

THE PROCEDURE OF GOVERNMENT UNDERTAKING LIABILITY IN FRONT OF THE PARLIAMENT

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Abstract: The Constitutional provisions regulate the Government possibility to undertake the political liability for a program, a general policy statement or a draft law in front of the Parliament. The purpose of Government political liability for its initiative consists in its decision to continue the given mandate of trust only under the term of the approval for the program, the general policy statement or draft law submitted in joint session of the Chamber of Deputies and Senate.

Keywords: political liability, government, parliament, program, draft law.

1. The Procedure of Government undertaking Liability in front of the Parliament

Government undertaking liability in front of the Parliament is performed according to the terms stipulated by art. 114 of the Romanian Constitution, and supposes the achievement of some procedural steps which are established in the Regulations on the Chamber of Deputies and Senate Joint Sessions.

According to the provisions of the art. 114 of the Romanian Constitution, the Government may undertake liability in front of the Chamber of Deputies and Senate, in their joint session, on a program, a general policy statement or on a draft law [1].

Undertaking liability is performed by the Government as collective and joint body, which supposes the need for passing a decision on this matter. The Government Decision to undertake liability in front of the Parliament is to be taken in Government meeting.

The initiative of Government undertaking liability on a program, general policy statement or on a draft law belongs to the entire governmental team, as collective and joint body, solution which is different from that of the French legislation where the Prime Minister undertakes governmental liability after deliberations in the Council of Ministers. The Government political liability is not the Prime Minister's prerogative but it represents the "chance" or the "risk" of the entire Government [2]. The possibility for undertaking liability is not submitted to any term, but it is exclusively for the Government to appreciate the opportunity for its initiative and

the contents of the respective initiative. The Government does not have to undertake liability, but it may do it if the odds are favorable. The advantages for the Government and the efficiency of the procedure of liability undertakings are nevertheless undeniable [3]. In doing so, the Government checks the parliamentary support and forces the Parliament to vote tacitly and globally as alternative to the submission of a vote of no confidence and, thus, the Parliament has to issue a valuable judgment on the matters comprised by a program or a statement which, otherwise would have been solved in a nuanced manner. If the subject of the liability is a draft law, the usual legislative procedure is substituted by one reduced to tacit vote, and, even if a vote of no confidence was submitted, the Government strengthens its position, the lack of no confidence vote being tantamount by a vote of confidence. From these reasons, the practice of passing some important laws such as codes or some of the organic laws when such acts do not possess deciding political connotations but with Governmental liability seems to us at least inopportune as the later revealed imperfections, during their implementation, proved the negative consequences deriving from the absence of parliamentary debates, and amendments submission.

In order to trigger the procedure for Government political liability in front of the Parliament, there has to be a Government Decision where it states the undertaking of the political liability in front of the Parliament, and the submission of the draft law, the program or the general policy statement to the Standing Offices of the two Parliamentary Chambers which are to provide for the dissemination of the draft law, the program or the general policy statement to the deputies and senators. The deliberations in the Government on the political liability are necessary, as this procedure implies the collective and joint liability of the Government members.

It arises from this situation the issue whether such decision must be published in the Official Journal in order to become effective. According to art. 108 par. 4 of the Constitution, not publishing the decisions in the Official Journal results in their nonexistence. Considering that the provisions of the art. 108 par. 4 of the Constitution refer only to the Governmental normative acts, the unavoidable consequence would be that the notification of the Parliament for the Government political liability does not have to be published in the Official Journal to valid as it does not have a normative character [4].

The Government informs in a letter the Standing Offices of the two Parliamentary Chambers on the intention to undertake the liability for a general policy statement, program or draft law.

After receiving the Government letter and in joint session, the Standing Offices of the two Chambers establish the agenda and the program of the joint session when the Government undertakes liability and the deadline for amendments submission by deputies and senators if the Government undertakes liability on a draft law.

