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Constitutional Aspects of the Government Crisis in Moldova in 2019

Keywords: Republic of Moldova, Constitutional Court of Moldova, president, parliament

Słowa kluczowe: Republika Mołdowy, Sąd Konstytucyjny Mołdowy, prezydent, parlament

Abstract

The purpose of this paper is to present a government crisis in Moldova that took place in 2019 from the point of view of its constitutional basis. Based on a legal dogmatic-analysis, supported with the comparative and historical methods, the paper verifies whether the blame for the situation could be placed solely on the Moldovan political fractions or on the unfortunate distribution of the voters' preferences, or rather on the legislator who passed ill-advised laws without foreseeing the possibility of a conflict, including the emerging dual power system in Moldova at the time in question.

Streszczenie

Konstytucyjne aspekty kryzysu rządowego w Mołdawii w 2019 r.

Celem niniejszego artykułu jest przedstawienie kryzysu rządowego w Mołdawii z 2019 r., z punktu widzenia jego konstytucyjnych podstaw. W oparciu o analizę prawnodogmatyczną, wspomaganą metodą prawnoporównawczą i historyczną artykuł miałby zweryfikować, czy winą za zaistniałą sytuację można obciążyć wyłącznie mołdawskie siły politycznych, ewentualnie nieszczęśliwe rozłożenia sympatii wyborców czy jednak również ustrojodawcę, który uchwała nieprzemyślane przepisy, nie przewidując możliwości zaistnienia sytuacji konfliktowej, w tym zmierzającej ku powstałej w omawianym czasie w Mołdawii dwuwładzy.

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I. Introduction

The adoption of the constitution of the independent Moldova on 29 July 1994², which was not a unique event in Eastern Europe, did not end the political transformation, but only created another framework within which political struggles were taking place. In Moldova, that framework was repeatedly infringed. The Constitution maintained the semi-residential system proposed in the first years, with the competences of the head of state being somewhat weakened among other things by depriving the president of the authority over the executive branch of government. This gave rise to political frictions caused, on the one hand, by efforts of the president (then Petru Lucinschi) to regain the lost powers³ and, on the other hand, by the desire of the majority of MPs to introduce a parliamentary republic, which in 2000 was adopted by vote, giving the constitutional system a parliamentary-cabinet form⁴. One of the outcomes of these changes was the abolition of general presidential election, which, as a consequence of introduction of a high threshold of 3/5 of the votes in Parliament needed to elect the head of state, resulted in almost two and a half years of vacancy in the office of the president (2009–2012)⁵. As it soon turned out, these were not the only controversial political solutions adopted then. The purpose of this paper is to present the government crisis in Moldova that took place in 2019 from the point of view of its constitution-

² Cf. *Constitution of the Republic of Moldova of 29 July 1994 (version before the amendment)*, http://ijc.md/Publicatii/mlu/legislatie/Constitution_of_RM.pdf (11.05.2020).

³ T. Sedelius, O. Mashtaler, *Two decades of semi-presidentialism: issues of intra-executive conflict in Central and Eastern Europe 1991–2011*, "East European Politics" 2013, No. 29:2, p. 122.

⁴ W. Baluk, *Republika Mołdowy*, [in:] *Ustroje polityczne krajów Wspólnoty Niepodległych Państw*, eds. W. Baluk, A. Czajowski, Wrocław 2007, pp. 85.

⁵ More information on this topic can be found in e.g. A. Olechno, *Czy w systemie parlamentarno-gabinetowym potrzebna jest wyodrębniona głowa państwa? – uwagi na temat mołdawskiego „bezkrólewia”*, [in:] *Ustroje, tradycje i porównania. Księga Jubileuszowa dedykowana Prof. dr. hab. Marianowi Grzybowskiemu w siedemdziesiątą rocznicę urodzin*, eds. P. Mikuli, A. Kulig, J. Karp, G. Kuca, Warsaw 2015, pp. 698–705.

al basis. Based on a legal dogmatic-analysis, supported with the comparative and historical methods, the paper verifies whether the blame for the situation could be placed solely on the Moldovan political fractions or on the unfortunate distribution of the voters' preferences, or rather on the legislator who passed ill-advised laws without foreseeing the possibility of a conflict, including the emerging dual power system in Moldova at the time in question.

