a month equals 15 days. The Court also justified that the Parliament dissolution is a sanction applied for the inactivity of the political powers to form the Government or for creating a legislative blockage. For this reasons, any act adopted by the Parliament on 8 June 2019 could not be considered valid.

On the third day, 9 June 2019, the Court adopted two opinions. According to the first opinion, issued at 8:30 a.m., the Constitutional Court suspended Igor DODON from the position of President of the Republic of Moldova, for his failure to dissolve the Parliament at the expiration of the three-months term allocated to form the Government. At the same time, the Court appointed Pavel FILIP as an interim president and instructed him ask the Constitutional Court to determine the circumstances that justify the dissolution of the Parliament and to set the date of the Parliamentary snap elections. On the same day, Pavel FILIP requested the Constitutional Court to establish the circumstances of the Parliament dissolution. The request was accepted by the Constitutional Court at 10:30 a.m.

The Court issued these three judgments and two opinions on weekend days, on Saturday and Sunday, upon the applications submitted by the MPs from the democratic party, submitted just one day before, or the same day as the judgements / opinions were issued. The representatives of the Parliament and the President were not invited to attend the Court's hearings, nor their opinions were presented. The Democratic Party members where the only ones attending these hearings.

On 15 June 2019, the Constitutional Court revised and annulled their acts adopted from 7 to 9 June, "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 formed in the Parliament of the Republic of Moldova." The Court, also emphasized "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". On 20 June 2019, Mihai POALELUNGI resigned as a judge and the President of the Constitutional Court.

The way in which the Constitutional Court acted on 7, 8 and 9 June 2019, by issuing thes3e arbitrary decisions, shocked the society. The means by which these judgments were reviewed on 15 June 2019 totally undermined the role of the Constitutional Court as the guarantor of the Constitution. All these decisions were taken unanimously by the Constitutional Court judges.

The summary of the main observations of the Venice Commission

Upon the request of the Council of Europe Secretary General, the Venice Commission, an independent body of the Council of Europe, accepted to review the Constitutional acts from 7-9 June 2019 On 24 June 2019, the Venice Commission issued an opinion on the constitutional situation in the Republic of Moldova, referring in particular to the conditions for the dissolution of Parliament. The Venice Commission exceptionally accepts the analysis of acts of a Constitutional Court only when the functioning of the constitutional body can significantly affect the democratic functioning of state institutions. We emphasize that only the Constitutional Court, in its current composition, through the acts which are clearly against the rule of law, has led to their examination by the Venice Commission. This constitutes an enormous regress and should have obviously

determined the constitutional judges to resign.

In its opinion published on 24 June 2019, the Venice Commission concluded that when issuing the rulings and opinions on 7-9 June 2019, the Constitutional Court failed to respect its own procedures and the principle of equality of the parts. These procedures have been examined exclusively with the exclusive participation of the democratic party MPs, with an extraordinary speed, which did not give reasonable opportunity for the other parties to basically participate, without providing any justification for such a hurry. The Commission did not find any justification for the fact that the Constitutional Court ruled on the application of the President of the Republic of Moldova on the Government's forming deadline only on 7 June 2019, although the application was lodged on 22 May 2019. The applications submitted by the Democratic party MPs on 8 and 9 June, were considered and examined as a matter of high priority by the Court, often on the same day. ***The Commission found that, in fact, the crisis and the instability increased as a result of the coordinated actions between the Democratic Party and the Constitutional Court from 7 June 2019, which were implemented with an extreme haste.*** The Commission stressed that any constitutional body must firstly respect their own procedures and the principle of equality of the parties to ensure its confidence.

