

POLITICAL RESPONSIBILITY OF THE GOVERNMENT IN THE MEMBER STATES OF THE EUROPEAN UNION

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ABSTRACT:

ONE OF THE FUNDAMENTAL PRINCIPLES UNDERLYING DEMOCRATIC SYSTEMS OF GOVERNMENT IN MOST COUNTRIES IS MINISTERIAL RESPONSIBILITY. ACCORDING TO LITERATURE, MINISTERIAL RESPONSIBILITY REFERS, ON THE ONE HAND, THE RESPONSIBILITY OF MINISTERS TO PARLIAMENT AND, ON THE OTHER HAND, THE LEGAL RESPONSIBILITY ASSUMED EXERCISE OF MINISTERIAL POSITIONS. USUALLY, WE DEAL WITH TWO TYPES OF MINISTERIAL RESPONSIBILITY: POLITICAL AND LEGAL (CRIMINAL AND CIVIL). IF POLITICAL RESPONSIBILITY COMES AS A RESULT OF POLITICAL INTERESTS WITHOUT THE WORK OF A MINISTER TO CONFLICT WITH THE TEXT OF THE LAW, THE LEGAL RESPONSIBILITY TO OPERATE AS A MINISTER COMMIT CRIMINAL OFFENSES OR ANY DAMAGE.

KEYWORDS: MINISTERIAL RESPONSIBILITY, CONSTITUTIONAL MONARCHY, PARLIAMENTARY REPUBLIC PRESIDENTIAL REPUBLIC, SEMI-PRESIDENTIAL REPUBLIC.

1. INTRODUCTION

Ministerial responsibility have different features, depending on the rules enshrined in the fundamental law of a State (parliamentary, presidential or semi-presidential). Reported to the ministerial, *parliamentary regime* has at least two essential characteristics: a) a two-headed executive, represented by the *president*, who does not respond in political and *Government*, which is accountable to Parliament; b) close cooperation between the legislative and executive (right guaranteed by the president to dissolve the parliament and government obligation to resign if he loses the confidence of Parliament). While the government is a key element in this regime ministers - both individually and collectively - are politically accountable to Parliament or Parliament's initiative (interpellation, vote of no confidence or no-confidence motion) or the executive initiative itself (by calling the vote the confidence of Parliament). In both variants, adopting a no-confidence vote attract obligation of the Government to resign. However, the president has the right to dissolve Parliament.

As *presidential regime*, we note that in this regime there is the institution of ministerial responsibility, members of the executive are appointed and dismissed by the President without the intervention of Parliament. Ministers responsible only to the President

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who exercises power over them a real tree. What characterizes presidential regime is lack of means mutual pressure of powers: Parliament can not dismiss the executive, whose chief is the President and the executive has no right to dissolve parliament, a situation that allows the balance between executive and legislature.

In the *semi-presidential* regime, the content of ministerial responsibility depends on the position that one has to parliamentary majority President. Thus, *if the parliamentary majority is on the same side with the President*, recognizing him as head of the Prime Minister is responsible, in principle, only to Parliament. But a conflict between the President and Prime Minister, the President will prevail, for its part has a parliamentary majority. From the theoretical point of view, it can not dismiss the president of the executive members, but this is possible because, as head of the parliamentary majority, the President dominates Parliament, through its government dominates. If, however, the President is a member of the majority (without being chief) and the Prime Minister is the head of the majority, the role of President decreases with increasing the role of the Prime Minister (who dominate state politics). The fact that the parliamentary majority is opposed to the President and the Prime Minister is the head of the parliamentary majority, the prime minister's position is very strong, the issue of political accountability of the Government, in the practical sense, can not be questioned.

2. THE POLITICAL RESPONSIBILITY OF THE GOVERNMENT IN THE PARLIAMENTARY MONARCHIES

In the parliamentary monarchies, ministers are responsible of politically to Parliament. Government liability may arise either from the Government's initiative, "a matter of trust", or Parliament, which raises the question "motion"². Whatever the variant, a vote of no confidence in the government entails the obligation to resign if the President does not dissolve the Parliament. In the interwar period, the legal instruments which were political responsibility materialize vote of censure (or withdrawal trust) and refusing to vote for a bill. It is true that not every refusal to vote on a bill evokes the idea of political accountability, the Parliament, the Minister initiator, but only those votes given after previously Minister was warned that Parliament "will make voting a matter of trust law"³. In countries where there is a solid parliamentary majority have to do with government instability, and where instability is present government, because it has its "outside the parliament"⁴.

In the constitutional monarchies can identify at least two functional.

