

## I. The acts of Government.

As a rule the Government adopts *decisions* to exercise its powers and to enforce laws and *dispositions* to regulate internal issues. (the Russian Federation, Ukraine, Estonia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Uzbekistan, etc.).

### ***The adoption by the Government of acts that have an effect of laws***

In some states the Governments can adopt the acts that have an effect of laws either through legislative delegation or in the exceptional circumstances

1. ***The adoption by the Government of the acts that have an effect of laws through legislative delegation.*** We understand under *legislative delegation* the constitutional power of Parliament that gives a right to the Government for a certain period of time and under certain conditions to pass acts that have an effect of laws in the spheres that are not subjects of organic and/or constitutional laws. The procedure of legislative delegation allows the Government, in case there was an agreement with the Parliament, to participate „in the proper name” in the implementation of the legislative function of the state. Thus, in the way it was understood, the legislative delegation corresponds with a number of interests: of *political character*, for example: the measures that can be considered necessary by the Governments and unpopular by the Parliament; of *financial – economic character*: the rapidity to introduce some measure is necessary to make them work, being more flexible the delegated legislation may allow their easier modifications in case of changed circumstances; of *institutional character*: in cases when the heterogeneous political composition of the Parliament and fragility of parliamentary majorities that support the Government can create a blockage of the law-making process; of *technical character*: it means possibility of concentration of the Parliament over the regulation of general principles without going into details, technical aspects are dealt with by experts, members of the Executive, specialists in the respective sphere<sup>1</sup>.

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<sup>1</sup> See: Duculescu Victor, Călinoiu Constanța, Duculescu Georgeta, *Drept constituțional comparat*, vol. I, ediția a doua, revăzută și adăugită, București, Lumina Lex, 1999, p. 275; Арефина С. И., *Проблемы делегированного законодательства в зарубежных странах (обзор)* // „Государство и право”, № 3/2002, p. 46.

The procedure of legislative delegation should be done according to a number of rules: the possibility of legislative delegation should be expressed in the Constitution; the Government is vested with power to adopt acts that have an effect of laws through the law on legislative delegation passed by the Parliament; the law on legislative delegation determines the social spheres where the written orders will be exercised and evidences the temporal character of the power of legislative delegation through a fixed term during which the acts can be passed.

Thus, in *Germany* (art.80 paragraph 1 of the Fundamental Law from May 23, 1949) the federal Government, a federal minister or governors of the lands can be given power to issue orders of regulating character. With that end in view, the content, objectives and limits of investments should be determined by the law.

In *Spain* (art. 82 of the Constitution from December 29, 1978) the Parliament can vest the Government with the power to issue norms with the effect of laws in the spheres that do not deal with the exercise of fundamental rights and freedoms, with the establishment of autonomous status, electoral system and other aspects written in the Constitution. The legislative delegation should be given to the Government for a limited period of time and for certain purposes. Framework laws precisely fix the object and duration of legislative delegation as well as the principles and criteria that must be respected while exercising legislative delegation.

In *Italy* (art.77 paragraph 1 of the Constitution from December 22, 1947) the Government cannot pass laws that have an effect of organic laws if this power was not delegated by the Houses, but in *Armenia* (art. 78 of the Constitution), to guarantee the realization of the program of activities of the Government the National Assembly can give the Government power to pass decisions with the effect of laws that have a certain period of action fixed by the National Assembly and cannot contradict the laws.

In our opinion, *legislative delegation stipulated in the art. 106<sup>2</sup> of the Constitution of the Republic of Moldova presents a positive practice that contributes to the quick and adequate settlement of different urgent issues that might appear in the crisis times, it allows avoiding a complex durative law-making process.*

2) *The adoption by the Government of the acts that have an effect of laws under the exceptional conditions.* Different exceptional situations might emerge caused by either internal or external factors of the state. Such situations demand some urgent adequate measures including those of legislative character. The convocation of Parliament can be impossible or difficult, that is why decision-making will take a lot of time. In some countries in similar situations the Government is vested with power to adopt temporal measures of the legislative character without *prior* revision of the Parliament. Thus, in *Spain* (art. 86 of the Constitution) in case of extraordinary necessity and urgency the Government can issue decrees – laws that cannot influence the organization of the main state institutions, rights, freedoms and responsibilities of the citizens, the regime of autonomous communities and the general electoral system. Decrees – laws should be put into discussions and immediate vote to the Congress of Deputies convoked with this very purpose if it is not reunited within 30 days of their publication. In *Italy* (art. 77 paragraph 2, 3 of the Constitution) when, in case of extraordinary necessity and urgency, the Government passes acts with the effect of laws it should present them for the approbation to the Houses that, even if they are dissolved, will be convoked and examine the laws during a 5-day term. The decrees will lose their legal power if they have not been approved within a 60-day period since they were published. In *Latvia* (art. 81 of the Constitution from February 15, 1922) in the period between the sessions of the Seim the Cabinet of ministers has a right in case of urgency and necessity to pass decisions with the effect of the law. They become invalid if they are not presented to the Seim in a 3-day term from the opening of the next session of the Seim.

