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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Functioning of democratic institutions in Moldova

Information note by the co-rapporteurs on their fact-finding visit to Chisinau (5-6 April 2010)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 19 May 2010.

1. Introduction

1. On 17 March 2010, the Monitoring Committee held an exchange of views on the implementation of Resolutions 1666 and 1692 (2009) on the functioning of democratic institutions in Moldova. On that occasion we informed the committee of recent developments in Moldova, namely the fact that, since the resolutions were adopted, the institutional crisis in Moldova has continued after Parliament blocked the election of the President of the Republic. We also took note of the outcome of the discussions on the situation in Moldova within the European Commission for Democracy through Law (Venice Commission) at its 82nd session (12-13 March 2010). In the light of recent political developments, the committee asked us to undertake a fact-finding visit to the country.

2. We therefore visited Moldova on 5 and 6 April 2010 to meet the main political players and consider possible ways out of the current crisis. The programme of our visit is appended hereto. We wish to thank the Moldovan parliamentary delegation for their help in organising the programme, and the Council of Europe office on site. We would also like to thank the ambassadors of the Council of Europe member states whom we met and our colleagues of the OSCE office and the European Commission delegation in Moldova for the full and helpful briefing given before our official visits.

3. In this information note we would like a) to take stock of the key political developments that have occurred since the adoption of Resolutions 1666 and 1692 (2010); b) to summarise the positions of the different political players and stakeholders concerning possible ways out of the current crisis situation; and c) to make some recommendations to Moldovan political players in order to facilitate dialogue.

4. We intend to prepare shortly a comprehensive report on the implementation of Resolutions 1666 and 1692 on the functioning of democratic institutions in Moldova. This information note is merely a summing up of the facts and the preliminary conclusions of our April 2010 visit. We reserve the right to make a more comprehensive analysis in the near future.

2. Political developments since the adoption of Resolutions 1666 and 1692 (2010)

2.1 Presidential election

5. The election of the President of the Republic was in two rounds. The first attempt to elect the President took place on 10 November 2009. It failed because the members of the Communist Party did not take part in the vote. The candidate put forward by the majority coalition (the President of the Democratic Party, Mr Lupu) obtained 53 votes (the number of votes required under the Constitution is 61).

6. The second attempt took place on 7 December after protracted negotiations between the majority and the Communist Party. The second attempt also failed, Mr Lupu having obtained only 53 votes from the members of the majority coalition. Once again, the Communist Party did not take part in the vote.

7. Four members of the Communist Party (Mr Turcan, Mr Stepaniuc, Mr Guznac and Ms Belchenkova) resigned from the party in protest. They are now independent MPs. Mr Turcan was particularly active during the negotiations, calling on the Communists MPs to participate in the election and support Mr Lupu's candidature. Mr Turcan is currently leader of the "independents" group in Parliament. He has since become leader of a new centre-left party, "Moldova Unita" ("United Moldova").

8. Three MPs elected on the list of the "Moldova Nostra" Alliance party, including Mr Untila, former Vice-President of the party, have also left their party since December 2009. They have joined the independents group headed by Mr Turcan.

9. However, it should be noted that the current institutional crisis is being managed. Moldova has a functioning Parliament and Government despite a situation of severe economic crisis. Moreover, the Government has already launched some very ambitious projects for reforms needed to help the country progress towards European integration. These reforms are in the right direction and enjoy the full support of the international community. For our part, we also support them and encourage Mr Filat's Government to continue to make progress.

2.2 *Venice Commission's opinion on the interpretation of the provisions of the Moldovan Constitution governing the election of the President and the dissolution of Parliament*

10. In December 2009, the Constitutional Court asked the Venice Commission to give an opinion on a case brought by a group of Communist Party MPs concerning the interpretation of the articles of the Constitution relating to the election of the President and the dissolution of the Parliament of Moldova. At its 82nd plenary session, the Venice Commission adopted an opinion for the Constitutional Court of Moldova in order to give its advice on this matter.

