

DISSENTING OPINION

Pursuant to article 27 paragraph (5) of the Law on Constitutional Court
and art.67 of the Code of Constitutional Jurisdiction

By Judgment No. 28 of 22 December 2011, establishing that it was violated the passing procedure, the Constitutional Court declared unconstitutional the Law No. 184 of 27 August 2011 on the amendment and completion of some legislative acts.

The Constitution of the Republic of Moldova, in Article 60 provides that "*Parliament is [...] the sole legislative authority of the State.*" At the same time, the Constitution puts at the disposal of the Government two tools that allow it to intervene in the sphere of regulation of social relations - either through ensuring accountability to the Parliament, as provided for in Article 1061, or after legislative delegation by issuing ordinances. These provisions are not intended to achieve "*the legal monopoly of Parliament*", as long as these mechanisms are used in accordance with the provisions of the Constitution.

Undertaking the accountability of Government for a draft law is an indirect legislative way of passing a law not by debating it in the ordinary legislative procedure, but by a simplified procedure, after which the dismissal of the Government may emerge. Romania's Constitutional Court has defined ensuring Government accountability for a draft law as "*a mixed procedure of parliamentary control, since it allows the initiation of a censure motion, and law-making, since the draft law in respect of which the Government undertakes accountability shall be considered passed if such motion has been filed, or being initiated, it was rejected.*"¹

¹ Decision No. 34/1998, Official Gazette of Romania, Part I, No. 88 of 25 February 1998

In § 38 of the decision the Court stated that the Academy of Sciences of Moldova noted that Government Decision No. 633 of August 24, 2011 on ensuring accountability for the draft law in question was published in the Official Gazette of 26 August 2011 and that at the time of the presentation in the Parliament Secretariat it was not in force in accordance with Article 1 paragraph (5) of Law No. 173 of 6 July 1994 on the manner of publication and entry into force of the official documents. According to the Academy of Sciences of Moldova, the term of 3 days from the "*submission of the draft law*" had to run from 26 August, 2011, when the Government Decision was published in the Official Gazette.

In § 65 the Court accepted the argument of the Academy of Sciences of Moldova and considered that the promulgation and publication of Law No. 184 on 27 August, 2011, at the distance of 1 day following the publication of Government Decision in the Official Gazette of 26 August 2011, was held in violation of the constitutional deadline prescribed for submitting the censure motion.

I consider unfounded the Court's conclusion, which states that it has been violated the procedure for passing laws. Both the Academy of Sciences of Moldova, as well as the Constitutional Court had misinterpreted Article 106¹ combined with Article 106 of the Constitution.

Art.106¹ of the Constitution of RM "[...](2) Government is dismissed if the censure motion, filed within 3 days from the submission[...] of the draft law, was voted under provisions of art.106"

Art.106 of the Constitution of RM "[...](2) The initiative of expressing distrust is examined after 3 days from submission to Parliament".

Thus, in accordance with article 106¹ paragraph (2) of the Constitution of RM, the Government may be dismissed if, within 3 days from the submission of the draft law to the Parliament 1/4 of Parliament Members submitted a non-confidence motion initiative. The initiative of the expression of non-confidence shall be examined over 3 days after its submission, but not after 3 days of submitting the draft law or decision on ensuring Government accountability (in accordance with article 106 of the Constitution of the Republic of Moldova).

Article 106¹ does not provide that the Government Decision on the ensuring Government accountability to be published in the Official Gazette and neither that the deadline runs from its publication in the Official Gazette, as the Court has wrongly interpreted this provision. The Government's accountability shall be undertaken to the Parliament (and not to the society) and it does not produce effects on persons or on a circle of people, as in the case of decisions or laws or other normative acts, therefore, the legal consequences of such decision occur at the time of its presentation to the Parliament, without the need of Government's representative to submit to the Parliament. Taking into consideration that the ensuring of Government accountability is done in exceptional cases and law-making process must be quick, for the submission of the censure motion is sufficient the term for 3 days, the Parliament having the possibility to convene in an extraordinary or special session, if it is not in a regular session.

In supporting these arguments comes the Article 119 of Parliament's Regulation, passed by the Law No. 797 of 02.04. 96, which, developing the constitutional articles, stipulates that "[...](2) *The ensuring of political responsibility to the Parliament shall be declared by the decision of the Government, that is submitted on the same day to the Parliament, with the annexation of the program text, of the general policy statement or the draft law. The Speaker of Parliament immediately rules the distribution of the decision and additional materials to Members of Parliament. [...]*". This regulation does not provide that the accountability to the Parliament must be published in order to gain legal value; it provides only that the decision is presented to the Parliament on the same day with the annexation of the draft law.

Pursuant to paragraph (3) of the same law "[...] (3) *If, within 72 hours from the time of the ensuring of Government accountability, at least 1/4 of the lawmakers selected does not make a censure motion to the Government or if the censure motion submitted is rejected, the program,*

the general policy statement or draft law shall be deemed passed and become enforceable for the Government. [...]"

In this case we see that from 24 August, 2011 until 27 August 2011 (date of passing the law), the Parliament has had sufficient time to submit a censure motion. At the meeting the Parliament s representative stated that *"the draft law was registered at the Parliament Secretariat under No. 1878 of 24.08.2011 and as a priority, in accordance with the paragraph (2) article 119 of the Parliament Regulation, the Speaker of the Parliament immediately ordered the distribution of Government decision and additional material to the Members of Parliament."*

The Government has adopted the Decision on ensuring the accountability of the Government to the Parliament on 24 August 24, 2011 and on the same date it was submitted to the Parliament together with the draft law On amendments and addenda to some legal acts. As it can be seen, the term of 3 days from the time of ensuring of Government accountability to the Parliament and the presentation of the draft law until the entry into force of the law has been observed.

Regarding the opinion of the Court set forth in § 66, we recall that Law No. 173 of 6 July 1994 on the manner of publication and entry into force of the official documents do not provide for the publication of the draft law in the Official Gazette and it would not be reasonable in recital that the Parliament can express their distrust towards the Government and the law would become null.

In § 62 and 63 of its decision the Court found *"[...] that Law No. 184 of 27 August 2011 was passed by ensuring the accountability of the Government during the Parliamentary vacation, without the presence of executive power representative in the plenary session of Parliament, determining the failure of censure motion and, implicitly, the political debate on maintaining or withdrawing the authority assigned to Government at the investiture. The Court considers that the manner in which the Government has made use of the procedure of ensuring accountability to the Parliament has effectively deprived the Parliament, as the Supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the State, of control over such exceptional measures."* I don t agree with this statement, because the parliamentary recess shall not constitute an impediment to the convening of the Parliament in an extraordinary or special session in accordance with Article 37 paragraph (2) of the Parliament s Regulation and paragraph (3) of the same article requires the convening of Parliament in extraordinary or special session in 3 days from the date of registration of the request. According to this regulation, the convening of Parliament shall not exceed 3 days, if the law provides otherwise. Parliament representative said in court that at the time of submitting the materials by the Government, some employees have been called back to work from vacation, as in a matter of emergency to be given the draft law. Thus, the Parliament was able to convene and to require the presence of the executive power representative in the plenary session of Parliament and, if necessary, to initiate the expression procedure of non-confidence towards the Government.

Thus, I consider that the conditions for the passing of the Law No. 184 of 27 August 2011 on the amendment and completion of some legislative acts were observed.

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