

# ASPECTS REGARDING THE PROCEDURE OF THE ASSUMPTION OF RESPONSIBILITY BY THE GOVERNMENT FOR A DRAFT LAW

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**Abstract:** *The Romanian Constitution regulates a derogatory procedure from the usual legislative procedure. This procedure involves the assumption of responsibility of the Government before the Parliament for a draft law. Our work addresses the characteristics of this procedure, but also its challenges, in the political and legal dialogue between the Government and the Parliament.*

**Key words:** *responsibility, draft law, regulation.*

## 1. Introduction

In conformity with Article 114 of the Romanian Constitution, the Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a programme, a general policy statement, or a draft law.

The Government shall be dismissed if a motion of censure, tabled within three days of the date of presenting the programme, the general policy statement, or the draft law, has been passed. If the Government has not been dismissed, the draft law presented, amended, or completed, as the case may be, with the amendments accepted by the Government, shall be deemed as passed, and the implementation of the programme or general policy statement shall become binding on the Government.

In case the President of Romania demands reconsideration of the law passed according to the procedure of the assumption, the debate thereon shall be carried out in the joint sitting of the Chambers.

## 2. Legal Nature and Purpose

The assumption of responsibility is a mixed procedure, of parliamentary control, as it allows the initiation of a motion of censure, and of legislation, in a simplified form, because the draft law in relation to which the Government assumes its responsibility is

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considered adopted, if such a motion has not been submitted or, having been initiated, was rejected. If at least a quarter of the total number of deputies and senators do not agree with the Government's liability or with the content of the draft law, they can submit a motion of censure, and if the motion is adopted with the majority of the deputies and senators, the Government bears the most severe sanction, that of dismissal (Decisions no. 34/1998, no. 375/2005).

The regulation of the assumption of the Government's liability was inspired by the Constitution of the French Republic. Article 49 of the respective Constitution provides for the commitment of the Government to the National Assembly on its programme or on a general policy statement, as well as on a normative text. Article 50 of the respective Constitution stipulates that the National Assembly adopts a motion of censure when it disapproves of the program or a general policy statement of the Government, and the Prime Minister must present the resignation of the Government to the President of the Republic.

According to the Romanian Constitution, the Government's responsibility before the Parliament can be assumed for a political (program or general policy statement) or legislative (bill) text. Engaging the Government's responsibility on a draft law is an indirect legislative way of approving the law, i.e. not by debating the law within the ordinary legislative procedure, but by debating a quintessentially political issue, related to the Government's stay or dismissal (Muraru, Tănăsescu, 2019, p. 951).

In the procedure of assuming responsibility, the Government sets before the Parliament the possible acceptance of a draft law without debate. However, it should not be understood that such a procedure would be undemocratic or unconstitutional. On the contrary, the Constitution itself legitimizes such a specific procedure for adopting the law, different from that regulated by section 3 "Legislation" of chapter 1 of title III of the Constitution.

The procedure balances the risk of the dismissal of the Government with the transformation of the project into law. The Parliament also has the option to dismiss the Government by adopting a motion of censure, and thus, the procedure reevaluates the parliamentary political support in favor of the Government.

The motion of censure constitutes a true instrument of a constitutional nature placed at the disposal of the Parliament in order to achieve parliamentary control over the Government's activity (Decision no. 1525/2010).

The responsibility assumed by the Government before the Parliament according to Article 114 of the Constitution is a political one and engages the Government as a whole, and not the Prime Minister or only certain members of the Government.

The political nature of the Government's responsibility stems from the parliamentary component of the semi-presidential regime. Thus, the Government is appointed by the President of Romania on the basis of a vote of confidence and bears the political responsibility for the way it carries out the internal and external policy of the country and for the general management of the public administration.

The government has legitimacy through the confidence vote of the Parliament. The Parliament is the supreme representative body of the people, which expresses their political will. Therefore, the Government is established and exercises its powers on the

basis of the trust granted on behalf of the people by the Parliament. Holding the Government accountable for its activity in general is a continuous process in a democratic state.

The procedure provided by Article 114 of the Romanian Constitution is only part of a whole constitutional dialogue between the Government and the Parliament, which also involves forms of political support, among which we mention, for example, the procedure of granting confidence to the Government upon its investiture, but also of parliamentary control, such as be the procedure of the parliamentary inquiry, the procedure of questioning the Government or the Prime Minister.

