

## THE JUDICIAL LIABILITY OF THE GOVERNMENT MEMBERS IN ROMANIA

**Ion Eduard LĂDARU**  
**Junior Assistant**

**University „Constantin Brâncuși” of Târgu-Jiu**  
**Faculty of International Relations, Law and Administrative Sciences**

Except the political responsibility, the members of the Government are judicially responsible. Therefore, they are not only civilly responsible, but also for summary offences, disciplinary or criminal offences, as in case, according to the common law, in that situation in which the law of the ministerial liability has no other provisions [1]

Concerning the judicial responsibility, the Constitution regulates in art. 109 para.(2) only the criminal responsibility, disposing that only the Lower House, Senat and President of Romania have the right to require the criminal pursuit to the members of the Government for deeds committed during their functions exercising. In applying these constitutional disposals it was adopted the Law No 115/1999, republished, concerning the ministerial liability, that regulates not only the political responsibility of the Government members, but also their judicial responsibility. This law overtake in art. 2 the constitutional disposals according to which the Government is responsible politically only in front of the Parliament, as a of the following trust vote awarded by this one on the investiture, and each member is responsible plotically sympathetically with the other members for the activity and documents of the Government.[2]

The Law No.. 115/1999 regulates the criminal responsibility of the Government's members for the offences committed by these ones during exercising their function.

In art. 8 from Law no. 115/1999 are regulated special offences which the members of the Government may commit during exercising their function:

a) hindering by threat, violence or using fraudulent means the exercise in good faith of any of the citizens' rights and freedoms of citizens ;

b ) the presentation with bad faith of inaccurate data to the Parliament or to President of Romania concerning the Government's or any of the ministries' activity , for hiding committing acts likely to prejudice the interests of the State.

c ) the unjustified refusal to submit to Chamber of Deputies or Lower Chamber, the Senate and their standing committees within 30 days of the request , the information and documents required by them on the information of Parliament by the members of the Government , according to art . 111 para. (1) of the Constitution;

d ) issuing orders or discriminatory instructions acts based on race, nationality, ethnicity , language, religion, social status, beliefs, age, sex or sexual orientation, political affiliation, wealth or social origin, which would adversely affect the human rights .

In accordance with art. 9 of Law 115/1999 in case of committing by the members of the Government , during exercising their functions of any other crimes or criminal offences, than those regulated by art. 8 of the same law, there are to be applied shall be punishments under the criminal law for those crimes.

For offences committed by members of the Government during the performance of their duties, in addition to the main penalty will be applied an additional punishment, such as, ruling out the right of occupying a public dignity or a public leading function over a period from 3 to 10 years [ art. 9 para . (2) of Law no. 115/1999 ]

For infringements committed outside the exercise of their duties, the members of the Government liability is under the common law [ art . 7 para.( 2)] .

The criminal liability has a personal feature, this one concerning each Government member, for the actions committed during exercising their functions.

Engaging the criminal liability of the Government members for their committed deeds as actions during their functions' performing may be possible only by respecting certain procedures of criminal pursuit and court settlement foreseen by the Law of Ministerial Liability. This procedure includes the following: [3]

1. The Request of criminal pursuit may be issued by the Chamber of Deputies – Lower Chamber, Senat or Romania's President. [4]

2. The debating of the request of beginning the criminal pursuit takes place within the Lower Chamber or in Senat, depending on the membership to those of the respective minister, in the situation in which this one is not a member of the Parliament. This situation has initiated a procedure. The debate is deployed based on a report drawn up by a standing committee, that performed according to its competences, a previous investigation concerning the activity performed by the Government or by a ministry or by a special investigation committee, formed with this purpose.

3. The request of criminal pursuit of the Government's members is debated in the presence of the majority of the Lower Chamber or of the Senat , as in case, and the decision is adopted by voting with the majority of the present members. The vote is secret and expressed by using balls. At the debates within the two Chambers of the Parliament, the presence of the involved person is mandatory, but the unreasoned absence of the concerned person doesn't hinder the development of these procedures, in the situation in which the involved person is objectively absent, the Chamber of Deputies or the Senat, with the opportunity of the debates, it will be set a new hearing term for their recalling. The concerned person has the right to express the own views on what constitutes the object of the offence to be prosecuted, and the request for the waiver of parliamentary immunity when appropriate. after the debate, the Chamber of Deputies or the Senate can approve or reject the application for initiation of prosecution ;

5. If a member of the Government, the President of Romania called slow  $\neg$  Perea prosecution is deputy or senator, Minister of Justice - or if he is concerned , Prime Minister - will require competent Chamber to initiate the procedure for starting the debate demand prosecution .