11. In the Venice Commission's opinion, if Parliament fails to elect the President of the Republic after two successive attempts, it must be dissolved. However, to maintain institutional stability, the dissolution of Parliament must take place, at the earliest, within one calendar year of the last dissolution which occurred on 16 June 2009. This means that the earliest date for the dissolution of Parliament would be 16 June 2010. However, the Commission stresses that, after that date, dissolution should take place within "a reasonable timeframe"; this expression still needs to be interpreted.

3. Positions of the different political players and stakeholders concerning possible ways out of the current crisis situation

3.1. *Venice Commission's proposals*

12. After protracted discussions with the main political players, the Venice Commission decided on 15 March 2010 to make public its recommendations concerning possible ways out of the current institutional crisis. In a press release, the Venice Commission made a proposal concerning the approach to constitutional reform. This proposal is in keeping with the requirements of the current Constitution. The proposed approach is as follows:

- a proposal to revise Article 78 of the Constitution, making it easier to elect the President of the Republic, should be decided on as soon as possible by the leaders of the political parties represented in Parliament. Representatives of the Council of Europe and the European Union could be witnesses of such an agreement;
- the proposal could provide for a smaller majority in Parliament for the election of the President starting from the third round of voting or direct election of the Head of State by the people;
- the proposal should be approved by the current Parliament as soon as possible after its validation by the Constitutional Court; however, it would not take effect until a new Parliament is elected;
- Parliament should be dissolved after this vote. This would be in keeping with the requirement to dissolve Parliament within "a reasonable timeframe", i.e. the timeframe necessary for Parliament to adopt the amendments to the Constitution in order to avoid the repetition of similar crisis situations in future;
- a more comprehensive revision of the Constitution could be undertaken during the term of office of the newly elected Parliament.

13. It should be remembered that, in Resolution 1692 (2009), the Assembly expressed the view that "*once the new state institutions are put in place, they should, with the active assistance of the Council of Europe, immediately begin working on a far-reaching institutional and legislative reform, including constitutional amendments where relevant, in order to establish genuine democratic safeguards against similar situations of institutional and political deadlock*".

14. We therefore feel that, on the substance, the Venice Commission's proposals are consistent with the Assembly's recommendations. These proposals have also been supported by the European Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR), which have sent observations to this effect to the Prime Minister of Moldova, Mr Filat.

3.2. *Proposals by the various political parties in the Moldovan Parliament*

15. During his official visit to Moldova on 22-25 March 2010, the President of the Assembly called upon all political players to come to the negotiating table in order to reach agreement on a procedure to follow and on amendments which should be made to the Constitution to break the present institutional deadlock, in the light of the Venice Commission's recommendations. In consequence of the President's visit, the Moldovan Parliament set up an ad hoc committee on the preparation of the amendments to Article 78 of the Constitution. The committee, made up of representatives of all the political parties represented in Parliament, is chaired by the Chair of the Parliament's legal affairs committee, Mr Ion Plesca ("Alliance Moldova Nostra").

16. During the visit of the co-rapporteurs on 5-6 April 2010, the delegation met Mr Ghimpu, Acting President, Speaker of Parliament of the Republic of Moldova, Mr Filat, Prime Minister of the Republic of Moldova, Mr Diacov, Honorary President of the Democratic Party from Moldova, Mr Urechean, First Deputy Speaker of Parliament, Chairman of the "Alliance Our Moldova" Party, Mr Turcan, leader of the parliamentary group of independent members, Mr Petrenco, International Relations Officer of the Party of the Communists of the Republic of Moldova, the members of the working group on the constitutional reform, the members of the Ad Hoc Committee on amendments to Article 78 of the Constitution, the members of the Parliamentary Inquiry Committee to elucidate the causes and consequences of the events of April 2009, as well as the Prosecutor General, Mr Zubco.

17. In particular, the members of the Ad Hoc Committee on amendments to Article 78 of the Constitution, belonging to the majority or the opposition, stated their determination to work together within it to reach an agreement. However, we gained the impression that the negotiations in the committee did not really begin on firm foundations. Indeed, before real negotiations commenced, the Communist Party and the "Alliance for European Integration" drew up and transmitted to the Constitutional Court their own proposed amendments to Article 78. The Constitutional Court examined the two proposals on 29 April and 4 May 2010. The Court held that the two proposals were in accordance with the present Constitution. The negotiations in the ad hoc committee must now be developed around these two proposals which, however, are diametrically opposed.

