

## THE MOTION OF CENSURE - JURISPRUDENTIAL ASPECTS AND THE PARLIAMENTARY PRACTICE

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### **Abstract:**

*The motion of censure is the main tool of parliamentary control, this control being exercised only within the limits of the constitutional[1] and regulatory provisions and respecting the jurisprudence of the Constitutional Court [2]. The Government is invested in the vote of confidence of the Parliament, and when the Parliament adopts a motion of censure, the confidence granted is withdrawn and the Government is dismissed. The institution of the motion of censure is regulated, in general, in Article 113 of the Romanian Constitution, but references to this institution and its effects can be found in other articles, such as Articles 110 and 114. Given that its purpose, after adoption, is the dismissal of the Government, the motion of censure was notified before the Constitutional Court by the subjects of law interested in blocking such an approach or in obtaining clarifications regarding the meaning of certain constitutional or regulatory provisions. This article makes an analysis of this institution and captures aspects of jurisprudence and parliamentary practice.*

**Key words:** *motion of censure, parliamentary control, Government, Constitutional Court, Parliament*

### **Introduction**

The parliamentary control function is performed by the Romanian Parliament with the help of various instruments provided by the fundamental act, the definition and use of which are largely regulated by parliamentary procedures. In the category of parliamentary control tools we include informing the Parliament by the Government and other public administration authorities, parliamentary inquiry, questions, interpellations, simple motions and the motion of censure. To these can be added, according to the jurisprudence [3] of the Constitutional Court, the commitment of the Government and the legislative delegation. The most important instrument of parliamentary control is the motion of censure, qualified in the doctrine [4] as a traditional institution of modern public law. If the motion has a political character until its submission before the Parliament, once submitted, it also acquires a legal capacity. The official submission of the motion is the moment when an act of the initiators' will becomes an act of will of the Parliament, the Parliament entering a specific rapport of constitutional law with the Government [5]. The motion of censure may be the result of the parliamentarians' will, according to the

provisions of Article 113 of the Constitution or may be a motion of censure activated by the Government, pursuant to Article 114, the moment it assumes responsibility for a program, a general politics statement or a bill before the Parliament.

Even if, at first sight, it can be concluded that there are two categories of censure motions, one regulated by Article 113 and the other by Article 114, as a legal institution, the motion of censure is a sole one, with the same legal nature and the same purpose pursued in both hypotheses, as the Constitutional Court emphasizes in Decision no. 1525 [6] of 24 November 2010. By adopting a motion of censure, the political responsibility of the Government is involved, regulated in Article 109 paragraph 1 of the Constitution, the Parliament applying the most severe sanction to the Government, namely the dismissal by withdrawing the trust granted. The Constitutional Court emphasizes in its jurisprudence [7] that the only tool of parliamentary control that has a legal sanction attached is the motion of censure, as the parliamentary control, in general, does not involve a legal sanction. Basically, the motion of censure is symmetrically opposed to the vote of confidence given to the Government by the Parliament, falling into the category of relations between the Parliament and the Government [8]. In both cases it is necessary for the two Chambers (Senate and Chamber of Deputies) to meet in a joint sitting. The parliamentary control through the motion of censure is exercised by complying with certain conditions of constitutional validity related to the number of holders of the initiative, communication of the approach, presentation, debate and adoption, but also conditions established by regulatory rules of a procedural nature, by Decision no. 64/1994 [9], the Constitutional Court ruled that “the regulatory norms are constitutional if they ensure the normal, responsible and reasonable conduct of parliamentary life”. According to Article 113 of the Constitution, the motion of censure can be initiated by at least a quarter of the total number of deputies and senators, the condition being imposed by the need to ensure the representativeness of the approach and stop those initiatives aimed at harassing the executive and discrediting it [10]. After its submission to the Parliament, the motion of censure is communicated to the Government in order to allow this public authority to come into contact with its content and prepare its defense[11], and the Government demonstrating that the confidence given by the investiture vote has not been misappropriated [12]. The motion is debated in the joint sitting of the two Chambers of

Parliament, three days after it was tabled in the joint sitting, and requires the vote of a majority of Deputies and Senators to be adopted. The analysis of the constitutional provisions reveals the following steps involved in the motion of censure: initiation, submission, communication, presentation, debate and voting.

The provisions of Article 113 paragraph 4 establish the rule of submitting a single motion of censure in the same parliamentary session by the subjects of law who initiated the parliamentary control through the motion of censure, unless the Government assumes responsibility. As the doctrine [13] points out, we find this constitutional solution enshrined in the Spanish and French constitutions. After the adoption of the motion of censure, the Parliament takes note of the decision, which is sent to the President of Romania, in order to initiate the procedure of forming a new Government [14]. The Government dismissed by motion of censure continues its activity until the investiture of a new Government, having a limited competence, namely to fulfill the acts necessary for the administration of public affairs, according to Article 110 paragraph 4 of the Constitution.

### **The motion of censure in the jurisprudence of the Constitutional Court and in recent parliamentary practice**

The recent parliamentary practice has faced the situation where two motions of censure were tabled in the same parliamentary session for the dismissal of the Government. The first motion filed was challenged by the Government in the Constitutional Court on the grounds that there was a legal conflict of a constitutional nature between the Government and the Parliament, alleging violation by the legislature of its constitutional obligations regarding the exercise of parliamentary control through the motion of censure, which led to the affectation of the constitutional relations between the two fundamental authorities of the Romanian state. This motion did not enter the debate procedure and vote in the Parliament, because the Government concerned was dismissed by another motion of censure initiated by other parliamentarians during the period when the first motion was under consideration in the court of constitutional contentious. The first motion, entitled "The dismissal of the Cîțu Government, the only chance for Romania to live! Florin Cîțu must leave!" was submitted to the Parliament on 3 September 2021, and the second one entitled "Stop poverty, prices on the rise and

criminals. Down with the Cițu Government!” was filed on 28 September 2021, on the same day that the Constitutional Court ruled on the legal conflict of a constitutional nature with which it was notified in the case of the first motion.