II. Political Background of the Crisis

On 24 February 2019, as a result of the mixed (a national list and 51 single-mandate districts) parliamentary elections, a stable majority coalition was not elected. In the 101-seat Parliament⁶, the Socialist Party of the Republic of Moldova won 35 seats, the Democratic Party of Moldova (PDM) won 30 seats, the Electoral Block Now (ACUM) won 26 seats, and the Sor Party (MR) won 7 seats⁷. Three seats were won by independent candidates. According with the Art. 98 of the Constitution, the Government appointment procedure started after the elections⁸. The president, having consulted the parliamentary groups, designates a candidate for the position of the prime minister, who then forms the Government and within 15 days of his or her nomination requests a vote of confidence in the Parliament. As a result of the amendment to the Constitution, a majority of the votes of all the MPs is required to obtain it⁹. After the vote of confidence, the president appoints the Government. Despite several attempts, it was impossible to appoint the Government. As a result, in 2016 the government appointed Pavel Filip, who represented the second largest party (PDM) in the Parliament after the elections and who was also one of President Igor Dodon's political opponents. The latter, elected in 2016 in the re-established general election, represented the Socialist Party of the Republic of Moldova and was even its chairman.

⁶ Both Parliament and Government are treated as proper nouns and names of the Moldovan Parliament and Government.

⁷ <https://www.rferl.org/a/moldova-constitutional-court-confirms-parliament-elections/29812890.html> (2.06.2020).

⁸ *Konstytucja Republiki Mołdawii*, Warsaw 2014.

⁹ Constitutional Act No. 1115-XIV of 5 July 2000.

At the end of the three-month time limit for the appointment of the Government, the Moldovan Constitutional Court became involved and, on 7 June 2019, at the request of MPs from the PDM party Sergiu Sirbu and Vladimir Cebotari, announced that new parliamentary elections would take place if the Government is not appointed within three months of the approval of the elections. Given that the elections were approved by the Constitutional Court on 9 March 2019, the MPs found that they had to complete the procedure before 9 June 2019. The pressure, or rather, as it later turned out, what the MPs considered to be pressure from the Constitutional Court, was successful and on 8 June the Electoral Block Now and the PSRM party reached an agreement that allowed a vote of confidence to be given to the Government of Maia Sandu (ACUM) and the election of socialist Zinaida Greceania as the Speaker of the Parliament. According to MPs from the Democratic Party of Moldova, the appointment of the Government took place one day after the deadline and in view of the President's inaction, the MPs from the PDM, including the Deputy Speaker of the Parliament Sergiu Sirbu, requested the Constitutional Court to suspend the President. As early as on the next day, the Constitutional Court granted the motion of the MP, suspended President I. Dodon, and entrusted the performance of the President's duties to the current Prime Minister, P. Filip. The *interim* President immediately dissolved the Parliament and ordered new elections on 6 September 2019. On 11 June, when President I. Dodon's suspension was over, he cancelled the decree on dissolution of the Parliament. In fact, from 8 June, the country had a dual power system with two cabinets of Sandu and Filip, which lasted until 14 June when the latter resigned¹⁰.

III. What Does the Constitution Say?

Given the content of the constitutional provisions, the actions taken by the various bodies of the Moldovan state, including the Constitutional Court, must give rise to legitimate concerns. In the discussion of the background of the crisis, emphasis was put on the most blatant faults in the Constitution.

¹⁰ All these events were accompanied by tents set up by protesters in Chisinau and by occupation of government buildings by supporters of rival factions. More information can be found in: K. Całus, *Koniec dwuwładzy w Mołdawii*, <https://www.osw.waw.pl> (3.06.2020).

I hope that the size of the paper justifies their choice and limitation of the assessment of the actions taken by the players on the Moldovan political scene to the constitutional grounds.

Let us start with the judgment of the Constitutional Court of 7 June 2019 (published on 8 June), which provided formal grounds for the actions of MPs on both sides of the conflict¹¹.

As indicated with the reference to the Art. 85 of the Constitution, the Constitutional Court indicated that if no Government is formed within three months after the approval of the election, a new general election will be held¹².

This seems to be a significant over-interpretation of the constitutional provision. The para. 1 of the mentioned article provides expressly that “If the Government cannot be formed or if laws cannot be passed for a period of 3 months, the President of the Republic of Moldova, having consulted the parliamentary groups, may dissolve the Parliament”¹³. The controversy was related to two issues: the time limit of three months and the announcement that a new election would be held after that date.