The practice of passing laws by the executive authorities without prior examination by the Parliament is, in our opinion, unacceptable and contradicts the principles of the national sovereignty, of legality and separation of state powers. We think it is not necessary to introduce in the constitutional practice of our country the institution of urgent laws. The practice of many states demonstrates that the Government often abuses

this right. For example in Romania the urgent laws modified the organic laws<sup>2</sup>. Plus the time period when the Government can adopt acts with the effect of laws is not clearly defined. Depending on different circumstances it justifies the approval of the acts that change the organic laws that can lead to the abuse of powers by the Government that would fundamentally substitute the Parliament in law-making.

## II. The responsibility of the Government.

**Accountability of Government** is manifested in two aspects: political and judicial.

**Political responsibility** means that the Parliament on the initiative of the deputies can show the vote of non-confidence to the Government (to vote on the censor motion). This way the Government loses legitimacy gained through the vote of investment. The vote on the censor motion can be provoked by the Government through the involvement of its responsibility over a program, a general political declaration a bill. The Parliament is to choose between the acceptance of the initiative of the Government or its dissolution (the Republic of Moldova, France, Romania, Armenia, etc.). We would like to mention that in presidential republics the Government usually is accountable only to the President, the dissolution of Government through the initiative of Parliament is practically impossible.

*The procedure of voting on the censor motion.* The initiative on the censor motion cannot be collective. The minimal number of people who initiate it makes up at least 1/3 of the deputies in Ukraine, Armenia, Georgia, Belarus, 1/4 - in the Republic of Moldova, 1/5 in Estonia or 1/5 from the total number from both Houses of the Parliament in Kazakhstan, 1/10 of the number of deputies in Spain, or 1/10 of the members of the Senate or the House of Deputies in Italy.

The censor motion is put to vote in a certain period after it was presented: in 2 days in France, Portugal, Slovenia, in 48 hours and not later than in 72 hours - in Armenia, in 3 days in the Republic of Moldova, Italy, Estonia, in 5 days in Spain.

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<sup>2</sup> Astfel, prin ordonanța de urgență nr. 10/1996 a fost modificată Legea nr. 68/1992 pentru alegerea Camerei Deputaților și Senatului, prin ordonanța de urgență nr. 22/1997 a fost modificată și completată Legea administrației publice locale nr. 69/1991, iar prin ordonanța de urgență nr. 36/1997 a fost modificată Legea învățământului nr. 84/1995 ș. a.

The censor motion is usually voted by the majority equal to that of the Government – the majority of elected deputies (the Russian Federation (the State Duma)), Belgium (the House of Representatives), Spain (the Congress of the Deputies), Ukraine, Lithuania, Estonia, Armenia, Georgia), still there may be other regulations: the vote of 2/3 of the members of Parliament (Kyrgyzstan) or each house of Parliament (Kazakhstan).

*Circumstances when the vote on the censor motion is not possible:* the period of war or an exceptional situation that threatens constitutional order (Armenia); within a year from the moment the vote of confidence was expressed to the Government (Ukraine, Belarus); more than once within the same session (Ukraine, Kyrgyzstan); six months before the presidential elections (Kyrgyzstan).

The Government is usually collectively responsible for its activities, the dismissal of the prime-minister leads to the dissolution of the whole Government (the Republic of Moldova, Germany, Spain, Ukraine, Latvia, Lithuania, Georgia, India, Kazakhstan, Kyrgyzstan, and Ethiopia). The Government functions as a solidary body where one is responsible for all and all members will be in charge for one of them. Or, a political responsibility applicable exclusively to every member of the Government taken separately will not take into consideration the fact that this solidary body is usually the author of the most important governmental measures. At the same time the collective responsibility in some states does not exclude individual responsibility of the ministers to the Parliament – in some circumstances concrete ministers will be dismissed. Thus, in *Georgia* (art. 59 paragraph 1 of the Constitution) the Parliament through the vote of the majority of members can ask the prime-minister a question on the functional responsibility of every member of Government. In case the prime-minister does not dismiss the member of the Government in question s/he has to present to the Parliament the motivation of his/her decision within a 2-week term. Besides, if the provisions of the Constitution are infringed 1/3 of the number of elected deputies can initiate dismissal of any member of the Government. The dismissal is possible after the statement of the Constitutional Court was received through the vote of the majority of the elected deputies. In *Estonia* (art. 96 paragraph 5 of the Constitution from June 28,

1992), if the State Assembly shows vote of non-confidence to a minister s/he will be dismissed by the President of the Republic. In *Kazakhstan* (art. 57 p. 6 of the Constitution from August 30, 1995) 2/3 of the members in the Senate or Majilis can address the President of the Republic referring to the dismissal of any member of the Government. The Parliament can ask for an individual dismissal of the members of the Government in Austria and Lithuania.