A. The fact that *Parliament can not withdraw confidence from the government only through a constructive vote of no confidence, characterized as the only institutional mechanism against governmental instability*; this is the **United Kingdom, Spain and Belgium**.

In **Great Britain**, Parliament was never a factor of governmental instability or brake effectiveness of state policy. Government members appointed by the Crown, the proposal Prime Minister must have confidence of House of Commons, both individually and collectively. If you lose the trust of the House of Commons a minister for political reasons, is forced to resign. Where, however, most members of the House of Commons express their

² Ion Deleanu, *Institutions and procedures Romanian constitutional law and comparative*, (Bucharest: Ed. CHBeck, Bucharest, 2006), 129

³ Anibal Teodorescu, *Treatise of Administrative Law*, vol. I, (Bucharest: Ed. Institute of Graphic Arts Eminescu S.A., 1929), 113

⁴ Pierre Pactet, *L'évolution contemporaine de la responsabilité gouvernementale dans les démocraties pluralistes*, en, (Paris: Le Pouvoir Mélanges offerts a G.Burdeau, LGDJ, 1977), 191.

distrust towards the Government as a whole, this does not imply an immediate resignation, but custom requires the Prime Minister to request the dissolution of Parliament and call new general elections. If the Prime Minister refuses to request the dissolution of Parliament, the monarch has the right to dissolve Parliament and dismiss the Government. When after the elections and formation of a new Parliament, the Government did not get his confidence will be forced to resign. In the UK, "the Cabinet collective responsibility and individual responsibility of ministers is not based on statutes, documents or judgment, but the acceptance of a general practice"⁵. One of the important components of constitutional law in the **Great Britain**, is the constitutional conventions (unwritten parliamentary practice to impose reasonable rules). In relation to collective responsibility of government, constitutional convention contains three rules:

- a) the '*trust*': Prime Minister is obliged to resign if they do not enjoy the confidence of the House of Commons;
- b) the rule "*unanimity*" ministerial policy responsibility is integral;
- c) the '*privacy*' ministers are obliged not to disclose the content of discussions within the government, not to challenge the rule "unanimity".

The **Spanish** Constitution, political responsibility of government is called into question either by the Congress of Deputies, which votes on the motion of censure by an absolute majority, or at the initiative of the Prime Minister, who puts his trust issue before the Government for political program or in respect of a general policy statement (art. 113 of the Constitution). To obtain the confidence of Congress of Deputies simple majority needed them. Regarding the motion of censure, the regulation states that Members of Congress have proposed that at least 1/10 of the members, and can be adopted by an absolute majority of MPs. If the censure motion was not adopted by the Congress of Deputies, its signatories may not submit another motion in the same session.

In **Belgium**, with the formation of the Government, the Prime Minister shall submit a statement to Parliament, which sets out the Government's legislative projects. That declaration is subject to debate after granting a vote of confidence in the Chamber of Deputies. Members may submit a constructive vote of no confidence or a motion of no confidence during the debate that the Government is doing its formation or if the program changes its composition. According to art. 96 of the Constitution, if the censure motion passed by the Chamber of Deputies containing the proposed successor to the position of Prime Minister, the federal government must resign and the monarch to appoint successor proposed for this function. Where, however, does not propose a successor, the monarch may dissolve the Chamber of Deputies while filing the motion. By default, the Prime Minister was in office remains in office. It is also mentioned liability institution that if the government commits its responsibility for a bill before both Houses, should be given a vote of confidence from the Belgian legislature.

B. The situation in which the *Parliament is the factor of political instability*; This is the case of **Sweden, Denmark, Luxembourg and the Netherlands's**.

As for **Sweden**, the country's Constitution provides that the Prime Minister is appointed by the Speaker after consultation with the Vice-President and representatives of the parliamentary parties, the proposal being considered by Parliament accepted if, in the next four days, more than half of its members do not vote against. This procedure can be repeated four times, after which a general election. Therefore, the appointment of Prime Minister relies on the trust presumed to Parliament. Article 61 of the Swedish Constitution states that government is accountable to Parliament, and providing clarifications in this regard. For

⁵ Robert Malcolm Punnett, *British Government and Politics*, quoted in *Compared Constitutional Law*, vol. I, authors V.Duculescu, C. Călinoiu, Duculescu G., (Bucharest: Ed. Lumina Lex, 1999), 328

example, after Parliament declares that the Prime Minister or a Minister no longer trusted, Speaker will have to remove him from office. If the possibility of extraordinary elections (by which to reelect MPs) dismissal does not occur following the Parliament to give vote of no confidence. When the Prime Minister is dismissed, all members of the Government are dismissed, but continues its work until a new cabinet. A government member who was dismissed (other than the Prime Minister) may remain in office until a new owner invest only at the request of the Prime Minister.