Related to the texts on which the Government undertakes liability, we believe that both the program and the general policy statement may complete or change the government program accepted by the Parliament on its investiture [5]. The program or the general policy statement is Government political acts which are debated in Parliament joint session where the Government political liability undertaking is analyzed but without voting on the debates results [6]. The government program defines the policy which the Government intends to put into practice, and, by this procedure, the Government aims to submit to Parliament approval its decision to change or complete the government program, while the general policy statement is drafted more vaguely than the program, constituting the pretext for restrengthening the parliamentary support and for increasing Government credibility [7].

Undertaking Government liability on a draft law is a simplified procedure for passing a law which may lead to its passing within three days since the draft submission to the Parliament. By its nature, undertaking Government liability on a draft law is a legislative way to appeal only when the passing of a draft in usual or emergency procedures is no longer possible. In such cases, the only ways for the Government to promote a draft law are those regarding the passing of an emergency ordinance or of undertaking Government liability for the respective draft. Choosing the option of the emergency ordinance implies certain risks related to the fact that, later on, the Parliament may change its provisions or even reject it in the control of the delegated legislation. Even undertaking Government liability is not free of risks. These arise from the fact that, during the three days following the Government undertaking liability on a draft law, a vote of no confidence may be submitted, the approval of which leads to Government dismissal. In case of such vote of no confidence was not submitted or if submitted it did not pass by the vote of the deputies' and senators' majority, the draft law becomes law and it is submitted to the General Secretary of the Chamber of Deputies, of the Senate, respectively, for the right to notify the Constitutional Court. If, the law is not contested at the Constitutional Court within 2 days, it is sent to be promoted by the President of Romania, being able to be submitted for re-examination if the President of Romania requires it [8].

The passing of a draft by undertaking the Government liability does not lead to a voting process on the bill. Practically, when the Government is going to undertake liability on a draft law according to the provisions of the art. 114 of the Constitution, this is to be notified to the Standing Offices of the two Chambers.

The presidents of the two Chambers are going to invite the senators and deputies to participate in joint session of the Parliament. The date and venue of the joint session is informed to the Government by the President of the Chamber of Deputies, 24 hours prior to its occurrence.

The amendments submitted by the deputies and senators within the agreed deadline, are informed to the Government for analysis, in order to establish which of them are going to be accepted and which rejected. The Government is to inform the Parliament which are the agreed amendments and which are rejected [9].

During the Parliament joint session, the Prime Minister expressly states that the Government undertakes liability on the draft of law, substantiating this way of passing a draft of law, and then he/ she presents the contents of the regulations proposed by the respective project.

This way of passing a law is simplified by its nature as it is a legislative way to be enforced only *in extremis*, namely only when the passing of the draft law in usual or emergency procedures is no longer possible. In other words, such a procedure is indicated mostly for a Government sure on the parliamentary majority, when it intends to pass very quickly a law which it considers vital for its government program.

The Prime Minister's presentation of the draft law, of the program or of the general policy statement to the joint session of the Parliament is not followed by parliamentary debates.

During this timeframe, the deputies and senators have the possibility to submit amendments which, if admitted by the Government, are introduced in the wording of the law. If, upon the completion of the 3 days deadline, no request for vote of no confidence was submitted, the law is considered as approved, together with the amendments accepted by the Government.

Since the moment of the Prime Minister's presentation of the draft law, program or general policy statement, there is a three-day deadline for submitting a request for vote of no confidence.

If no vote of no confidence request is submitting within the three days deadline, the draft law is regarded as passed by the fact of time expiry, with the possibility for the President of Romania to notify the Constitutional Court with an objection of non-constitutionality or to ask for law re-examination.

If a request for vote of no confidence was submitted, this is too presented in joint session of the two Parliament Chambers, on a date set by the joint Standing Offices, and the legislative procedure proceeds with its debating and voting [10]. This vote of no confidence is caused by the Government as results of Government aim to pursue the passing of a law without taking the steps of the legislative procedure. If such a request for vote of no confidence was submitted, the Standing Office set the date for the new joint session of the two Chambers where the reason for vote of no confidence is presented. The debate and vote for no confidence takes place three days after the date of it being presented in the Parliament under the terms set by the art. 113 of the Constitution. The passing of the request for vote of no confidence results in the rejection of the draft law and Government dismissal. If,

after secret balloting with balls, the request for vote of no confidence does not obtain majority of the parliamentary votes of the Parliament members, the draft law turns into law and takes the usual steps for publication. Even in this case, the amendments agreed by the Government are introduced in the law wording [11].