The withdrawal of confidence granted to the Government can be issued by a motion of censure against it. Parliamentary control over the Government is exercised at the initiative of the legislative forum. In contrast to this, the procedure of engaging the Government's responsibility is triggered at the initiative of the Government, respectively of the entire government team.

### **3. Conditions**

The government is the authority that has the margin of appreciation regarding the moment in which it chooses to assume responsibility, as well as regarding the field of regulation through the draft law subject to adoption through the procedure provided by Article 114 of the Constitution.

However, the idea that the Government can assume responsibility for a draft law in a discretionary manner, at any time and under any conditions, cannot be accepted, as it would be equivalent to the transformation of this authority into a legislative public authority, competing with the Parliament in terms of the attribution of legislation (Decision no. 1431/2010).

The government can assume responsibility in compliance with the following conditions (Decision no. 1655/2010):

- the existence of an urgency in the adoption of the measures contained in the law for which the Government has pledged its responsibility;
- the need for the regulation in question to be adopted with maximum celerity;
- the importance of the regulated field;
- the immediate application of the law in question.

The Government can assume its responsibility when the adoption of the draft law in the usual procedure or in the emergency procedure is no longer possible or when the political structure of the Parliament does not allow the adoption of the draft law in the usual or emergency procedure (Decision no. 1557/2009).

On the other hand, the Government's liability under the conditions in which the draft law was in the process of legislation in the Senate, as the decision-making Chamber, triggered a legal conflict of a constitutional nature between the Government and the Parliament, since through the Government's exercise of a competence, with the non-respect of the constitutional framework that surrounds it, the competence of the Parliament as the sole legislative authority was violated (Decision no. 1431/2010).

With regard to the first mentioned criterion, it is observed that the Government, according to the jurisprudence of the Constitutional Court, is not limited to use the procedure of the assumption of the liability a certain number of times per session, but, on the contrary, the premise of using this procedure takes into account the existence of an emergency in the adoption of the legislative measure regardless of the quantitative criterion mentioned above (Decision no. 1655/2010).

Regarding the second criterion, this assumes that it was necessary for the law to be adopted in conditions of maximum celerity. This “maximum celerity” is an element that supports the Government's approach, considering that between the moment of initiation of the draft law and the moment of its entry into force, an energetic and quick solution was needed to counteract the negative social effects.

The Government's commitment to a draft law aims for it to be adopted in conditions of maximum celerity: the content of the regulation aiming at the establishment of urgent measures in a field of maximum importance, and their application must be immediate (Decisions no. 1557/2009 and no. 1655/2010). The use of the procedure of engaging the responsibility of the Government for a situation that concerns a distant temporal horizon reveals the lack of urgency of the adopted measure (Decision no. 28/2020, para. 84).

Regarding the moment of assumption of liability, the Government can resort to this procedure regardless of the phase in which the legislative procedure is. The role of such a procedure is to coagulate a parliamentary majority, but also to overcome the obstructionist acts of the opposition during the legislative debates (Decision no. 1415/2009).

Regarding the third criterion, it concerns the content of the regulation - the establishment of urgent measures in a field of maximum importance. Regarding the field of regulation, the Government has the option to propose the regulation of several fields through amendments, additions or repeals of several normative acts in force in a draft law, which it submits to the Parliament for adoption by engaging the responsibility (Decision no. 375/2005). Article 114 of the Constitution does not provide the requirements that a draft law must meet in terms of its structure and the scope of the regulatory field.

In its jurisprudence, by Decision no. 375/2005, the Constitutional Court ruled that the draft law on which the Government undertakes its responsibility can also have a complex character, can be structured on several titles, chapters and sections and can regulate several areas, if there is a connection between them. The Government's right to establish the content and the structure of a draft law is not absolute, it having to submit to conditions imposed or derived from reality or the importance of the law for its governance programme.

Ignoring such limitations is equivalent to undermining a balanced relationship between state powers, denying to the point of annihilation the role of legislation as the main function of the Parliament (Decision no. 1557/2009).

Recent jurisprudence emphasizes that the third criterion mentioned (the importance of the regulated field) is that of a draft law whose regulatory object is subject to a single domain. Therefore, in order to establish that the Government has undertaken its

responsibility on a single draft law, an evaluation of the draft law presented to the Parliament is necessary from both a formal and material point of view. The constitutional text provides that a procedure of assumption of responsibility concerns a single draft law.