Government may assume responsibility for a particular law or bill that requires giving a vote of confidence from the Swedish parliament. If the vote of confidence requested is negative, occurs entirely dismiss the Government. There is also the possibility that only a cabinet minister to be sacked when voters dealt with the work of the ministry led by him.

In **Denmark**, the political regime is characterized by: formation of the Government without the vote of confidence, so based on trust presumed practice of minority governments, government liability on the path vote of confidence on his own initiative or motion and, in particular, frequent use the possibility of dissolution of Parliament, which, within certain limits, hinder the government's dismissal by Parliament. Article 15 para. (1) of the Danish Constitution provides that "no minister can remain in office after Parliament (*Folketing*) refused to trust." In case the person to whom withdraw confidence from the Prime Minister is right, it, according to art. 15 para. (2) should demand the resignation of the entire cabinet, unless the King, making use of the prerogative defined by art. 32 of the Constitution, dissolved the *Folketing* and called new parliamentary elections.

The **Grand Duchy of Luxembourg** Constitution provides that members of the Government are responsible, without specifying whether this responsibility is committed to the Chamber of Deputies or to the Grand Duke. The interpretation of constitutional provisions allows us to understand that ministers are responsible, in political terms, just before the Grand Duke. Although the Luxembourg Constitution provides that "The Grand Duke of Luxembourg is placed under the parliamentary democracy" procedural mechanisms do not allow political responsibility by the Government to Parliament. Neither the Constitution of the **Netherlands** there is no provision on the responsibility of ministers, stating only that ministers are responsible. The interpretation of constitutional provisions, allows us to conclude that this responsibility relations between King and Cabinet members, whom he calls or to cancel without consent of Parliament.

3. POLITICAL LIABILITY OF GOVERNMENT IN THE PARLIAMENTARY REPUBLICS

Wishing to avoid using exaggerated by the Parliament of its instrument of control, some Republican states have opted, like monarchies, to "rationalize" the parliamentary regime, Parliament unable to withdraw confidence from the Government only provided to transfer another government (eg. **Germany and Hungary**).

The **German** Constitution provides that the federal government's political accountability to Parliament can be assumed if the Prime Minister (Chancellor) requires Bundestag vote of confidence and if the Bundestag, on its own initiative, adopt a motion of censure against the Government, which drives its removal. If confidence is not granted, the Chancellor has the right to propose the President of the dissolution of the Bundestag and early general elections. Bundestag may, however, a new prime minister, removing the threat of being dissolved at the request of Chancellor no longer enjoy his confidence. If the President of the Republic does not meet the request of the Chancellor to dissolve the Bundestag and the House does not appoint a new Chancellor, the Prime Minister who has been refused a vote of confidence may request the President to declare, with the consent of

the Bundestag, the state of emergency laws. The onset of this condition is only a measure against the Chancellor, which can not oppose. Adopted by the Bundestag motion of censure against the Government, *doctrine known as positive or constructive vote of no confidence*, is to designate successor Chancellor undesirable.

Similarly the **Hungarian** Constitution stipulates that a censure motion may be filed against Prime Minister, indicating the person nominated as candidate for prime minister. If following the debate motion majority of the National Assembly expresses its confidence in the Government nominee for prime minister is considered elected.

There are also parliamentary republics that have not adopted the mechanism to rationalize parliamentary control, the Government having the confidence of Parliament as long as he was not explicitly withdrawn. In this respect are: **Italy, Greece, Czech Republic, Latvia and Estonia.**

Italian Constitution states that the government assumes political responsibility before the two legislative chambers. The Prime Minister is appointed by the President of the Republic, and in the event that it calls for a vote of confidence, rooms can be granted separately, through a reasoned motion, put to a vote by roll call. Adoption relative motion requires a majority vote of the House in which it was filed⁶. According to art. 94 of the Constitution, censorship has no binding effect of the dismissal of the Government. The government can commit to any Non responsibility before a bill, an amendment or a government and seek a vote of confidence from parliament. Negative vote of one of the two chambers, against a Government proposal does not oblige him to resign; But executive will consider positive or negative vote of Parliament in conducting policy which has assumed responsibility.

In the **Greek** Constitution distinguishes between the motion of no confidence, which can be initiated following a request by the Government of confidence of the Chamber and the motion of censure, which is triggered at the initiative of deputies. Both motions are adopted by an absolute majority of the members of the Chamber of Deputies. Government may at any time Parliament vote of confidence, but confidence motion can not be filed until after at least 6 months after the rejection of another motion; only exceptionally, within that period, it may submit a motion, provided it is signed by at least 1/6 of the deputies.