In its capacity as the sole constitutional court in Romania [15], the Constitutional Court examined the institution of the motion of censure both on the occasion of this referral regarding the settlement of the legal conflict of a constitutional nature, and on other occasions, in which it stressed the importance of this Parliament action in its relations with the Government [16].

In Decision no. 1525/2010, the Constitutional Court states that the motion of censure “constitutes a real instrument of a constitutional nature made available to the Parliament in order to achieve parliamentary control over the activity of the Government”. The parliamentary control exercised over the Government by means of the motion of censure aims, once initiated, at its dismissal, so that from the moment of its submission it creates a state of uncertainty and instability in the relations between the Parliament and Government by questioning the trust rapport granted by the investiture vote, as the Court points out in another decision [17]. The motion of censure is generated by the “crisis of confidence” emerging in the relationship between the Parliament and Government. Once tabled in Parliament, the motion of censure must be presented, debated and voted on, otherwise “the impediment to the presentation and the refusal to debate a motion of censure already tabled are unconstitutional” [18]. Filing a motion involves a procedure, in which case the Parliament’s action must, in the view of the Court [19], be consistent, rigorous and coherent. With regard to the moment when a motion of censure is tabled, the Constitutional Court has stated that the constitutional text does not contain any provision prohibiting the tabling of a motion outside the ordinary sessions of Parliament. Given that the function of parliamentary scrutiny is exercised on a permanent basis, not only in the ordinary sessions of Parliament, a motion of censure may also be tabled in an extraordinary session, provided that the two Houses of Parliament meet, work and operate simultaneously in separate meetings and separate special sessions, regardless of their agenda [20]. However, the court of constitutional contention emphasizes that the filing of a motion of censure in the special session must be done in good faith, in the spirit of the rules of constitutional loyalty, so as not to expose this legal institution [21]. Also

related to the timing of the tabling, presentation, discussion and voting of the motion of censure, the Court was called upon to rule on the possibility of a motion of censure being tabled in one session and presented, discussed and voted on in another session. Following the analysis of the constitutional conditions, the court of constitutional contention concludes [22] that there are no rules for the submission/presentation/debate and voting of the motion of censure to take place in the same session or in sessions of the same nature. This means that a motion can be tabled in one session and if that session ends, it can be presented/discussed and voted on in the next session. For example, if a motion of censure is tabled on the last day of an ordinary session, it may be presented/debated/voted in a special session following the ordinary session. At the same time, if a motion of censure is tabled on the last day of a special session, it shall be presented/debated/voted in accordance with the time limits laid down in the Rules of Procedure of the joint sittings and in the Constitution, even in ordinary session, provided the Parliament is in session, that is, to be assembled, and to work in a joint meeting.

Another feature of the motion highlighted by the Constitutional Court is related to the rapidity of the procedure, specific to parliamentary control, in the sense that, after submission, the motion of censure must be debated after at least 3 days following the submission, but within an appropriate time interval [23] meant to avoid legal uncertainty in relation to its purpose [24].

As for the initiators of the motion of censure, the court of constitutional contention ruled that, in order to be legally initiated, it must be signed by at least a quarter of the total number of deputies and senators, and regarding the signature of the parliamentarians it states that “the signature of the deputy/senator expresses their unequivocal will to initiate a motion of censure” [25]. Because technical-formal issues were brought to the attention of the Constitutional Court, namely the issue of how the handwritten signatures of the motion initiators must be submitted, the constitutional court ruled that as long as there are no express constitutional and regulatory provisions regarding the manner in which the signatures must be submitted (original or copy), what matters “is the will of the deputy or senator who signed the motion of censure in the sense of initiating it and the owning/assumption of the signature by each initiating deputy/senator” [26]. In the Court’s view, a signature inscribed on the list in support of the motion of censure is presumed to

be true in the sense that it expresses the reality of the will and intention of the deputy/senator to initiate a motion of censure, and this presumption can be overturned only by parliamentary means.

An interesting aspect resulting from the jurisprudence of the constitutional contentious court is the one related to the status of the two authorities involved in the parliamentary control activity through the motion of censure. The Court considers that the Parliament must not show a dominant and subordinating tendency in the relationship with the Government, because otherwise it would destabilize the balance of power between the two authorities and, in this way, violate the principle of balance of powers enshrined in Article 1 paragraph 4 of the Constitution, a principle also valid in the case of exercising the function of parliamentary control over the activity of the executive [27].

## **Conclusions**

The directive of a legal institution's constitutional and regulatory level does not always allow to capture of all aspects that may arise in parliamentary practice related to that institution, which leads to the need for further clarification of constitutional and regulatory provisions by the Constitutional Court. It can be seen from the analysis of the jurisprudence of the Constitutional Court regarding the motion of censure that the constitutional court manages to clarify the meaning of the provisions subject to its analysis and to give the institutional actors involved in the parliamentary control procedure through the motion of censure a much clearer picture of this important institution. The analyzed decisions capture the different dimensions of the legal institution and manage to highlight the way in which both the Parliament and the Government must behave, so that the conduct of the two fundamental authorities respect the principle of loyal cooperation and that of balance of powers.

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