The procedure for holding the Government accountable to the Parliament is itself one that limits the legislative role of the Parliament, so this must and can only be achieved under restrictive conditions.

Article 114 of the Constitution is infringed if the Government does nothing but to convert a series of draft laws that would have targeted the more than 20 amended/supplemented/prolonged normative acts into a single one precisely in order to fit formally, in the normative prescription of Article 114. However, such a draft law circumvents both the letter and the purpose of the constitutional text, so that the law adopted through the procedure of engaging the Government's liability is unconstitutional (Decision no. 61/2020).

Regarding the fourth criterion, the Constitutional Court analyzes the reasons that were the basis for the imposition of the law's entry into force term, respectively censures the Government's margin of appreciation under this aspect. The Court can censure the possibility of the Government to provide in the text of the law short terms of entry into force, in order to be able to use the liability engagement procedure.

The date of entry into force of the law must be supported objectively and rationally by the nature of its implications (Decision of the Constitutional Court no. 1655/2010). The fourth condition is not met when, although the law enters into force under the conditions of Article 78 of the Constitution (3 days after publication), it does not apply immediately, but after a time interval of approximately 6-9 months (Decision no. 28/2020, para. 89).

The constitutional provision does not distinguish about the nature of the draft law proposed to be adopted in the liability engagement procedure. It follows that it can be of the nature of organic laws or ordinary laws, with the exclusion of the constitutional law revising the Constitution, for which there is a special procedure, provided for in the Constitution, within which the Government cannot be the initiator.

The responsibility of the Government can also be engaged for a law approving an emergency ordinance. The constitutional procedure of Article 114 allows the exercise of parliamentary control by initiating a motion of censure regarding the ordinance proposed by the Government to be approved by the draft law in connection with which it assumed responsibility. What excludes Article 114 of the Constitution is the debate of the draft law (Decision no. 34/1998).

#### **4. Procedure**

The procedure of assuming responsibility for a draft law is subject to certain legal rules and consequences. It must comply with the Constitution and the regulations of the joint activities of the two Chambers of the Parliament. The consequences of the procedure provided for by Article 114 of the Constitution are of a legal nature, as the Government can be dismissed if the Parliament adopts the motion of censure.

The procedure for engaging the Government's responsibility for a draft law has two stages. In the first stage, the Government initiates this procedure. The government has the exclusivity of decision in the engagement of its responsibility. The Government decision is the act of manifestation of this decision and through it the draft law is submitted to the Parliament, for adoption, in the procedure provided by Article 114 para. (1) of the Constitution.

The Constitutional Court emphasized that the Government's decision to assume its liability is based on Article 114 para. (1) of the Constitution and constitutes an exclusive, unilateral and irrevocable act of will made in order to adopt a programme, a general policy statement or a draft law.

The Government's decision to assume responsibility cannot be censured by the Parliament under the aspect of its expediency, however, at the level of the Parliament, under the procedural conditions established by the Constitution and the Regulations of the joint sessions of the Chamber of Deputies and the Senate, a motion of censure can be submitted and voted, which has the effect of dismissing the Government. The Parliament does not have the competence to prevent the Government from making the decision to engage the responsibility.

Once this decision is made, the Parliament cannot prevent the Government from continuing the procedure in question, as it would lead to inadmissible situations in which a minority Government would never be able to engage its responsibility, which flagrantly infringes Article 114 of the Constitution.

The Government cannot withdraw its request for liability, this being an irrevocable act of its own (Decision no. 1525/2010).

The Government notifies the Parliament with the assumption of its responsibility, also attaching the draft law to the notification the Government's decision in this regard.

In the second stage, deputies and senators can initiate the censure motion, and it is debated and voted on. The procedure is dynamic, with deputies and senators being able to propose amendments to the draft law, and the Government being able to accept or reject them. Thus, according to para. (3) of Article 114, parliamentarians, in the procedure of engaging the Government's responsibility, can formulate amendments to the draft law presented, and if amendments are accepted by the Government, the draft law is considered adopted together with the respective amendments (Decision no. 375/2005).