Up to the prosecution, the Chamber of Deputies , the Senate or the President of Romania may withdraw reasoned request that sought criminal proceedings against members of the Government .

6 . After the prosecution, if the member is the Deputy or Senator Government , it may be detained, arrested or searched only with the consent of the House to which it belongs and after hearing. in case of flagrant offenses , member of the Government may be detained and searched , but the Minister of Justice shall promptly inform the President of the Chamber part . where the person concerned is himself justice minister , referral is made by the prime minister. According to art . 72 para. (3) of the Constitution, if the notified Chamber finds no grounds for detention , it shall order the revocation of the measures taken against members of the Government who is also a deputy or a senator;

7 . When asked, the prosecution against a member of the Government for whom the Romanian President may order its suspension as a following of beginning the prosecution;

8 . If it is ordered the prosecution of a member of the Government, the Minister of Justice or, where appropriate , the Prime Minister communicates to the President of Romania before the date on which the High Court of Cassation and Justice, would suspend the concerned person from his/her function . It is stressed that, by the indictment, the suspension of the member government concerned is optional , left to the will of the President of Romania ;

9 . The Prosecution of members of the Government for acts committed in the exercise of their function is for the Prosecutor's Office attached to the High Court of Cassation and Justice or the National Anticorruption and their judgment is our court

The special procedural rules are completed with those contained in the regulations of the two Chambers of the Parliament and those contained in the Criminal Procedure Code , if there is no infringement against the special law. During the criminal trial, the members of the Government are entitled to the presumption of not being guilty. Any member of the Government convicted by a definitive decision will be fired from his or her function by the President of Romania, at the proposal of the prime-minister.

The decision of convicting a member of the Government is published in the Official Journal of Romania, part I.

## References

- [1]. Anton Trăilescu, Administrative Law , Publishing House C.H. Beck, Bucharest, 2010, p. 27
- [2]. Ibidem
- [3]. Ibidem, p. 29
- [4]. The Expression „only" in para. (2) of art. 109 from the Constitution signifies the fact that „nobody" else than the three public authorities are able to require the criminal pursuit and that this cannot be started in absence of a request of the Lower Chamber, Senat or the President of Romania , as it is the case. If the criminal pursuit assigned people may proceed to different previous actions before the criminal pursuit, under the law conditions, they cannot continue their activity without referring to one of the three public authorities to demand the prosecution. In such situations , the Public Ministry – Prosecutor’s Office Attached to the High Court of Cassation and Justice has the obligation to notify the Chambers of Parliament or the President of Romania , where appropriate, in connection with the information and data they hold and the resulting possibility of prosecution against a member of the Government , as the only authorities able to decide this procedural act. As for the conjunction "and " in the text of art . 109 para. ( 2 ), it signifies the end of an enumeration , which gives each of the three authorities own competence . The Constitutional text excludes both cumulative power on the demands of the three public authorities and the alternate jurisdiction between them. The provisions of art. 109 para. ( 2 ) Thesis 1 of the Basic Law establish the absolute right of each of the three public authorities to require the prosecution or the criminal pursuit and its exercise by one of them can be done at the expense of others, the right of one of them not being the subject to the right of the other (Decision no. 270 of 10 March 2008, Official Gazette . nr. 290 of 15 April 2008) , cited Tudorel Toader, Constitution , reflected in constitutional jurisprudence , Hamangiu Publishing House , Bucharest, 2011 , p . 229  
The notification submitting to one of the three authorities to demand the prosecution can not be done at preferential random nor by the Public Ministry – Prosecutor’s Office of the High Court of Cassation and Justice, because, in accordance with art . 71 para. (2) of the Constitution , the quality of a Deputy or Senator is incompatible with the membership of the Government function exercising. That is , the overlapping quality of a deputy or senator with the membership of the Government draws after itself naturally , according to art . 109 para. (2) the competence of the Chamber of Deputies or the Senate as the power to demand the prosecution , as appropriate. Therefore, in relation to the above, if the Prosecutor's Office attached to the High Court of Cassation and Justice is notified by one of the three authorities - the Chamber of Deputies , the Senate and the President of Romania - to demand the prosecution of a member of the Government, the solution is differentiated as it has or not the quality of being a Deputy or Senator, otherwise , it would lead to a situation when, according to the provisions of Art. 109 para. ( 2 ) and the thesis of the Constitution would

become inapplicable in the Chamber of Deputies and the Senate for giving the right to demand the prosecution of members and former members of the government that are also MPs, leaving it up to the DPP to decide, with the on its own , which of the three authorities to address their complaint (Decision no. 270 of 10 March 2008, Official Gazette no. 290 of 15 April 2008) , cited Tudorel Toader , op. cit. ECR 230