

Controversies of early parliamentary elections – the political position of the parties and the decisions of the Constitutional Court

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The victory of November 15, 2020, in the presidential elections of the Republic of Moldova of the main exponent of the opposition, the pro-European Maia Sandu, to the detriment of the leader of the ruling party, the pro-Russian Igor Dodon, anticipated for the political year 2021 a confrontation between the presidency and parliament which is numerically dominated by political forces descending from the oligarchic regime. These predictions came true. The Republic of Moldova has been for over three months in a political-institutional deadlock caused by disputes on the topic of early political elections. This deadlock is fuelled also by the inconveniences of the constitutional norm, which has directly involved the Constitutional Court, to whom the political forces and the presidency often appealed in the process of unblocking the political and institutional processes in the Republic of Moldova.

The political stance of the parties

The resignation of the Prime Minister Ion Chicu on December 23, 2020, gave the start to the confrontation between the political forces, particularly those in the parliament, on the matter of the dissolution of the legislature. Although in the December 28, 2020 consultations with the head of state, the parliamentary factions (with the exception of the “Șor” Party-the “For Moldova” Platform) affirmed their support for the organization of early parliamentary elections, in reality the positions of the political parties were completely different from those stated after the meeting with President Maia Sandu.

In a short time, three political camps stood out in the parliament of the Republic of Moldova. The first, consisting of PAS (the least numerous), advocates early parliamentary elections as soon as possible. The second camp, which includes the PSRM, the “Șor” Party-the “For Moldova” Platform and the “Pro Moldova” group (the largest), is against the early parliamentary elections and the organization of the next legislative election in the term. Besides these two camps there is a third one, consisting of PDM and the “DA” Platform, which opts for early parliamentary elections, but only after the establishment of a temporary anti-crisis government.

In the absence of a government, in accordance with the constitutional norm (art.98, paragraph (1)), the presidency has the proactive role in the conduct of political procedures. The presidency headed by Maia Sandu has spoken out uncompromisingly for the dissolution of the actual legislature and the organization of early parliamentary elections.

But the logic of the functioning of the Constitution of the Republic of Moldova dictates that it is very difficult to dissolve the legislature as long as there is a parliamentary majority that opposes this constitutional exercise. The fact that President Sandu persevered, seeking to identify the scenario for the dissolution of parliament, provoked an inter-institutional conflict between the presidency and parliament.

The presidency, supported by PAS, did not have from the very beginning established a strategy on how to dissolve the parliament and acted contextually. After the failure of the request to the Constitutional Court to allow the possibility of self-dissolution of parliament with the vote of 2/3 of the deputies (as many as needed to amend the Constitution), the President issued on January 27 the decree appointing Natalia Gavriliță as a candidate for prime minister. She appeared in the plenary on February 11 with the bizarre and seemingly illogical request not to vote for the cabinet and the government program proposed by her. Consequently, the candidate for the position of Prime Minister Gavriliță accumulated 0 votes in parliament.

On the same day, President Sandu, disregarding the existing proposals for the position of prime minister – of the formal candidate (Mariana Durleșteanu) and the compromise candidate (Andrei Năstase) – repeatedly appointed Natalia Gavriliță to the position of prime minister. After the Constitutional Court ruled that the February 11 presidential decree was unconstitutional, the head of the state took a break from the procedural actions for the nomination of a candidate for prime minister, creating in society the impression that she would wait for the period of three months to pass from the government's resignation, after which she will petition the Constitutional Court on the possibility of dissolving the parliament. At that time, the head of state adopted the position of pushing for either early parliamentary elections or for a referendum for the dismissal of the president. Throughout this period, her political rivals have accused her of deliberately violating the Constitution.

One week before the expiration of the term for appointing a government, President Sandu, probably convinced of the need to comply with constitutional procedures, held new consultations on 16 March with parliamentary factions on the nomination of a candidate for prime minister. Towards the end of these consultations, during the discussions of the head of state with the PSRM faction, Mariana Durleșteanu announced the withdrawal of her candidacy from the position of prime minister. This decision “released the hands” of President Sandu from the obligation to nominate the formal candidacy, and she has soon thereafter signed the presidential decree appointing Igor Grosu as candidate for prime minister.