The Commission found that the interpretation by the Constitutional Court of the President's obligation to automatically dissolve the Parliament immediately after the expiration of the three-months term, regardless of whether or not a vote of confidence has been made for the formation of the government and regardless of the consultation with parliamentary parts, is incoherent with both the wording of Article 85 of the Constitution and with its purpose as established by the Constitutional Court of Moldova in its previous rulings (the judgement from 1st October 2013). ***The Commission concluded that on 7 or 8 June 2019, there were clearly no conditions met by the Constitution for the dissolution of the Parliament.***

The Venice Commission found that for the first time in its decision of 7 June, the Constitutional Court added a non-reasoned indication in brackets that the three months' term equal 90 days, a method of interpretation that would have absurd implications on the duration of a year (one year = 360 days). The Commission noted that the Constitutional Court of the Republic of Moldova failed to explain why it did not refer to the more pertinent provisions in the Civil Code, according to which the three-month term would expire on 10 June 2019 because three months expired on 9 June, a day of Sunday, but according to the general provisions of the Civil Code (Article 388 paragraph 1), the term is prolonged until the end of the next working day.

The Venice Commission stressed that the temporary suspension of the President Igor DODON on 9 June 2019 and the appointment of the Prime Minister as an interim office holder is not grounded in the Constitution of the Republic of Moldova. The Commission also found a very important thing for the constitutional mechanisms in the Republic of Moldova, namely that ***the application by the Constitutional Court of the "temporary suspension" mechanism (known in society as "the 5-minute President") for his/her failure to fulfill an obligation based on Article 90 paragraph (3) of the Constitution, is contrary to the Constitution.***

Conclusions and requests

The Venice Commission is the most prestigious and credible European body in constitutional matters, whose opinion should be strictly considered by the Republic of Moldova, especially in view of the still-evolving nature of our democracy.

We stress our deep concern about the (in)dependence of the Constitutional Court, which was signaled by 17 NGOs in December 2018, when three Democratic party affiliated persons were appointed by the Superior Council of Magistracy, the Government and the Parliament as judges of the Constitutional Court. The way in which the Constitutional Court acted on 7-9 June, in an obvious tandem with the democratic party MPs, as also found by the Venice Commission, shows an obvious political affiliation and lack of impartiality of the Constitutional Court judge, which seriously affects the impartiality of the whole institution. The absurd interpretation of the three-month term as a 90-day period denotes a lack of legal minimum knowledge or an intentional intent or a gross negligence on the professional capacities of the Constitutional Court judges. Through these acts, the current judges have unprecedentedly discredited the institution of the Constitutional Court. We reiterate the appeal of 19 June 2019 addressed to Mr. Veaceslav ZAPOROJAN to resign as a constitutional judge.

In this context, we call on to those four constitutional judges who still have constitutional mandates – **Raisa APOLSCHII, Veaceslav ZAPOROJAN, Artur RE?ETNICOV and Corneliu GURIN** – to immediately resign. By your resignation, you will allow the appointment of the new constitutional judges, which will have the important task to restore the confidence in the role of the Constitutional Court as the guarantor of the Constitution.

In the absence of the resignation from the respective judges, we ask the Parliament to urgently establish a Commission composed from representatives of political parties, local and international notorious experts, in order to find a solution to dismiss the current judges, to investigate their actions through the existence or non-existence of a componence of an offense and the appointment of new constitutional judges in a transparent and merit-based manner.

The public appeal is available here

Signatories:

1. *Amnesty International Moldova,*
2. *Association for Participatory Democracy „ADEPT”,*
3. *Association for Efficient and Responsible Governance (AGER),*
4. *Foreign Policy Association (APE),*
5. *Association of Independent Press (API),*
6. *Center „Acces-info”,*
7. *Center „Contact”,*
8. *Center for Investigative Journalism*
9. *Legal Resources Centre from Moldova (LRCM)*
10. *Center “Partnership for Development”(CPD)*
11. MD
12. CPR Moldova
13. *Expert-Grup*
14. *Est-European Foundation*
15. *Human Rights Embassy*
16. *(IDIS) „Viitorul”,*
17. Institute for Public Policy (IPP)
18. Institute for European Policies and Reforms *(IPRE)*
19. Promo-LEX
20. *Transparency International Moldova*

The list of signatories remains open

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