18. The Moldovan Communist Party proposes retaining the system of the President of the Republic being elected by the Parliament, though adding a third election round and progressively reducing the required majority. Thus the required majority for the first round will be 61 votes, 57 votes for the second round, and an absolute majority will suffice to elect the President of the Republic at the conclusion of a third round of voting. If, after three rounds of voting, the Parliament does not succeed in electing the Head of State, the Acting President must dissolve Parliament within ten working days and early elections must be held within sixty days of Parliament's dissolution.

19. The "Alliance for European Integration", bringing together the Liberal Democratic Party, the Liberal Party, the Democrat Party and the "Alliance Moldova Nostra", proposes introducing direct election of the President of the Republic. The motion for amendments tabled by the Alliance only concerns Article 78 of the Constitution. However, we note that certain other more technical changes to the letter of the Constitution could prove necessary, owing to the fact that altering the mode of election of the Head of State could necessitate adjustments to the provisions governing relations between different State organs.

20. Under the present Constitution, Parliament cannot put proposed amendments to the vote until a period of at least 6 months has elapsed. The required majority for the enactment of a law making amendments to the Constitution is 67 votes (2/3 of the seats). It should be remembered that neither the "Alliance for European Integration" nor the Communist Party commands a sufficient majority at present to pass constitutional amendments. Negotiations between the parties are thus plainly necessary and urgent.

3.3 Other proposals concerning the modalities of resolving the current institutional crisis

21. However, it should be noted that, in parallel with current parliamentary debate on the two proposals which were formally tabled, certain political players put forward alternative solutions that might be applied, if the current negotiations between political parties do not succeed.

22. The first alternative would be the adoption of an altogether new Constitution. Moreover, a draft of a new Constitution was recently produced by a working group of legal experts set up at the behest of the Acting President, President of Parliament Ghimpu. During our visit, we met the members of the working group and were handed the text of the draft Constitution. We note that the draft provides for direct election of the President of the Republic by Parliament. But transitional provisions are proposed: the President of the Republic will be directly elected only from 2013 onwards. Meanwhile, the present Parliament would continue to function until the expiry of its mandate (viz. July 2013) and would hold a new three-round election of the President of the Republic with a required majority progressively diminishing from 61 votes at the first round to an absolute majority at the second round and a simple majority at the third round. According to the proposed plan, the Constitution would be adopted by the present Parliament then submitted to referendum for approval.

23. The second alternative would involve submitting to referendum a proposal to amend Article 78 of the Constitution, thereby introducing direct election of the President of the Republic.

24. At the moment, as long as negotiations are proceeding in Parliament on the adoption of amendments to Article 78, we should not take a position on either of these alternatives. It is essential, we find, to allow

whatever time is necessary for these negotiations and to take advantage of every possibility for compromise. We reiterate our appeal to all political players to participate constructively in these negotiations, showing the necessary political will to come to an agreement.

25. If, however, a successful conclusion to the present negotiations proves impossible, the Moldovan political players will need to seek another alternative to extricate themselves from the current institutional crisis, by availing themselves fully of the Venice Commission's expertise. Whichever alternative solution might be found in due course, it should in our opinion meet the following criteria:

- according to the principle of legality, this solution should be adopted under arrangements and procedures in keeping with the present Constitution, so as not to create a dangerous precedent;
- this solution must be fully consistent with the principles of the Council of Europe and with the commitments Moldova has taken upon accession.

3.4. The present dilemma

26. Considering that the stances of the "Alliance for European Integration" and the Communist Party on the amendments to Article 78 of the Constitution are diametrically opposed, negotiations on the actual amendments seem extremely difficult. Both options have been declared in conformity with the Constitution by the Constitutional Court. Moreover, the Venice Commission in its proposals raised the two possible alternatives (namely, election by the Parliament with a reduced majority or direct election). Therefore it now rests with the political parties in the Moldovan Parliament to take a decision on the amendments, and we call upon all parties to shoulder their political responsibilities and enter into constructive negotiation.