First of all, the MPs from the PSRM and the ACUM interpreted the three-month deadline literally, i.e. since the elections were approved on 9 March 2019, the constitutional three-month deadline was 9 June 2019. However, in its judgment, the Constitutional Court used the phrase “3 months (90 days)” and if 90 days were counted in this manner starting from 9 March, the deadline would expire on 7 June 2019 (9 June is the 92nd day). While such interpretation of a statutory month is possible and could be accepted, the second controversy is much more difficult to sustain. The Constitutional Court ruled that after 3 months (90

¹¹ Judgment of the Constitutional Court of Moldova No. 13 of 8 June 2019; Judgment on the interpretation of the provisions of Art. 63 and 85 of the Constitution of the Republic of Moldova (Application No. 110b/2019), <http://www.constcourt.md/ccdocview.php?l=en&tip=hotariri&docid=699> (3.06.2020).

¹² R. Ratajczyk, *Parlament Młdowy*, Warsaw 2012, p. 11.

¹³ It seems that the Polish translation by Wydawnictwo Sejmowe – which states “If the Government cannot be formed or if for 3 months laws cannot be passed, the President of the Republic of Moldova, having consulted the parliamentary groups, may dissolve the Parliament” – is erroneous and distorts the intentions of the legislature, which can be seen in the Moldovan and English versions and in the case law of the Moldovan Constitutional Court. Cf. Art. 85(1) of the Constitution of the Republic of Moldova, Introduction and translation from Romanian by Bartłomiej Zdaniuk, Warsaw 2014.

days) the President was obliged to dissolve the Parliament, which had already lost its right to function due to the expiry of the mentioned deadline. However, the Constitution (in all language versions) explicitly provides for an optional possibility to dissolve the Parliament in such a situation, thus leaving it to the President to consider whether the MPs are able to reach a consensus or whether agreement is impossible and a new election should be organized. Of course, the other provisions of the Constitution in this respect were and are coherent and the right to dissolve Parliament is granted only to the President. In addition, their semantics clearly distinguish between situations in which the president “shall dissolve” or “may dissolve” the Parliament. In addition to Art. 85(1), the President has the power to dissolve Parliament pursuant to Art. 85(2), i.e. if, within 45 days of the first motion to form a Government, the Parliament does not give the President a vote of confidence and only after the motion is rejected twice. According to that paragraph, “The Parliament may be dissolved”, so we are again dealing with the President’s discretion. Art. 78(5), revoked in 2016 but existing until then alongside Art. 85, contained completely different provisions, as it obliged the head of state to dissolve the Parliament, if the President was not elected by the Parliament as a result of a repeated election. Then, as the legislator decided, “the President shall dissolve the Parliament and sets the date for for a new parliamentary election”. The legislator’s intentions with regard to Art. 85(1) and the optional nature of the President’s powers should therefore not be called into question.

Therefore, even if we conclude that the actions of the coalition of the Socialist Party of the Republic of Moldova and the Electoral Block Now were delayed and the 90-day time limit for the appointment of the Government expired on 8 June 2019, this did not mean that the president was obliged to dissolve the Parliament. However, as we remember, on the same day, the Constitutional Court ruled that the decree appointing the new Government was unconstitutional¹⁴ and then suspended the president from office on 9 June 2019¹⁵. In this

¹⁴ Judgment on the constitutional review of the Decrees of the President of the Republic of Moldova of 8 June 2019 on the nomination of the candidate to the office of Prime Minister of the Republic of Moldova and on the appointment of the Government of the Republic of Moldova (Application No. 112a/2019) (16.06.2020).

¹⁵ Opinion on ascertaining the interim office of the President of the Republic of Moldova for the failure to exercise the constitutional duty of dissolving the Parliament and for setting the date for snap parliamentary elections (Application no.113f/2019) (16.06.2020).

case, too, there is a double controversy. If we consider the 3-month deadline to be equal to 90 days, the presidential decree of 8 June 2019 was issued after the deadline and could be overturned by the Constitutional Court as incompatible with the Constitution. But was that really a sufficient reason to suspend the president? Art. 135(1)(f) provides that the Constitutional Court “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”.