In some states the so-called *vote of constructive non-confidence* is applied – the Government will be dismissed only if the Parliament will give a vote of confidence to the new Government. In *Germany* (art. 67 from the Fundamental Law) Bundestag can give a vote of non-confidence to the federal chancellery only through the elections of a successor with the participation of the majority of its members, the elections take place in 48 hours after the initiative was stated. The Federal President has a function to revoke the minister in function. S/he has to execute this demand. In *Spain* (art. 113 paragraph 2, 114 paragraph 2 of the Constitution) the censor motion that was initiated by the deputies should contain a candidate for the function of the prime-minister. If the Congress of Deputies adopts the censor motion, the Government is dissolved and the candidate is vested with the confidence of the Congress.

The constitutional practice of the states prompts two possible *effects of the adoption of the censor motions*:

- a) *dissolution of Government* – Spain, Austria, Armenia;
- b) *the chief of the state decides what to choose: the dismissal of the Government or the dissolution of the Parliament or a House of Parliament that adopted the censor motion*. Thus, in *Estonia* the President has at his disposal 3 days to make a decision in this sphere, but in *Byelorussia* – 10 days. In *Georgia*, if the Parliament not earlier than in 90 days and not later than in 100 days after the motion was given keeps to the decision the President of the Republic dismissed the Government or dissolves the Parliament. We would like to mention the fact that if more than 3/5 of the number of deputies vote for the dismissal of the Government the President is obliged to dismiss the Government. In *the Russian Federation* and *Kyrgyzstan* the President decides within three months whether the Parliament will repeatedly vote on censor motion. In *Belgium*

(art. 46 paragraph 1 p. 2) C) the Monarch can dissolve the House of Representatives if having given the vote of non-confidence to the federal Government it does not concomitantly present a candidate for the post of the prime-minister.

In our opinion *the institution of the constructive vote of non-confidence is of great interest in cases when it is necessary to avoid the political crisis. The practice of offering the Parliament a chance to avoid the dissolution through advancing a candidate for the function of the prime-minister is also very useful.*

**Judicila responsibility** is known in all regimes. It means penal responsibility of the members of the Government for the committed infringements while implementing their powers. For example, in *Austria* (art. 76, 142 paragraph 2 p. b) from the Constitutional Law) calling to account of the members of Federal Government for the committed infringements while exercising their powers will be made on the basis of the decision of the National Council, the competent institution being the Constitutional Court. In *Belgium* (art. 103 of the Constitution) calling to account of the members of federal Government for the infringement of laws while exercising their powers is made by the House of Representatives. In *Spain* (art. 102 paragraph 2 of the Constitution), if members of the Government are found guilty with betrayal or other crime against the security of the state, penal action can be advanced only if  $\frac{1}{4}$  of members of the Congress ask for it and there is an absolute agreement of the Congress. In similar cases the Royal pardon cannot be used. In *Georgia* (art. 64 of the Constitution), if a member of Government is accused with the betrayal or other crimes the Parliament, having the majority of votes of the deputies and the statements of the Supreme Court, has a right to decide the case.

In some states the prime-minister enjoys immunity and inviolability. Thus, in *Azerbaijan* (art. 123 of the Constitution) the immunity of the prime-minister can be raised by the President of the Republic on the proposal of the Solicitor general in case of infringements. In *Lithuania* (art. 100 of the Constitution) the prime-minister and minister are inviolable. Their immunity can be raised only by the Seim, but in the period between the sessions – by the President of the Republic. In *Estonia* (art. 101 paragraph 1 C) members of Government can be called to penal account on the initiative of the

chancellery of justice with the agreement of the majority of members of the State Assembly.

In *Italy* (art. 96 from the Constitution) the infringements committed by the prime-minister and ministers while exercising their powers are examined and after the end of their mandate are given for consideration to the Senate of the Republic or the House of Deputies.

*The competent institution to decide the cases of the ministers* are: the Supreme House of the Parliament – Argentina, India; the Constitutional Court – Austria, Germany, Italia; the Court of Justice of the Republic – France; the Court of Appeal – Belgium; the Penal Section of the Supreme Tribunal – Spain.

We support the opinion *it is necessary to introduce in the Constitution of the Republic of Moldova of regulations on the declaration of the judicial responsibility of members of the Government who infringed the law while exercising their powers not only on the procedure of political responsibility of the Government.*

