

LEGAL REGIME OF THE MOTION OF CENSURE, PARLIAMENT'S MEANS OF CONTROLLING THE GOVERNMENT'S ACTIVITY

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Abstract: The Government acts in its full power to carry out its duties, parliamentary control being exercised only within the limits of constitutional provisions and only by using the ways and procedures that the Constitution provides to Parliament. The Constitution, recognizing the existence of political responsibility, merely regulates it from a procedural point of view so as to limit as far as possible any possibility of committing abuses by Parliament by adopting a motion of censure and to ensure guarantees of stability for the Government.

Keywords: ministerial liability, Government, Parliament, motion of censure, Constitution.

Most often, the public law treaties shall not stop on the meaning of the concept of political liability, approaching it as a concept on which there is the consensus of theorists and always referring to it in relation to a certain institution: Government, President and Parliament.

Without deepening an approach that especially refers to the general theory of law, it is interesting to remember the opinion of an author in the field, according to which within the types of legal liability we identify also the political legal liability¹.

Not least, in literature the terminology is diverse and nuanced, clarifying it being the first step in understanding the political liability of the government's institution.

The Romanian Constitution uses the concept of political liability of the Government in art. 108, having as marginal title the "Responsibility of the Government's members", and in art. 113, on "Engaging Government liability".

The doctrine referring to political institutions often uses the term liability, with the explanation that the use of this term is simply the result of the translation from French literature of the appropriate term or by making a subtle distinction, it

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¹ Nicolae Popa, *General theory of law*, Bucharest, Actami Publishing House, 1996, p. 323.

is shown that “Liability requires an active reporting of the Citadel: by its authorities to the agent of social action” (in this case of the Parliament to the Government), while liability appears as an active reporting of the “agent of social action” to the citadel, in terms of its rules and authority (in this case, the Government in front of the Parliament)².

These two reporting situations are illustrated by the two above-mentioned articles of the Constitution, the first one referring to the active attitude of the Parliament, a concept which is more clearly detailed by art. 112 concerning the censure motion and the second one referring to the Government’s action of engaging its liability in front of the Parliament, from its own initiative.

The Constitution introduces in art. 108(3) the “ministerial liability” phrase, referring to the law which must regulate the liability cases and the related punishments. The concept of “motion” was introduced in the French conditional vocabulary in the year of 1946 but the “motion of censure” phrase was applied only in 1958.

The scope of ministerial liability exceeds the content of governmental liability, by including in one opinion³ also the responsibility of other persons, who, without being members in the Government, hold titles assimilated with the position of minister, the author showing that the law on ministerial liability must also regulate their relative liability.

Political liability always refers to decision making, whether it is taken by the Government or it comes from the Parliament. “The ministerial liability is not based on the idea of an imputable act or risks, although it does not exclude them, but on the idea according to which the governors are under the service of the governors”. Governors are directly liable in front of the electoral body during elections and indirectly in front of the Parliament, by the means provided by the Constitution. Although in both cases we are talking about a political liability, the distinction refers to the fact that the first one is an extra-judicial *de facto* liability, and the second one is an administrative-disciplinary *de jure* liability⁴.

All these clarifications concerning the concepts used in this domain follow conceptual limitations and clarifications. Most often, the conceptual rigour gives way to analyzing the practical aspects of the researched issue, without impinging on the correct understanding of the way in which the liability institution operates, the liability and responsibility terms being used with the same meaning.

The motion of censure is the supreme expression of the parliamentary control exercised on the Government.

² Antonie Iorgovan, *Treaty of administrative law*, vol. II, second revision, Bucharest, Nemira Publishing House, 1996, p. 501.

³ Mircea Preda, *The authorities of public administration. The Romanian constitutional system*, Bucharest, Lumina Lex Publishing House, 1999, p. 138.

⁴ Dan Claudiu Danişor, *Constitutional law and political institutions*, vol. 1, Bucharest, Scientific Publishing House, 1997, p. 384.