After the lack of a quorum in parliament on March 25, when the candidate for Prime Minister Grosu had to ask for the vote of confidence of the deputies, the head of state has organized on March 26 and 29 new consultations with parliamentary factions on the dissolution of parliament. Consequently, on March 29, 2021, the President of the Republic of Moldova addressed the Constitutional Court regarding the finding of the circumstances that would justify the dissolution of the parliament of the 10th legislature.

The camp of the political majority in the parliament, after some political hesitations in finalizing the position related to the subject of early parliamentary elections (this refers particularly to the Socialists), and beginning with 11 when February the formal candidature of Mariana Durleșteanu was announced, constantly pleaded against elections early

parliamentary elections. Although initially and for reasons of political image, PSRM and the “Șor” Party-the “For Moldova” Platform tried to camouflage their existing relations behind the scenes of politics, their common backing of Durleșteanu’s candidacy formalized the relationship between these parties.

The political majority in the parliament has constantly put pressure on the presidency, trying to dictate to President Sandu how to act politically. In their maneuvers, the PSRM and the “Șor” Party-the “For Moldova” Platform constantly insisted on identifying (and inventing) various legal instruments aimed at ascertaining the existence of a parliamentary majority and at presenting the actions of the head of state as unconstitutional. The Socialists have repeatedly addressed the Constitutional Court in order to challenge the actions of President Sandu, emphasizing that the head of state, in the exercise of her duties, goes beyond the constitutional framework. At the same time, the majority in parliament has constantly put pressure on the Constitutional Court, accusing it in the media of playing politically on the side of the presidency.

By proposing on February 11 the formal candidature for the prime minister, but also because of President Sandu’s reluctance to act procedurally in accordance with constitutional rules, the majority in the parliament had political and legal control in the dispute with the presidency over the dissolution of parliament. But the unexpected self-withdrawal of the candidate Durleșteanu and the immediate appointment of Grosu to the position of prime minister by the head of state reversed these positions. The nomination of Vladimir Golovatiuc as the new candidate of the parliamentary majority for the position of prime minister had no legal status because he was not appointed by President Sandu.

Between these two political camps – placed at opposite poles - are the PDM and the “DA” Platform, which showed rational political behavior, but were not heard at the time stronger by political actors. Both the active “DA” Platform and the PDM have attempted, from the background, to propose a compromise option by setting up a pro-European interim government, aimed at combating the pandemic and its negative socio-economic effects. But the President Maia Sandu did not show signs of taking into account the candidacy of the President of the “DA” Platform, Andrei Năstase, for the position of Prime Minister. Also, PSRM did not take seriously the alternative candidacy of Năstase, the Socialists merely speculating with the candidate of the “DA” Platform in their tactical disputes with President Sandu.

The decisions of the Constitutional Court

A few days after the first consultations of the head of the state with the parliamentary factions, PAS deputies M. Popșoi, D.Perciun, V.Pâslariuc addressed the Constitutional Court on December 31 regarding the possibility of dissolving (self-dissolving) the parliament through adoption by the legislative forum of a decision by a qualified majority (2/3) of the votes of the deputies. PAS deputies started from the premise that on December 28 the parliamentary factions opted for early parliamentary elections, and a 2/3 majority represents the necessary number of votes to change the Constitution. The Constitutional Court declared on January 18, 2021, inadmissible this notification of the PAS, emphasizing that, according to the constitutional provisions, the attribution of dissolving the parliament rests exclusively with the head of state within the limits of art.85, paragraphs (1) and (2) of the Constitution.

Immediately after this decision, on January 19, the PSRM deputies V. Bolea, Gr. Novac have addressed the Constitutional Court with the notification regarding the deadline and the obligation for the President of the Republic of Moldova to appoint a candidate for the position of prime minister. The notification was submitted by PSRM when President Sandu had not yet nominated a candidate for head of government, and when a current of opinion emerged among certain civic activists (also supported by some politicians) who asserted that, because the Constitution does not stipulate the term for appointing the candidate for head of government, the president should wait for 3 months from the resignation of the Chicu government in order to meet the conditions for the dissolution of the parliament. The Constitutional Court responded to this filing on 2 February, ruling that it was inadmissible for examination on the merits because the authors had insufficiently argued the reasons for the complaint.