Consequently, if the vote of no confidence request submitted as exercise of this constitutional procedure is rejected, the law is announced in the plenary session of the two Parliament Chambers and is submitted to the Secretary general of the Chamber of Deputies, where it is to stay for two days for the eventual exercise of the right to notify the Constitutional Court.

After the expiry of the two days deadline, if the law is not attacked in the Constitutional Court, it is sent to the President of Romania for promulgation.

Within the promulgation deadline, the President of Romania may ask for the law to be re-examined, according to the dispositions of the art. 77 par. 2 of the Constitution. The Constitutional provisions set the Romanian President's right to ask only once for the law to be re-examined by the Parliament. The President of Romania repeating of this demand is inadmissible, just as the demand for re-examination made after the conclusion of the promulgation deadline. Nevertheless, the request for re-examination may be concomitant with the notification of the Constitutional Court on an objection of non-constitutionality. In such situation, the 10 days deadline is an exclusive term for passing it. It starts running, either from the date of receiving the Court decision on rejection of non-constitutionality objection, or on the date of receiving the law, after it being re-examined. This is the reason why the President of Romania may ask for the law to be re-examined for other reason than those which were the subject of the non-constitutionality check.

In the situation where the President of Romania requested for re-examination of the law, passed by the procedure of Government liability in front of the Parliament, the parliamentary debates are to take place during the joint session of the Parliament Chambers which are to decide upon it with simple or absolute majority, depending on the type of law: organic or ordinary. In the same way, the Regulations of the joint sessions establishes that the examined organic laws are to be passed at least with absolute majority, and the re-examined ordinary laws are to be adopted with plain majority, at least.

The Parliament may admit the request for re-examination and to reject the law priory adopted, if the re-examination concerned the law overall, to change or even complete the law with other provisions if it accepted entirely or only partially the objections and propositions submitted by the Head of state, or it may even reject the request for re-examination, not agreeing on the criticism, objections and propositions comprised in the presidential message. The Parliament Decision is decided with the majority of votes required by the constitutional provisions on the passing of the law.

The constitutional dispositions do not establish which is the required legal quorum for passing the law by undertaking political liability, after re-examination or if it varies depending on the type of law: organic or ordinary. In this regard, there has been expressed in the doctrine the opinion according to which, regardless if the passed law by Government political liability is organic or ordinary, its re-examination is made with absolute majority as, if the law might have been rejected by the passing of a vote of no confidence with at least the absolute majority, it could not be passed explicitly, with a majority inferior to that required for rejecting it [12]. There has also been expressed the opinion according to which the law which was passed according to the terms stipulated by the art. 114 of the Constitution, it may be re-examined with simple or absolute majority, depending on its organic or ordinary character, as the rejection of a vote of no confidence, submitted as result of the Government liability to the Parliament, may not be the consequence of creating a favorable majority of a draft law, but of the impossibility to reunite the necessary number of votes required for passing the no confidence request. Therefore, there cannot be about the presumption that the draft law for which the Government undertook political liability was adopted by the majority of the Parliament members [13].

We join this second opinion, as the law passed by Government liability received the juridical regime of an organic or ordinary law, depending on the social relations to regulate, which means that the provisions of the art. 76 of the Constitution, establishing the way of passing the organic and ordinary law, are also applicable in this case.

On the occasion of law re-examination, the members of the Parliament may submit amendments which are to be admitted or rejected by voting, as, in case of law re-examination, it may be rejected entirely as the laws passed by the procedure of Government liability do not enjoy a special legal regime upon re-examination. There was also the opinion according to which the amendments to be submitted by deputies and senator may have as exclusive subject the idea of clarifying Parliament position towards President's request for re-examination and not the idea of blocking the effects of Government liability at law-making level [14].

The Parliament may also review the law passed under the terms of the art. 114 of the Constitution when the Constitutional Court finding would be of law non-constitutionality overall or on some of its provisions during the *a priori* or *a posteriori* non-constitutionality control, thus being put into practice the provisions of the art. 147 par. 1 of the Constitution.