The motion of censure is the final act, the most drastic consequence of the control exercised by the Parliament on the “executive”. It can be commonly represent the natural outcome of exercising the other parliamentary control means concerning the Government’s activities – questions, inquiries, parliamentary investigations, debates on certain motions concerning the Government’s activity, etc. The censure motion is symmetrically opposed to the vote of confidence because by establishing it, the Parliament withdraws the trust granted to the Government at investiture⁵.

Therefore, although the Government is subject to the vote of confidence from the Parliament, this vote is not granted once for all. The motion of censure is, in most cases, the work of the opposition trying, despite the results of the elections, to form a new parliamentary majority in virtue of which a new Government is formed, with another political compeence⁶.

Our constitutional regime does not allow the support of an individual motion of censure which can end the function exercising of a certain member of the Government; this causes that the acts and facts of a member can be imputed to the entire governmental team, if the Prime Minister does not propose the President of Romania to revoke that member of the Government whose political or legal behavior can trigger the support of a motion of censure⁷.

Despite the invoked reasons, a conflict between legislative and executive is created, fact that leads to the motion of censure.

Parliamentary procedure regarding the initiation and enactment of a motion of censure

The motion of censure can be initiated by at least one quarter of the total number of deputies and senators and it is to be communicated to the Government at the submittal date⁸.

The debate of the motion of censure is to take place at a new joint meeting, after 3 days from the date when the motion was submitted at the joint meeting of the two Chambers.

The regulation of the joint meetings establishes the rules of procedure applicable to the institution of the motion of censure. Therefore, the date and place of the joint meeting, together with the invitation to attend are to be communicated to the Government by the president of the Chamber of deputies, with 24 hours before the meeting takes places.

⁵ *Ibidem*, p. 142.

⁶ Ioan Vida, *Executive power and public administration*, Official Gazette Publishing House, Bucharest, 2004, p. 79.

⁷ *Ibidem*, p. 103.

⁸ According to art. 113 par. (2) Of he Romanian Constitution, revised.

After the motion of censure is presented by the deputy or senator appointed by the motion's initiators, the president ruling the joint meeting gives the word to the Prime Minister or, in case he does not attend the meeting, to the members of the Government which he represents, for presenting the Government's position.

Hereinafter, the president gives the word to the deputies and senators, as per the order of their taking the word.

After concluding the debates, the vote for the motion of censure starts. The vote is secret and expressed by using marbles. After counting the marbles the president announces the result of the vote which is recorded also in the report concluded for this purpose.

In case of vote of deputies and senators' majority, the Parliament, under the signature of the two Chambers, immediately informs the President of Romania regarding this situation, for appointing a candidate for the position of Prime Minister.

The Government is dismissed at the withdrawing date by the Parliament of the granted trust. The dismissed Cabinet fulfils only the documents necessary for the administration of public issues, until the members of the Government take the oath. The Constitution also provides certain limits regarding the initiation of a motion of censure. Therefore, if the motion of censure is rejected by the Parliament, the deputies and senators who signed it can no longer initiate, in the same session, a new motion of censure, except for the case when the Government undertakes the responsibility as per the provisions of art. 114⁹.

According to the provisions of art. 114 of the fundamental law, the Government can take responsibility in front of the Chamber of Deputies and Senate, during the joint meeting, in what concerns a certain program, a general political statement or a draft legislation. The Government is dismissed if a motion of censure submitted within 3 days after presenting the program, the general political statement or draft legislation was voted as per the conditions of art. 113. If the Government was not dismissed, the draft legislation which was submitted, amended or supplemented, depending on the case, with the amendments accepted by the Government, is considered as approved and the enforcement of the program or of the general political statement becomes mandatory for the Government.

The motion of censure has as purpose to organize a public debate on what concerns the overall politics of the Government, in order to dismiss it. According to professor Deleanu, the motion of censure is the procedure by which the Chamber of Deputies and the Senate jeopardize the political responsibility of the Government by blaming it and its related activity. By means of the motion of censure, the minority representing the opposition tries to become a majority. In this way, the motion of censure represents an attempt to reverse majority by substituting the actual majority with another one, eventually as result of new

⁹ Dan Claudiu Danişor, *Constitutional law and political institutions*, vol. 1, Bucharest, C.H. Beck Publishing House, 2017.

alliances between the parties of the Parliament, fact that can however have a contrary effect¹⁰.

