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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 recent developments¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 22 June 2010.

I. Introduction

1. On 19 May 2010, the Monitoring Committee held an exchange of views with the members of the Moldovan delegation to the Parliamentary Assembly on the main conclusions of our fact-finding visit on 5 and 6 April 2010 and on recent developments concerning the negotiations for constitutional reform. Following the exchange of views, the Committee made our information note public (AS/Mon(2010)22rev.).

2. Further to the exchange of views, in this new information note, we wish to recall the main conclusions of the visit of 5-6 April 2010, take stock of the latest developments regarding the constitutional reform, as well as make some recommendations for the future.

II. Overview of the main conclusions of the visit of 5-6 April 2010

3. During our visit of 5-6 April 2010, we 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 of 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.

4. In our discussions, we encouraged the parties to fully engage in constructive negotiations, showing the necessary political will to come to an agreement, on various proposals of amendments to Article 78 of the Constitution, or to find another possible solution consisting in adopting broader constitutional changes, with a view to promptly resolving the current institutional crisis. We stressed that it was imperative that this state of crisis be swiftly resolved and that the country cannot function with the current institutional deadlock until the Parliament's term of office ends (July 2013). 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.

5. At its meeting of 19 May 2010, the Monitoring Committee supported our recommendations and encouraged the majority coalition and the opposition to swiftly find a solution to the current institutional crisis. At the same time, we clearly indicated that, if it proves that the current negotiations cannot resolve the institutional crisis, the Moldovan political players should then seek an alternative solution.

6. Today, we note with satisfaction that our recommendations contributed to the political debate and helped reach a solution to the ongoing institutional crisis.

III. Current status of negotiations on the adoption of amendments to the Constitution

7. At the Monitoring Committee's meeting on 19 May 2010, our Moldovan colleagues informed us that it emerged from the discussion in the Ad Hoc Committee on amendments to Article 78 of the Constitution that the positions of the Communist Party and of the Alliance for European Integration were very different, particularly regarding the method of election of the President of the Republic. It may be recalled that two legislative initiatives have been tabled: the Communist Party proposes that the election of the President by Parliament be retained, introducing a third round of voting and progressively lowering the majority stipulated for election; the Alliance for European Integration proposes direct election of the President of the Republic by the people.

8. It became clear that a compromise between these two proposals could not be reached if the two parties stand firmly by their positions. Let us remember, the Constitutional Court held that both proposals were in accordance with the present Constitution. Nor did the Venice Commission express a preference about the method of election of the President.

9. In this context, it appeared that the holding of a referendum on the method of the presidential election could bring elements of solution to the present crisis. When negotiations between political forces cannot bring results, the Moldovan citizens themselves must directly express their views on the future development of democratic institutions of their country.

IV. Constitutional Court decision of 5 May 2010

10. The recent opinion of the Constitutional Court confirms that it is possible to organise a referendum in order to consult the voters on the method of the election of the President. On 5 May 2010, the Constitutional Court of Moldova delivered an opinion on the interpretation of Articles 141, 142 and 143 of the Constitution of Moldova concerning the procedure for adopting amendments to the Constitution, in response to an application by a group of members of Parliament. The questions put to the Court were to ascertain:

- whether the provisions of Articles 141-143 applied solely to cases of amendments to the Constitution or whether the procedure also covered the cases of adopting a new Constitution or repealing certain provisions of the present Constitution;
- whether, under the provisions of Articles 141-143, power to adopt the new Constitution belonged solely to Parliament;
- if there were a different procedure for adopting a new Constitution, whether it should correspond to the mechanisms and time limits prescribed by Articles 141-143 of the Constitution;
- if a new Constitution were submitted to referendum for approval, whether the draft Constitution should be adopted before or after the referendum by Parliament by a two-thirds majority;
- whether Article 141 of the present Constitution authorised the President of the Republic to hold a referendum on amendments to the Constitution or on the adoption of an altogether new Constitution.

11. Referring to its previous decisions, the Court declined to consider the application on the merits since the Moldovan Code of Constitutional Justice forbids the Constitutional Court to deliver two interpretative opinions on the same question. However, the Court wished to specify a number of principles deriving from its earlier opinions with which the legislator and the key political players must comply in the matter of amendments to the Constitution.

12. According to the Constitutional Court's finding, law no. 1115-XIV of 5 July 2000 introducing amendments to the Constitution provides that the President of the Republic may no longer submit to referendum questions of amendments to the Constitution. At the same time, the President of the Republic may initiate a consultation of the citizens (by referendum) on the major issues which the nation must face.