According to the doctrine, even if the Government accepts the proposed amendments, a motion of censure against it can be submitted and voted against (Ionescu, Ionescu, 2017, p. 1189).

The procedure itself requires urgency. Deputies and senators have a short term of three days to submit a motion of censure against the Government. In addition, the procedure for contesting the law thus adopted at the Constitutional Court is also urgent, Article 15 para. (2) of the Law no. 47/1992 on the Constitutional Court, providing for a deadline of two days for referral to the Constitutional Court when the law was adopted with an emergency procedure. The purpose of short terms is to prevent governmental instability.

## 5. Consequences

If the procedure of assumption of the Government's responsibility ends with the adoption of the draft law, the consequences are political and legal. The political consequence is the acknowledgement of solid parliamentary support in favor of the Government.

This confirms its legitimacy to carry out its governing program, including through the legislative measures adopted in the procedure of the assumption.

From a legal perspective, if a motion of censure is not submitted within the period stipulated by the Constitution, i.e. three days after the presentation of the draft law, or if it is submitted but is rejected by vote, the Government remains in office, continues its activity and the draft of the law presented, possibly modified and completed with the amendments accepted by the Government, is considered adopted. In this case, the adoption of the law is tacit, but does not prevent debate, if this is the will of the Parliament (Ionescu, Ionescu, 2017, p. 1191).

The law adopted through the procedure of assuming the responsibility of the Government will follow the natural course of the law adopted by the Parliament. Thus, the law will follow the promulgation procedure.

Before promulgation, the Constitutional Court can exercise the *a priori* constitutionality control. In case the law is declared unconstitutional, as well as in case the President of Romania requests the re-examination of the law adopted in the procedure of assumption of responsibility, the law will be re-examined by the Parliament.

Following the review of the law, the Parliament can approve or reject it. The Constitution does not establish an incompatibility between the vote given by the parliamentarians and the adoption of the law in the procedure of assuming governmental responsibility and their subsequent contrary vote following the re-examination of the normative act, at the request of the President of Romania. In the case of the re-examination following the decision of the Constitutional Court, the re-examination will comply with the binding character of the decisions this court.

Following the review procedure, the law can be rejected. This time, the Parliament's vote is no longer given in the procedure provided by Article 114 of the Constitution, but in the procedure of re-examination of the law, so that there is no constitutional basis for the Government to be forced to resign in case of rejection of the law in this procedure. If the draft law is adopted by assuming the responsibility, the Government has the freedom to modify or complete it afterwards, there being no constitutional provisions to prevent this measure.

When the Parliament adopts the motion of censure, the legal consequence is the dismissal of the Government. The censure motion is a constitutional instrument placed at the disposal of the Parliament, in order to achieve parliamentary control over the Government's activity.

The general regulation of the censure motion can be found in the provisions of Article 113 of the Romanian Constitution, and certain particular aspects of this legal institution

are regulated by Article 114 para. (2) and (3) of the Fundamental law. Article 114 qualifies the motion of censure submitted in the procedure of engaging the Government's liability as a "provoked" one, without distinguishing it from the motion of censure regulated by art. 113 of the Constitution in terms of its legal nature and the purpose pursued. Thus, the provisions of the Constitution do not regulate two categories of motions of censure, but, on the contrary, the motion of censure as a legal institution is only one, regulated by Article 113 of the Constitution.

The specific elements concerning the motion of censure initiated in the assumption of liability of the Government reveal only two procedural particularities (the context of the initiation - after the presentation of the program, the general policy statement or the draft law that is the object of liability - and the constitutional possibility of initiation - regardless of whether its signatories have already initiated a censure motion in the same parliamentary session according to the provisions of art. 113 of the Constitution) and a particularity of a substantial nature (in the case of rejection of the censure motion, the program, the general policy statement or the draft law is considered adopted), which cannot qualify the censure motion provided for by Article 114 of the Constitution as means of parliamentary control distinct from the censure motion regulated by Article 113 of the Constitution.

In other words, by voting a censure motion, regardless of whether it was submitted under the conditions of Article 113 or Article 114 of the Constitution, when the parliamentary control is carried out, the trust granted to the Government is withdrawn, which has the effect of dismissing the Government.