The motion of censure can be initiated by the majority but if the Government can only rule with the trust of the Parliament, the parliamentary system “is analyzed as an opinion governing” and the sanction resulting from its political responsibility is the loss of power. By means of the motion of censure it can be also aimed a governmental crisis, which, as per the provisions of art. 89 par. 1 of the Constitution, leads to early elections.

Debating and enacting the motion of censure are based on the Government’s taking political liability towards the Parliament, as per the provisions of art. 108, par. 1 of the Constitution, The political liability of the Government in front of the Parliament represents a disagreement between the Government and the Parliament’s Chambers, having as consequence the loss of power.

The 2008–2012 governing is characterized by the abuse of the Government’s undertaking the political liability in front of the Parliament by legislative initiative, being a period during which it was attempted to overthrow the Government by enacting motions of censure with the purpose of the opposition to take over the power.

According to the provisions of art. 113 par. 2 of the Constitution, the motion of censure can be initiated by at least ¼ of the total number of deputies and senators. The motion is debated and voted during the joint meeting of the reunited Chambers.

According to the provisions of art. 78 of the joint meetings’ regulation, the motion of censure is submitted to the permanent offices of the two Chambers and is communicated in the same day to the Government by the President of the Chamber of Deputies. In maximum 5 days after the date of submittal, the motion of censure is provided by the initiator also to the plenary of the Chambers reunited for a joint meeting, and within 3 days after submittal it is to be debated and voted.

The motion of censure can be enacted only with the vote of the absolute majority. The vote is secret and expressed by marbles.

The dismissal of the Government by the Parliament by enacting a motion of censure leads to a governmental crisis, which can be resolved by investing a new Government. The prolongation of this crisis for a period higher than 60 days and after two failed attempts to form a new government can lead to the dissolution of the Parliament (according to the provisions of art. 89 par. 1).

The motion of censure provided by art. 113 of the Constitution and the challenged motion, regulated by art. 114 of the Constitution– comparative analysis

“The motion of censure provided by art. 113 of the Constitution and the challenged motion, regulated by art. 114 of the Constitution– comparative analysis” represents a comparative study between the two constitutionally regulated procedures.

¹⁰ Ion Deleanu, *Constitutional Institutions and Procedures – in Romanian and Comparative Law*, Bucharest, C.H. Beck Publishing House, 2006.

By analyzing the dispositions of art. 114 par. (2) of the revised Romanian Constitution, we find that, by this paragraph, it is regulated the procedure to dismiss the Government by means of a motion of censure, – motion which, in the doctrine, is named started or forced motion – which has as subject the program, the general political statement or the draft legislation for which the Government took responsibility.

By performing a comparative analysis of the constitutional regime applicable to the two procedures that can lead to the dismissal of the Office, – namely the motion of censure provided by art. 113 of the Constitution and the started motion, regulated by art. 114 par. (2) of the Constitution – we find that the general regulation of the motion of censure is found also in the dispositions of art. 113 of the Constitution, while certain particular aspects of this judicial institution are regulated by the provisions of art. 114 par. (2) and (3) of the fundamental law. These constitutional provisions clarify the motion of censure submitted within the procedure of the Government's taking responsibility as a "provoked" one, without, in terms of judicial nature and pursued objective, distinguishing it from the motion of censure regulated by the provisions of art. 113 of the Constitution. The Constitutional Court, by Decision no. 1525/2010 a rules that "the Constitution does not regulate two categories of motions of censure, on the contrary, the motion of censure as judicial institution is a safe one, regulated by the provisions of art. 113 of the Constitution (...)".

Moreover, we will find, in this context, the existence of differences between the two constitutional regulated institutions, differences which can result also from the context of the initiation and from certain substantial type particularities, derived from enacting the program, the general political statement or the draft legislation representing the object the Government's responsibility, if the motion of censure was rejected.