After the February 11 attempt to vote for the government in parliament, PSRM deputies V.Bolea, Gr.Novac, A.Suhodolski went to the Constitutional Court again. This time the object of the notification was the verification of the constitutionality of the decree of the President of the Republic of Moldova of February 11, 2021 on the repeated appointment of the candidate Natalia Gavriiliță to the position of Prime Minister. PSRM also asked the Court to examine whether the head of state, by refusing to nominate the candidate of the parliamentary majority for the position of prime minister, violated the constitutional provisions and the obligation of impartiality and political neutrality. In this case, the Constitutional Court ruled on February 23 that the decree of the President of the Republic of Moldova of February 11, 2021, is unconstitutional. At the same time, the Court decided that the head of state must resort to new consultations with the parliamentary factions and declared inadmissible the request of the authors of the notification to examine the decision of President Maia Sandu regarding the refusal to nominate the candidate proposed by the parliamentary majority for prime minister. By this decision, the Constitutional Court practically decided to bring back the constitutional procedure for appointing the government at the moment of February 11, after the first attempt to vote for a cabinet of ministers was consumed in the parliament.

PSRM deputies V.Bolea, Gr.Novac, A.Suhodolski, V.Bătrîncea came with a new notification to the Constitutional Court on March 17, requesting the verification of the constitutionality of the decree of the President of the Republic of Moldova of March 16, 2021, on the nomination of the candidate Igor Grosu to the position of prime minister. PSRM justified its filing to the Court by the fact that the head of state, in appointing the candidate for prime minister, must consult deputies not only pro forma, but consider the option of the candidacy of the political majority in parliament, and not to nominate the candidate in a discretionary manner. In its decision of March 22, the Constitutional Court responded to this address by recognizing the constitutionality of the decree issued by President Sandu on March 16, 2021, on the appointment of the candidate for prime minister. The court reasoned in its decision that both the candidate's refusal to be appointed prime minister, as well as the fact that the parliamentary majority did not ensure that the candidate's agreement for her envisaged role was maintained, cannot be blamed on the head of state. Since the refusal of Mariana Durleșteanu to be nominated as a candidate for the position of prime minister, the parliamentary majority has ceased to exist, which allowed the President of the Republic of Moldova, in accordance with the constitutional norm, to appoint a candidate for the position of Prime Minister, Igor Grosu.

However, in the argumentative part of the judgment, the Court specified that, according to the Constitution, at the expiration of the term provided for the election of the government, in case of dissolution of the parliament, consultations between the President of the Republic of Moldova and the parliamentary factions must take place (art.85 paragraph (1)), during which the absolute parliamentary majority will have the opportunity to address the issue of government investment, thus balancing the discretion of the president in appointing the candidate for prime minister.

On 24 March, the day before the request for the vote in the parliament by the candidate for Prime Minister Igor Grosu, PSRM deputies V.Bolea, A.Suhodolski filed an appeal with the Constitutional Court. This time the PSRM's complaint had a certain dose of absurdity because they asked the Court to examine the review of the constitutionality of the presidential decree signed two months ago (January 27) on the appointment of Natalia Gavriliță as a candidate for prime minister, on the grounds that the document was published in the Official Gazette only on February 26. If successful, this filing would have cancelled the first attempt to elect the government by the parliament, as the Socialists were trying to invent legal pretexts not to meet all the circumstances that could lead the Constitutional Court to decide that the legislature can be dissolved. Predictably, the Court declared this referral inadmissible on April 1 on the grounds that the contested decree had been exhausted.