The procedure for removal from office can be found in the Art. 89 of the Constitution, which provides that if serious offenses infringing upon constitutional provisions are committed, the President of the Republic of Moldova may be suspended from office by the Parliament with the vote of two-thirds of its members. The relevant motion may be filed by at least one-third of the Members of Parliament and is immediately communicated to the President of the Republic of Moldova. The President may make explanations before the Parliament and the Constitutional Court about the acts he or she is accused of¹⁶. However, in this case, the Constitutional Court has ruled, at the request of three Members of Parliament (S. Sirgu, I. Vrenea, and V. Cebotari), on the determination of the replacement of the President for failure to comply with his or her constitutional obligation to dissolve the Parliament and on the timing of parliamentary elections. Irrespective of the legitimacy of the replacement, we are again faced with a sequence of controversies. A possible determination of circumstances justifying the removal of the President is one thing and a motion by MPs and a vote in the Parliament is another. Although in this case it seems that the Constitutional Court replaced the legislative body by interfering with its competence, in reality the Court itself interpreted this competence to temporarily suspend the President and it entered into the political practice of Moldova¹⁷. In the opinion itself, the judges not only stated those circumstances, but also pointed out the suspension and the need for the

¹⁶ More information can be found in S. Grabowska, *Modele odpowiedzialności konstytucyjnej prezydenta we współczesnych państwach europejskich*, Toruń 2012, pp. 236.

¹⁷ More information can be found in, e.g. I. Guceac, *Constitutional Justice in the Republic of Moldova*, [in:] *Constitutional Courts in Post-Soviet States*, ed. J. Zalesny, Frankfurt am Main–Bern–Bruxelles–New York–Oxford–Warsaw–Wien 2019, p. 362.

temporary replacement of the President¹⁸, and concluded that the incumbent Prime Minister Pavel Filip, as the acting head of state, would ask the Constitutional Court to determine the circumstances justifying the dissolution of Parliament and, having confirmed them, would issue a decree dissolving the Parliament and setting the date for a new parliamentary election. Thus, one can additionally have doubts about violation of Art. 91 of the Constitution, which provides that the first person to replace the President is the Speaker of the Parliament and that the Prime Minister is only the second. Thus, since Zinaida Greceania from the PSRM party was elected on 8 June 2019 as the Speaker of the Parliament, she was entitled to perform the duties of the head of state, not P. Philip.

IV. Conclusions

The mentioned deliberation indicates that the constitutional crisis in Moldova in 2019 had a completely different background than, for example, the one that took place a decade earlier. This time, it was not about a certain carelessness of the legislator who, when adopting the provisions of the Constitution, was unable to predict negative political scenarios; instead, the issue was an erroneous interpretation of the provisions of the Constitution, possibly due primarily to political bad will¹⁹. The quoted provisions of the Constitution of the Republic of Moldova themselves were not the root cause of the crisis. Their wording did not differ from other solutions of this type adopted worldwide and their interpretation should not raise any doubts. Similarly, one should not look for doubts in the semantics of the constitutional provisions. The Moldovan Constitutional Court itself must have eventually reached similar conclusions. On 15 June 2019, the Tribunal repealed all acts that caused the constitutional crisis, including its own judgments on the an-

¹⁸ It is worth mentioning that this was not the first suspension of President I. Dodon: he had been suspended several times before when he delayed signing of laws passed by the Parliament. More information can be found in *Moldovan Constitutional Court Suspends President for Fifth Time*, <https://www.rferl.org/a/moldova-court-dodon-suspended/29649228.html> (17.06.2020).

¹⁹ An interesting picture of Moldova, also in its political aspect, has been recently presented by K. Calus, *Moldawia. Państwo niekonieczne*, Wołowiec 2020, passim.

nulment of the President's decree appointing a new Government and on the suspension of the President. On 20 June 2019, its President Mihai Poalelungi resigned from office, followed by all members of the Constitutional Court on 26 June, thus ending the Moldovan crisis and indirectly confirming the interpretation of the parliamentary majority²⁰.

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²⁰ The resigning judges explained that previous decisions were influenced by “pressure” <https://www.wnp.pl/parlamentarny/swiat/sad-konstytucyjny-moldawii-podal-sie-do-dymisji-po-oskarzeniach-o-kompromitacje,40184.html> (20.06.2020).