27. Clearly though, the failure of the negotiations is a scenario to be averted at all costs. As indicated above, the present Parliament must be dissolved and the dissolution must take place within "a reasonable time", after 16 June 2010. It would be damageable to dissolve the present Parliament and hold early new elections without the Constitution being amended and effective safeguards established against recurrence of the present crisis. Given the present balance of political forces, in fact, a fresh election could have the same results within the Parliament and none of the political forces would be capable of gaining the number of votes needed to elect the President. The country could then be caught in a vicious circle of successive elections and dissolutions of Parliament. In the interests of the country, a solution must now be found promptly.

4. The appointment of members of the Moldovan parliamentary delegation to the Parliamentary Assembly on behalf of the Party of communists

28. On 28 December 2009, Parliament held a discussion in plenary on the list of members of the Moldovan delegation to the Parliamentary Assembly. According to the political agreement reached at the end of the negotiations, each parliamentary group would have a seat as member on the delegation. Substitute seats would be allocated according to the size of the political groups. The Communist Party, being the largest group in Parliament, would thus have one representative's seat and 3 substitutes' seats. Mathematically, therefore, the political balance in the delegation would be respected.

29. The Communist Party put forward the candidatures of Mr Voronin as representative and Ms Postoico, Mr Petrenco and Mr Stoicov as substitutes. During the debate in plenary, members of the majority coalition proposed that Parliament should vote on each candidate separately, as had been the case in 2005, when the "Moldova Nostra" Alliance (in opposition at the time) had put forward the candidature of Mr Urechean as a member of the delegation.

30. Despite protests from the Communist MPs, Parliament went along with this proposal. Mr Voronin and Mr Petrenco failed to obtain the required majority. The delegation was therefore formed with two vacant seats (reserved for the Communist Party), which is not prohibited under the Assembly's Rules of Procedure. The Communist Party candidatures approved by Parliament were Ms Postoico and Mr Stoicov.

31. The Moldovan delegation's credentials were ratified by the Assembly at the start of its January 2010 part-session. Two members' seats remained vacant.

32. In protest, the Communist Party decided that none of its representatives would participate in the Moldovan parliamentary delegations to European organisations. We were also informed that the Communist Party was no longer taking part in the plenary sittings of Parliament. However, we note that Communist Party MPs are still working on committees, particularly the special committee of inquiry into the events of April 2009. An exception seems to have been made during the visit of the President of the Assembly, Mr

Çavuşoğlu, when the Communist Party MPs attended the plenary sitting to listen to the Assembly President's speech. Since then, they have apparently resumed their boycott of plenary sittings.

33. We would like to make two points regarding these developments. Firstly, the Assembly's Rules of Procedure are very clear on the question of the appointment of national delegations. According to Rule 6, it is for national parliaments to decide the procedure for appointing the members of their delegations (which must meet a certain number of criteria, particularly as regards fair representation of the political parties or groups present in parliaments and the need to ensure proper representation of members of both sexes). The credentials of the Moldovan delegation were ratified by the Assembly in January 2010. It is now for the Moldovan MPs themselves to reach an agreement on the composition of the delegation in order to fill the two vacant seats reserved for the Communist Party. We invite our Moldovan colleagues to pay close attention to the work of Assembly's Committee on Rules of Procedure, Institutional Affairs and Immunities in preparation for the report on fair representation of the political parties or groups in member state parliaments on delegations to the Parliamentary Assembly.

34. Secondly, we do not think that boycotting the plenary sittings and activities of the Parliamentary Assembly is an effective means for any opposition party to defend its rights. Participation in the functioning of Parliament is an essential element of the democratic process.

35. We note that, on 7 May 2010, Parliament approved the appointment of Mr Voronin and Mr Petrenco as members of the parliamentary delegation to the Assembly. We welcome this development and call on all the members of the Moldovan delegation to the Assembly to participate actively in its work, including in the Monitoring Committee, in the manner provided for in the Rules of Procedure.