13. It transpires from the opinion that under Articles 66 b) and 75 1) of the Constitution, Parliament has power to initiate a referendum on the most important matters of society and state including revision of the Constitution. Under the terms of Article 75 2) of the Constitution, "decisions adopted pursuant to the results of the national referendum have a supreme legal power".

14. Finally, the Court made clear that the holding of national referenda, including referenda on amendments to the Constitution, was governed by the Election Code and the provisions of Articles 75, 141, 142 and 143 of the Constitution. The proposal to hold a referendum on constitutional revision must firstly be submitted to the Constitutional Court. The Court must deliver its opinion within 10 days. Subsequently, the proposal and the Court's opinion are transmitted to Parliament which considers them and takes the decision.

15. The foregoing Constitutional Court decision is very important because it confirms the power of Parliament to avail itself of a referendum as part of the constitutional revision process.

V. Opinion of the Venice Commission on the amendments to the Election Code of Moldova

16. The opinion of the Constitutional Court adopted on 5 May 2010 has to be examined in conjunction with the opinion of the Venice Commission on amendments to the Electoral Code.

17. This later opinion was approved by the Venice Commission at its 83rd plenary session on 4 June 2010. In the Commission's opinion, the proposed amendments improve the Election Code and enhance the quality and integrity of the election process. We are especially glad that the proposed amendments take into account the earlier recommendations of the Venice Commission and the Assembly concerning electoral thresholds and formation of electoral blocks, lifting of the disqualification from election to Parliament imposed on Moldovan citizens also holding the nationality of another country, and the introduction of a national voter register and the cases where supplementary voters' lists are to be used at the poll. We therefore call upon the Moldovan authorities to follow to the letter the Venice Commission's recommendations on these essential points. At the same time, we note that further improvements could be made to the Election Code and that not all the recommendations of the Venice Commission have been implemented in the proposed amendments. We call upon the authorities to give these important recommendations due consideration in the legislative process, so that they too may be taken into account.

18. We stress that the adoption of the proposed amendments is an important part of the reform of the Moldovan election system. The amendments will need to be adopted with all dispatch in order to lay a firm legal foundation for the organisation of the forthcoming parliamentary elections.

19. As to the question of holding a referendum on constitutional amendments, the Venice Commission thought this was a matter for final decision by the Moldovan democratic institutions.

VI. The way towards resolving the current institutional crisis

20. In the light of the opinion of the Constitutional Court, after long consultations, the Alliance for European Integration decided, on 3 June 2010, to proceed with the organisation of a referendum on the amendments to Article 78 of the Constitution (and the introduction of direct election of the President of the Republic). On the basis of the results of the referendum, corresponding amendments will be adopted by Parliament which will then be dissolved and new parliamentary and presidential elections held in autumn 2010.

21. We note that after the announcement of this decision, the Communist Party also went back on its position. At a press briefing held on 4 June 2010, its leader Mr Voronin declared that his party was dropping its agenda of protests and was ready to support the adoption in Parliament of amendments to Article 78 of the Constitution introducing direct election of the President of the Republic.

22. In reply to this declaration, the Alliance for European Integration leaders said that they did not intend to reverse their decision to hold a referendum to choose the manner of election. We consider this decision wise. After long-standing disagreements and mutual accusations between the majority coalition and the opposition on the issue, the voters themselves must be afforded the possibility of expressing their opinion.

23. We are glad that this solution follows the line of our discussions with key political stakeholders as well as corresponds to the conclusions of the debate in the Monitoring Committee. We note that the Secretary General of the Council of Europe also supported this solution. We now expect the key political players in Moldova, belonging to the majority and to the opposition, to swiftly put an end to the current crisis.

VII. Recommendations for the future

24. As we pointed out in our information note of May 2010 (AS/Mon(2010)22rev.), it is imperative that the present institutional crisis be swiftly resolved. Moldova cannot function with the current institutional deadlock until the Parliament's term of office ends (July 2013). It is therefore urgent to find a democratic solution to end the crisis.

25. In the light of the recent developments, it seems to us that holding a referendum on the choice of the presidential election procedure is the sole possible solution. This would give the present political class a clear indication of the voters' choice. We therefore take note of the decision of the Alliance for European Integration to carry out such a referendum before dissolving Parliament and holding new elections as prescribed by the Constitution. This decision bears witness to the democratic maturity of the Moldovan political class and its resolve to govern the country democratically.

26. And now that all Moldovan political forces focus on the preparation of the referendum and of the new elections, it is necessary to improve the legislative framework by adopting amendments to the Election Code. At the same time, it is necessary to create a propitious environment for holding free and democratic elections in line with the undertakings taken upon accession to the Council of Europe. The Parliamentary Assembly will follow this process closely and observe the referendum and the elections. The Council of Europe will support the Moldovan people in their endeavours and key historical moments for their country.