In terms of the context of initiation, the differences between the two procedures can regard:

1. Comparative with the institution regulated by art. 113 of the Constitution, article in which there are not stated the reasons for which a motion of censure can be initiated, considering, by analogy, that they can concern the entire activity of the executive, art. 114 of the fundamental law establishes exactly, at par. (1) which is the object on which the Government can take responsibility and, in consequence, which are the reasons for initiating a motion of censure;

2. While the motion provided by art. 113 of the Constitution is a motion resulted from the will of the Parliament's members, the motion provided by art. 114 par. (2) of the fundamental law is a motion of censured challenged by the Government, with the purpose to exceed an exceptional situation, whether political or legislative;

3. The motion of censure provided by art. 113 of the Constitution being a motion resulted from the will of the Parliament's members, if it is rejected, the

senators and deputies who already signed it can no longer initiate, during the same session, another motion of censure. In case of the motion of censure provided by art. 114 par. (2) of the fundamental law, no limitations were mentioned in what concerns the initiation of a motion of censure; this can be initiated as many times as the Government undertakes responsibility, namely various time during the parliamentary session.

In what concerns certain substantial type particularities, the difference between the two institutions refers to the fact that the challenged motion, except for keeping in position the Government or dismissing it,- effect produce by the motion of censure provided by art. 113– it also has as result the acceptance or rejection by the deputies and senators of a program, general political statement or draft legislation since the parliamentary procedure regulated by art. 114 of the Romanian Constitution is a complex parliamentary procedure which, despite the fact that its content is an act of the Government, by its effects whether it produces an act or regulation or causes the dismissal of the executive¹¹.

In Romania, after the year 1989, the practice proved we cannot refer, in general, to a political stability, in the context of weak coalitions and a changing electoral decision, dictated by the governmental inefficiency and confusion. The governmental instability in our country was determined by a series of factors which, frequently, acted in consequence; for example, the absence of a parliamentary majority based on a dominating party or a properly consolidate coalition, the misunderstandings between the President and the Prime-Minister, the Government's trend to gain supremacy in front of the Parliament, by forcing constitutional prerogatives.

In the background of a constant pressure from the executive, in the desire to dominate the Romanian political life, the Parliament succeeded, however, to act as a stability factor, taking actions in major political crisis situations, with the purpose to consolidate democracy, without taking the risk of its dissolution, whether by enacting motions of censure or by taking decisions to suspend the Romanian President.

Concerning the institution of the motion of censure, the Romanian parliamentary practice, analyzed during more than two decades, that was elapsed from the enactment of the Constitution in the year of 1991, showed the fact that there were initiated more than 23 motions of censure, out of which 3 were enacted by the Parliament, namely the motion called "11 against Romania", directed against Boc Cabinet, enacted in October 2009, the second one suggestively called „Stop the blackmailable Government! Never this way". Enacted by the Parliament in April 2012, which disputed the antinational measures adopted by Ungureanu Cabinet and the most recent one called "Romania cannot be confiscated! We defend democracy and the Romanians' vote!" directed against Grindeanu Cabinet,

¹¹ Antonie Iorgovan, *Tratat de drept administrativ*, vol. II, second revision, Bucharest, Nemira Publishing House, 1996.

enacted in July 2017; this last motion also represents a negative premiere for our political regime since it was submitted by a party against its own Cabinet.

We find, specific to our country, that all introduced motions of censure were initiated with the purpose to discredit the Government and to draw the population's attention on the mistakes of the Government's politics, corruption and failure of solving the country's primary issues. The motions of censure were thereby considered both as punitive measures and as the most radical control instruments of the legislative available for the opposition. We see that, up to 2009, no motion of censure clearly aimed at the Government's downfall and at provoking early elections, although all the motions insistently requested the Government to quit.

In general, most of the motions of censure were introduced in the second and third year of legislative mandate and this fact suggests that the Romanian parliamentarians considered their first year of mandate as an year of adjustment with the new responsibilities and they dedicated the last one for the preparation of the following round or elections, with the purpose to renew their mandate.

Moreover, the parliamentary practice showed that the motions of censure resulting from over twenty years of ruling were whether the result of the parliamentarians' initiative or the result of the Government's undertaking responsibility in front of the legislative forum, with the purpose to promote certain draft legislations by means of the simplified enactment procedure, provided by art. 114 of the Constitution.