The President of Romania or any other subject stipulated by the art. 146 letter a) of the Constitution, except for the Government as initiator of the law, may notify the Constitutional Court when they appreciate that the law presents certain unconstitutional aspects.

In the situation when the Parliament modified or completed the law after re-examining it upon the President of Romania request, the parliamentary procedure of claiming law unconstitutionality in front of the Constitutional Court becomes again applicable. The objection of non-constitutionality may concern any aspect of the law, not only the new wordings, as the law was not published, and the right to notify the Constitutional Court disappears only as effect of the publishing.

2. The Effects of Undertaking Government Liability in front of the Parliament

By using the procedure of undertaking the political liability in front of the Parliament, the Government exposes to the risk of wording and passing a request for vote of no confidence. In this regard, the undertaking of Government liability is made by the presentation of the program, of the general policy statement or of the draft of law in front of the Chamber of the Deputies and Senate, in joint session. Within 3 days since the presentation, a request for vote of no confidence may be issued and submitted which can be signed also by the deputies and senators who initiated such request during the same parliamentary session. The request for vote of no confidence must be submitted until the completion of the three days deadline, under the sanction of limitation, considering the need for quick solving of the situation resulted from the Government undertaking political liability. Not submitting such a request for no confidence within the deadlines set by the Constitution or the rejection of a motion submitted under such terms results in the Parliament acceptance of the program, of the general policy statement or of the draft law [15].

The request for no confidence vote submitted under such terms is one caused by the Government due to the fact that it is aimed to pass a draft law without taking the legislative steps. If the Government is not dismissed, the draft law is regarded as passed and is going to be sent for publication to the President of Romania [16], and the application of the program or of the general policy statement becomes mandatory for the Government, according to art. 114 par. (3) of the Constitution.

The presidents of the two Chambers of the Parliament, being informed on the introduction of the request for no confidence vote within the three days term stipulated by law, are to call in a joint session the Senate and the Chamber of Deputies, within at most five days since the date of submission of the request for no confidence vote. The request for vote of no confidence is presented in this joint plenary session of the Chambers by the representative of the initiators, presenting the reasons for submitting it, and without debating on it.

The debate on the request itself takes place within at most three days since the presentation. After debates conclusion, the voting on the request takes place, by secret ball voting. Being symmetrically opposite to the vote of confidence, the request for vote of no confidence is passed by complying with same terms

regarding the quorum, as stipulated at art. 103 par. (3) of the Constitution, respectively by the majority of deputies and senators.

After the members of the Standing Offices counting of the votes, the session chairperson informs on the voting result which is to be specified in the minute drafted in this regard.

If the request for vote of no confidence is rejected, the Government mandate continues, as it still enjoys Parliament support, and the draft law, the program or the general policy statement are considered as passed.

If the request for vote of no confidence was adopted, the dismissed Government shall proceed in managing the public affairs until the assignment of a new Government, and the draft law, the program or the general policy statement are considered to be rejected, not causing any juridical effect.

Conclusions

The procedure of Government undertaking political liability at its initiative relies on the Government decision to continue its mandate of confidence granted upon its nomination, but only under the terms of approving its program, general policy statement of draft law presented in front of the Parliament in joint session. By undertaking liability, the two majorities for Government dismissal and for passing the program, the general policy statement or the draft law, are no longer dissociated, but they coincide, thus, it is intended by this measure to reduce the political instability.

Thus, the debating of the Government liability may be achieved not only as result of the Parliament initiative, but also by the Government itself. The initiative which makes possible the unilateral termination of the governing agreement is undertaking the Government liability, such as regulated by the art. 114 of the Constitution, when there are clues that the parliamentary majority required for passing a measure cannot be met. The Government must thus condition the further development of its mandate by the passing of some measures, regarded as essential for the achievement of the governmental program.