Czech Republic and Latvia constitutions contain express provisions on liability to the Chamber of Deputies and Government Diet respectively, showing that they can express their distrust of government or prime minister.

As the **Estonian** Constitution should be noted that it does not enshrine government accountability to Parliament, but requires only that the government resign following a vote of no confidence passed by Parliament against the Prime Minister or the Government.

4. POLITICAL RESPONSIBILITY OF THE GOVERNMENT IN SEMI-PRESIDENTIAL REPUBLICS

In the doctrine was shown that the liability regime semi-presidential government intervenes on the ground "done evil" and involves initiating a proceeding, materialized in the end, a penalty or another. The worst penalty which occurs when the political responsibility of government is dismissing the withdrawal of confidence by the Parliament granted by the motion procedure⁷. As parliamentary regime, some semi-presidential republic in the European Union opted to rationalize parliamentary control, such as **Slovenia and Poland.**

⁶ Ioan Alexandru, Ivan Vasile Ivanoff, Claudia Gilia, *European political and administrative systems*, (Targoviste: Ed. Bibliotheca, 2007), 343

⁷ Antonie Iorgovan, *Treatise of Administrative Law*, vol. I, (Bucharest: Ed. All Beck, 2005), 370

The **Slovenian** Constitution provides that the Prime Minister may ask the National Assembly vote of confidence. If the government does not get the support of the majority of deputies shall be dismissed, and within 30 days, the House must elect a new Prime Minister; if not this time either obtain a vote of confidence, President of the Republic can dissolve the National Assembly. Prime Minister, together with the government members may be dismissed by adopting a simple majority of a motion of censure initiated by at least 10 deputies. They can propose a candidate for prime minister, who will get the vote after 48 hours from the time of proposal. The Government will continue its work sacked by the new Government.

According to the **Polish** Constitution, nominee for prime minister, to produce, within 14 days a government program. Government receives vote of confidence only if the political program adopted by an absolute majority of votes. Vote of confidence may be withdrawn by initiating a motion signed by at least 47 members and will be specified name a replacement for prime minister. If the motion is adopted, another motion will be filed not later than 3 months, unless a motion is initiated at least 115 deputies.

In the European Union meet and semi-presidential republic who have not opted to rationalize parliamentary scrutiny: **France, Finland, Austria, Portugal, Ireland, Slovakia, Lithuania, Bulgaria and Romania.**

In art. 20 para. (3) **French** Constitution provides that "The government is accountable to Parliament, the conditions and procedures laid down in art. 49 and 50 '. According to art. 49 paragraph (1), the Prime Minister, after deliberation by the Council of Ministers, the National Assembly undertakes the responsibility of the Government with its government program or possibly a general policy statement. If the program is mandatory hiring accountability and governance is required, involving the responsibility of a general policy statement is optional and at the discretion of the Government. Also on the program responsibility by the Government meets the training period, while general policy statements can be made only after a certain period of exercise of functions to strengthen parliamentary support and political credibility of the Government. The National Assembly regulation stipulates that program or general policy statement of the Government shall be voted by an absolute majority of votes cast, with alternate deputies to vote for or against giving confidence to the Government or to abstain. Article 49 paragraph (2) shows that a motion of censure against the Government, can only be initiated at least 1/10 of the members of the National Assembly can not be voted on until after 48 hours of submission, and they needed to vote majority vote. Adoption of motion involves the resignation of Prime Minister and Government; otherwise, those who initiated it can not submit another during the same session, except liability assumption Government before the National Assembly for a vote as provided by paragraph text. (3) art. 49 of the Constitution. According to art. 49 para. (3) of the Constitution, after deliberation in the Council of Ministers, the Prime Minister may engage the responsibility of the Government to the National Assembly on a vote on a bill related to finance, social security funding or other project or proposal sesiune. Articolul legislation and the above paragraph refers to the fact that the Prime Minister can bind the Government to the National Assembly by a vote of a text. If not filed any motion of no confidence in the next 24 hours the decision of Prime Minister by the National Assembly, the text is considered and adopted without MPs to vote pro. In the event that a censure motion is filed within 24 hours of the submission of the decision of Prime Minister, but not absolute majority, the text is considered adopted. Finally, if the censure motion filed meets the absolute majority of members of the National Assembly, the text is rejected and the Prime Minister is obliged to resign Government (art. 50), President of the Republic, which, according to art. 8 is obliged to accept. Head of State may request the Government to deal

with current resigning to form the new Cabinet. Taking into account that often called for the repeal of para. (3) art. 49, the doctrine states that only "the future will tell whether this reform did not affect the stability of government"⁸.