The outcome of the request of the Constitutional Court to mediate the political-institutional conflict was the ruling of April 15, given to the filing of the President of the Republic of Moldova of March 29, 2021, regarding the finding of the circumstances for organizing early parliamentary elections. In its opinion of April 15, 2021, the Court found as a circumstance that justifies the dissolution of the Parliament of the Republic of Moldova of the 10th legislature, the impossibility of forming a government in accordance with the provisions of Article 85 paragraphs (1) and (2) of the Constitution. In other words, the Constitutional Court in its decision ruled according to the formal side of the Constitution, establishing that the 3-month term for the election of the government expired in relation to the number of requests (at least two) for government investment in parliament. The Court reasoned that its control does not extend to establishing the opportunity to dissolve parliament and that it does not assess the viability of the legislature that failed to meet constitutional requirements to invest the government, and that the President of the Republic of Moldova has the power to dissolve the legislature after consulting the parliamentary factions if the circumstances that justify the dissolution of the parliament provided in art.85 of the Constitution are met.

It is necessary to mention that for this opinion only three of the five judges of the Constitutional Court ruled and that there was a separate opinion (Vladimir Țurcan) and a separate dissenting opinion (Serghei Țurcan). Judge Vladimir Țurcan considered that the decision of the Court was a strictly literal and fragmented interpretation of the Constitution, which contradicts the logic and the constitutional spirit. Judge Serghei Țurcan argued the dissent with the Court's decision by the fact that the parliament is the institution that has the powers to elect and dismiss a government, the main role of the President of the Republic of Moldova is to contribute to the formation of an effective government.

Although the Constitutional Court has been in high demand since the beginning of 2021 in order to mediate the institutional conflict between the presidency and the majority in the parliament, the Court has managed to take balanced legal decisions. Despite all the

pressures to which it was subjected, especially from the PSRM and the leader of the Socialists, Igor Dodon, the Constitutional Court had the capacity to maintain its legal neutrality, its decisions being in accordance with the Constitution and constitutional jurisprudence. The decision of April 15 was a complicated one to take, as evidenced by the 3 to 2 votes, which established the conditions for organizing early parliamentary elections. Between the letter of the Constitution (expiration of the 3 months compared to two attempts to elect the government in the legislature) and the constitutional spirit (the existence of a formalized majority in parliament), the Court preferred the first option to untie the political-institutional deadlock at the beginning of 2021.

Conclusions

The decision of the Constitutional Court of April 15, 2021, marked the end of a stage of political confrontation between the presidency and the parliament at the level of higher institutions of the state, and between PAS and PSRM-“Șor” Party-“For Moldova” Platform at the level of political parties. On the one hand, it was the outcome of the stage of the political-institutional conflict in the Republic of Moldova between the presidency and the parliament. On the other hand, the political dispute between President Maia Sandu, supported by PAS, and the Dodon-Șor-Plahotniuc triumvirate, which stands behind the PSRM-“Șor” Party-“For Moldova” Platform formations, has passed into another phase.

Although during this political-institutional conflict the Constitutional Court took balanced decisions, the decision of April 15, by which the Court “gave the green light” to the head of state to dissolve the parliament, provoked a disproportionate counter-reaction of Igor Dodon and PSRM, who accused President Sandu and the three judges, who ruled in favor of this decision, of the usurpation of power in the state. For the time being, the President of the Republic of Moldova cannot sign the decree dissolving the parliament because a state of emergency is introduced to combat the pandemic, during which the legislature cannot be dissolved (art.85 paragraph (4)).

Further political developments in the Republic of Moldova depend on the PSRM – will it comply with the decision of the Constitutional Court or will it challenge it without further recognition? If the first scenario is followed, then the institutional procedure for holding early parliamentary elections will be triggered. In this case, a turbulent period awaits us, determined by the organization of the electoral process, but with an (unguaranteed) chance of institutional cleansing of the oligarchic elements after the early parliamentary elections. If PSRM, for political reasons and party and group interests, perseveres in not recognizing the decision of the Constitutional Court, continuing to insist on the election of a government, then the Republic of Moldova will reach international isolation. Following the decision of the Constitutional Court of April 15, and the subsequent decree of the head for the dissolution of the parliament, any government elected by the current legislature will be illegitimate and illegal, with all the negative consequences for the Republic of Moldova.