References

1. M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *Constituția României revizuită – comentarii și explicații*, Editura Rosetti, Bucharest, 2003;
2. I. Deleanu, *Instituții și proceduri constituționale – în dreptul român și în dreptul comparat*, Editura C.H. Beck, Bucharest, 2007;
3. T. Drăganu, *Drept constituțional și instituții politice. Tratat elementar*, vol. II, Editura Lumina Lex, Bucharest, 1998;
5. C. Ionescu, *Tratat de drept constituțional contemporan*, 2nd edition, Editura C.H. Beck, Bucharest;
6. A. Iorgovan, *Tratat de drept administrativ*, vol. I, 4th edition, Editura C.H. Beck, Bucharest, 2005;

7. I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 12th edition, vol. II, Editura C.H. Beck, Bucharest, 2006;
8. N.M. Stoicu, *Drept constituțional și instituții politice*, vol. II, Editura Casa Cărții de Știință, Cluj-Napoca, 2014;
9. N.M. Stoicu, *Controlul parlamentar asupra puterii executive*, Editura Casa cărții de Știință, Cluj-Napoca, 2014;
10. M. Preda, *Drept administrativ. Partea specială*, reviewed and updated edition based on the applicable law, on September 1, 2001, Editura Lumina Lex, 2001;
11. I. Vida, *Legistica formală. Introducerea în tehnica și procedura legislativă*, 3rd reviewed and completed edition, Editura Lumina Lex, Bucharest, 2006.

Notes

1. I. Vida, *Legistica formală. Introducerea în tehnica și procedura legislativă*, 3rd reviewed and supplemented edition, Bucharest, 2006, p. 261 and following
2. I. Deleanu, *Instituții și proceduri constituționale – în dreptul român și în dreptul comparat*, Editura C.H. Beck, Bucharest, 2007, p. 655.
3. *Idem*.
4. T. Drăganu, *Drept constituțional și instituții politice. Tratat elementar*, vol. II, Editura Lumina Lex, București, 1998, p. 172.
5. M. Preda, *Drept administrativ. Partea specială*, reviewed and updated edition based on the applicable law, on September 1, 2001, Editura Lumina Lex, 2001, p. 135.
6. C. Ionescu, *Tratat de drept constituțional contemporan*, 2nd edition, Editura C.H. Beck, Bucharest, 2008, p. 273.
7. N.M. Stoicu, *Drept constituțional și instituții politice*, vol. II, Editura Casa Cărții de Știință, Cluj-Napoca, 2014, p. 94.
8. The days set by the parliamentary rules are considered as full days and not working days. In this regard, to see the *Decizia Curții Constituționale/ Decision of the Constitutional Court no. 233 of December 20, 1999*, published in the Official Journal of Romania, part I, no. 638 of December 28, 1999.
9. The 2003 review of the Constitution brought some changes meant to reinforce and strengthen the Parliament legislative function, among others also by reducing, respectively conditioning Government role in the law-making activity. The provisions of art. 114 par. (3) of the Constitution have been changed, stipulating the possibility that the draft law presented by the Government under liability procedure is regarded as adopted with amendments of modification and completion proposed by deputies and senators, if the respective wording was accepted by the Government (I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice / Constitutional Law and Political Institutions*, 12-th edition, vol. II, Editura C.H. Beck, Bucharest, 2006, p. 234).
10. The vote of no confidence is submitted to the Standing Offices of the two Chambers and is notified to the Government by the President of the Chamber of Deputies, on the day where it was submitted, so that the Government to be able to build its defense knowing its contents (A. Iorgovan, in M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *Constituția României revizuită – comentarii și explicații*, Editura Rosetti, Bucharest, 2003, p. 212).

11. I. Vida, *Legistica formală - Introducere în tehnica și procedura legislativă*, op. cit., p. 264.
12. I. Deleanu, *Instituții și proceduri constituționale în dreptul intern și în dreptul comparat*, op. cit., p. 659-670.
13. T. Drăganu, *Drept constituțional și instituții politice*, vol. II, op. cit., p. 177.
14. A. Iorgovan, *Tratat de drept administrativ*, vol. I, 4th edition, Editura C.H. Beck, Bucharest, 2005, p. 428.
15. N.M. Stoicu, *Controlul parlamentar asupra puterii executive*, Editura Casa cărții de Știință, Cluj-Napoca, 2014, p. 416 and following.
16. In this regard, to see art. 114 alin. (4) and 77 alin. (2) of the *Romanian Constitution*.