Although **Romanian** constituent legislature stopped at a solution similar to the French, however, some differences are significant: the motion is admissible only if it was initiated by a quarter of the total number of parliamentarians (MPs), while in France the minimum condition for admissibility is one-tenth of the members of the National Assembly; period for reflection between presentation in plenary debate on the motion and is 48 hours in France and 3 days in the Romanian system, with the particularity that it is a competence of Chambers. Unlike the French constitutional regulation, Romanian constituent legislature has chosen to ensure the stability of government, the appointment of the Government on the vote of confidence of Parliament, expressed confidence so.

It is considered that the "first European Constitution which codified the principle of political responsibility of the Government to the Parliament" is the **Austrian** Constitution⁹. Members of the federal government accountable to the National Council, the legislative power is exercised by the Austrian National Council (House of Representatives) and the Federal Council (Senate). National Council by resolution express, may withdraw confidence from the federal government or some federal ministers by a vote of no confidence. In this case, the Government as a whole or ministers concerned are obliged to resign. The adoption of no-confidence vote requires the presence of at least half the members of the National Council, the same majority is needed in the investiture procedure of the Government. According to art. 74 of the Constitution may postpone the vote two days, at the request of 1/5 of the members present.

In **Portugal**, the government accountable to the President and the Assembly of the Republic (art. 193 of the Constitution). Political responsibility of the Government may be held either upon a request vote of confidence of Parliament on the government program or matters of national interest (rejection vote of confidence requested, bringing down the government) or by passing a motion of censure on the government program execution or any relevant matter of national interest (art. 194 and 195 of the Constitution). Government may assume responsibility for a bill or statement of general policy, by requiring a vote of confidence in Parliament (Art. 196). The motion of censure may be initiated by a quarter of the total number of deputies or upon the request of any parliamentary group and is taken within 48 hours of submission, the absolute majority of MPs.

Although the Basic Law governing the liability of **Finland** Ministers to Parliament for acts performed in the exercise of it not specified whether the liability is joint and several liability operates in parallel with the ministers. At the request of Parliament or the Prime Minister, the President of the Government decides whole or resignation of a member thereof.

Irish Constitution stipulates that the Government is responsible to the House of Representatives and the Prime Minister has to resign if it is not supported by a parliamentary majority in this House unless the president decides the dissolution of the two Houses - Senate.

According to the **Lithuanian** Constitution, the government is accountable to Parliament for its general activities. At the same time, the Government is responsible to the President of the Republic, as the Prime Minister is appointed by the President, with the approval of Parliament and all the other ministers are appointed by the President, the Prime

⁸ Michel Lascombe, *Le gouvernement et la revision constitutionnelle: un oublié très present*, in *La semaine juridique*, (Ed. G., 2008), 173

⁹ Radu Carp, *Ministerial responsibility*, (Bucharest: Ed. All Beck, 2003), 101.

Minister's proposal. He who accepts the resignation of the Government as a whole, or individual resignation of a minister, is the president.

According to the Constitution of **Slovakia**, any person appointed as Prime Minister must present a government program of the National Council within 30 days to obtain a vote of confidence. The Prime Minister may, at any time, a vote of confidence by the National Council for the adoption of a law. The National Council may withdraw confidence vote at any time, the entire Government or just a member thereof. Initiation of motion belongs to 1/5 of the deputies and is discussed and adopted by the National Council by a simple majority of votes.

Bulgarian Constitution provides that the Prime Minister is accountable to Parliament for its overall policy. This accountability is achieved through annual reports submitted to the Government and voted by Parliament. The motion of censure may be submitted at least 1/5 of the members of the National Assembly and adopted by a majority vote of the House. Another no-confidence motion can not be filed earlier than 6 months if the National Assembly rejects no-confidence vote in the Council of Ministers.

5. CONCLUSIONS

Some constitutions of the Member States of the European Union containing provisions on parallel operation of two ways political responsibility of Government members (*Sweden, Denmark, Greece, Latvia, Austria, Finland, Lithuania, Poland and Slovakia*). Other constitutions provide only a political solidarity as *Belgium, Spain, Estonia, Czech Republic, Hungary, Italy, Ireland, Portugal, Slovenia, Bulgaria and Romania*. There constitution that the institution is not ministerial responsibility such as: *the Constitution of the Netherlands, Norway Constitution, the Constitution of the Grand Duchy of Luxembourg, and the German Constitution*.

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