5. Preliminary conclusions and recommendations

36. Moldova is still undergoing a situation of serious institutional crisis after the failure of the elections held to choose a President of the Republic in the Parliament elected on 29 July 2009. This institutional crisis is aggravated by a difficult political context in that the positions of the various political forces in the Parliament are diametrically opposed. Now, it is imperative that this state of crisis be swiftly resolved. The country cannot function with the current institutional deadlock until the Parliament's term of office ends (July 2013).

37. Moldovan citizens deserve to have democratic institutions that operate normally as well as a stable political situation, in order to continue progressing on the path of European integration. The reforms needed to fulfil the undertakings made by Moldova upon its accession to the Council of Europe 15 years ago now must continue, and all the political forces and State institutions must concentrate on this task without delay.

38. In this context, we urge the parties of the majority (banded together in the "Alliance for European Integration") and the Communist Party to enter into constructive negotiations, showing the necessary political will to come to an agreement, on amendments to Article 78 of the constitution in order to facilitate the election of the President of the Republic and establish effective safeguards against the situations of institutional deadlock like the present one, while fully availing themselves of the Venice Commission's expertise.

39. If, however, it proves that the current negotiations cannot resolve the institutional crisis, the Moldovan political players should then seek an alternative solution. This possible solution should be in full conformity to the provisions of the present Constitution and follow the recommendations of the Venice Commission. The Assembly will need to monitor this process closely, and the Monitoring Committee's rapporteurs place themselves at the disposal of the Moldovan authorities to make a field visit shortly in aid of political dialogue.

APPENDIX

Programme of the fact-finding visit to Chisinau (5-6 April 2010)

Mrs Josette DURRIEU, Senator
Mr Egidijus VAREIKIS, member of Parliament
Mr Artemy KARPENKO, Secretary of the Monitoring Committee

Monday, 5 April 2010

- 17:45 Meeting with NGO representatives:
- Mr Vlad LUPAN, Human Rights Institute, Moldova
- Mr Victor CHIRILA, Association for Foreign Policy
- 19:00 Working dinner with Ambassadors of Council of Europe member states

Tuesday, 6 April 2010

- 08:00 Working breakfast with the representatives of the European Union and OSCE
- 09:00-09:45 Meeting with H.E. Mr Mihai GHIMPU, Acting President, Speaker of Parliament of the Republic of Moldova
- 10:00-10:45 Meeting with Mr Vlad FILAT, Prime Minister of Moldova
- 11:00-11:45 Meeting with Mr Dumitru DIACOV, Honorary President of the Democratic Party from Moldova
- 11:50-12:35 Meeting with Mr Serafim URECHEAN, First Deputy Speaker of Parliament, Chairman of the "Alliance Our Moldova" Party
- 12:45-13:50 Working lunch with the members of the Moldovan delegation to the Assembly
- 14:00-14:45 Meeting with Mr Vladimir TURCAN, leader of the parliamentary group of independent members
- 14:55-15:40 Meeting with Mr Grigore PETRENCU, International Relations Officer of the Party of the Communists of the Republic of Moldova
- 15:50-16:35 Meeting with the members of the working group on the constitutional reform
- 16:45-17:30 Meeting with the members of the Ad Hoc Committee on amendments to Article 78 of the Constitution
- 17:40-18:25 Meeting with the members of the Parliamentary Inquiry Committee to elucidate the causes and consequences of the events of April 2009
- 18:35-19:20 Meeting with Mr Valeriu ZUBCO, Prosecutor General
- 19:30-20:00 Meeting with H.E. Mr Mihai GHIMPU, Acting President, Speaker of Parliament of the Republic of Moldova
- 20:00-20:30 Joint press conference of H.E. Mr Mihai GHIMPU, Acting President, Speaker of Parliament of the Republic of Moldova, and the co-rapporteurs of the Monitoring Committee of the PACE
- 20:45 Working dinner with H.E. Mr Mihai GHIMPU, Acting President, Speaker of Parliament of the Republic of Moldova