The submission of the censure motion has the significance of triggering parliamentary control over the Government's activity and constitutes an irrevocable act in the sense of initiating this control; it is a weapon placed at the disposal of the parliamentary opposition and, last but not least, it is a form of expression of the opposition to the measures adopted by the Government. Consequently, preventing the presentation and refusing to debate a censure motion that has already been submitted are unconstitutional, as this would be equivalent to eliminating the possibility of the parliamentary opposition to censure and control the government's decisions on assuming its responsibility (Decision no. 1525/2010). In another decision, the Court emphasized that the expediency aspects that determined the rejection of the censure motion do not fall within the competence of the Constitutional Court to examine, as they concern the political decision to adopt the law itself, and according to Article 61 para. (1) of the Constitution, "Parliament is the supreme representative body of the Romanian people and the only legislative authority of the country" (Decision no. 2/2011).

The consequence of the dismissal of the Government through a motion of censure is the resumption by the President of Romania of the procedure of investiture of the Government, respectively the appointment of a candidate for the position of Prime Minister, who will request, within 10 days from the appointment, the vote of confidence of the Parliament on the program of governance and on the Government list.



## 6. The Control of Constitutionality

According to the doctrine (Ionescu, Ionescu, 2017, p. 1196), the decision of the Government to assume its responsibility is a governing act having the legal nature of an administrative act. However, the doctrine does not address the issue of the admissibility of an action in administrative litigation against such an act.

We consider that such a decision is issued in the constitutional relations of the Government with the Parliament and is exempted from control in administrative litigation according to Article 126 para. (6) of the Constitution.

The Parliament's relations with the Government consist, according to the constitutional provisions, in: informing the deputies and senators (Article 111), the questions and interpellations that the parliamentarians can address to the members of the Government [Article 112 para. (1)], the possibility of introducing simple motions [Article 112 para. (2)] and censure motions (Article 113), the assumption of the Government's liability (Article 114), as well as the legislative delegation procedure (Article 115).

Therefore, given the specificity of the legal relationship between the Government and the Parliament within the procedure provided by Article 114 of the Constitution, the act of the Government as a manifestation of will to assume its responsibility exceeds the scope of acts that can be challenged before the administrative litigation court, as it is inadmissible to challenge this act before the judiciary court.

The control of legality in this procedure translates into an *a priori* constitutionality control of the law adopted in the procedure provided by Article 114 of the Constitution. The *a priori* control of constitutionality consists in "checking the conformity with the Fundamental Law of the adopted laws, which have not yet entered into force" (Barbu, Muraru, et al., 2021, p. 59).

In the framework of this procedure, the Constitutional Court also makes an analysis regarding the compliance with the procedural and substantive conditions of the engagement of the Government's responsibility and sanctions the law adopted with non-compliance with the constitutional provisions, including those regarding the assumption of the Government's responsibility.

In other words, the Court does not find that the Government's own liability on the draft law is unconstitutional, but only the product of this liability - the draft law which, as a result of the Government's responsibility, becomes a law through parliamentary procedures.

The constitutionality control on the procedure of assuming the Government's responsibility can also be done following a notification regarding a possible legal conflict of a constitutional nature between the Parliament and the Government generated by the non-fulfillment of the conditions for the assumption of responsibility.

In case of non-compliance with the provisions of Article 114 para. (1) of the Constitution, the Constitutional Court may find that the Government's liability to the Chamber of Deputies and the Senate, based on these constitutional provisions, on a draft law is unconstitutional and has triggered a legal conflict of a constitutional nature between the Government and the Parliament.

The Constitutional Court is not, however, competent to compel the Government to give up the liability procedure, the solution belonging exclusively to the conflicting public authorities.

## 7. Conclusions

In any democratic state, the assumption of the Government's responsibility on numerous occasions and the limitation of the Parliament's main attribution - to legislate - may raise questions about the effective functioning of the democratic mechanisms for power regulation.

We believe that the Executive has a capacity for self-regulation, for quantitative self-limitation of its possibility to use this procedure during a parliamentary session, by eliminating the premises for the exercise of its constitutional right to engage its responsibility before the Parliament by exceeding its limits.

We underline that Article 114 para. (1) of the Constitution must be interpreted with reference to Article 61 of the Fundamental Law, regarding the legislative monopoly of the Parliament, as well as to Article 102 para. (1) regarding the role of the Government, that is by prioritizing the role of the Parliament as the main legislative authority of the state.

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