



The Motion of No Confidence as a Mean of Parliamentary Control in Relation to the Government and the Dissolution of the Parliament: A Comparative View Between Kosovo, France, Germany, Italy and Croatia

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Abstract

From the treatment that has been given to the role of the motion of confidence-no-confidence as a means of controlling the parliament in relation to the government and its effects that are produced in the inauguration of the government or in the dissolution of the assembly and the announcement of early elections, efforts have been made to underline the characteristics of this means of control, especially in countries with a parliamentary system, and the consequences it produces in the continuation or shortening of the governing mandate. When it comes to obtaining the confidence of the government through a motion of no confidence by the parliament, one naturally thinks of a rather harsh political and constitutional mean that exposes the political responsibility of the prime minister and his government cabinet or ministerial council. In the most adequate treatment of this issue, the comparative method between different states has been used, drawing parallels between the Republic of Kosovo and these states, in terms of the motion of no confidence as an extraordinary means of parliamentary control. The role of the President of the State in such a political momentum is extremely important, in creating the conditions for a government that enjoys parliamentary support.

Keywords: *Vote of Confidence; Motion of No Confidence; Assembly; Government; Parliamentary Control*

1. Introduction

The exercise of state power first of all means enjoyment of citizens' trust in a government or governing power. The reflection of all this in a representative democracy is the support of the parliamentary majority towards a certain government. Naturally, as representatives of the people, deputies, congressmen, etc., the members of the legislature, relying also on the governing ideology in

which they believe, should give their trust - vote (support) to that governing nomenclature that meets expectations them as representatives of the people. Parliamentary rules provide instruments for giving and obtaining the confidence of a government as the bearer of executive power. Depending on the state in the state, such rules differ in terms of the procedure that is required to be respected in the case of giving and obtaining the mandate of a government, the majority that is required for this, as well as the consequences that are produced in the case of obtaining the mandate. Such parliamentary rules are a kind of pressure on the work of the government, in such a way that it does not deviate from the government plan-program presented to the citizens, thereby realizing the citizens' right to good governance. In the theoretical and practical aspect, the instruments of control of the executive power by the legislature, especially the motion of confidence-no-confidence, which is the main focus of this paper, are looked at from different angles.

The first, in the theoretical aspect, the motion of no confidence against the executive, is seen as putting before the public responsibility of the bearers of the executive power both in the case of giving the confidence for assuming governing responsibilities and in the case of obtaining such confidence, the second in the practical aspect the motion of no confidence enables the citizens to have a different governing nomenclature, in contrary to that, which has been worn out from confidence by the legislature. Viewed from a theoretical and practical point of view nowadays, the parliamentary systems in the world do not have the same rules or ways of functioning, but there are different models of parliamentarism that differ from country to country. The purpose of this paper is to define the constitutional and parliamentary rules regarding the motion of confidence-no-confidence as a means of putting the executive in front of political responsibility. In order to better achieve this goal, comparative methods have been used between different states in terms of the constitutional rules that are provided for this means of parliamentary control in the direction of the executive. From the models of parliamentarism that are applied today in different countries of the world, the means and instruments used by the parliament to control the work of the executive power, give it where less and where more weight and political and legal power, in relation with other state institutions. From the comparative aspect that is brought out in this paper, it can be ascertained that in the countries with a parliamentary system, where we have a bicameral parliament, it is the representative or lower chamber that has at its disposal the means of giving and obtaining confidence to the government as for example Germany, the exception here is Italy, in such a moment both chambers are involved, that is, both the Chamber of Deputies and the Italian Senate.

2. In General, For the Means of Parliamentary Control of the Work of the Government - the Case of Kosovo

In this part of the paper, the focus will be on dealing with the regular and extraordinary means of parliamentary control over the Government in the case of Kosovo, especially on the means that have as a consequence the announcement of new parliamentary elections before the regular constitutional deadlines. With the Constitution of the Republic of Kosovo and the Regulations of the Assembly of the Republic of Kosovo, the means or instruments of parliamentary control over the government are foreseen with various articles. Although the theory of constitutional law makes the division into regular and extraordinary means of control, such a division has not been expressly made even with the Constitution or the Regulations of the Assembly.

In the constitutional system of the Republic of Kosovo, **the following are considered regular means of parliamentary control:**

1. Periodic reports of the Government and the President to the Assembly on their work;
2. Approval of the state budget.

Whereas, **as extraordinary means of parliamentary control over the work of the executive power are:**

1. Parliamentary questions of deputies;
2. The establishment of parliamentary investigative commissions;
3. Interpellation;
4. Motion of no confidence;
5. Distribution of the Assembly with 2/3 of the votes of all deputies (Constitution of the Republic of Kosovo, 2008 & Regulations of the Assembly of the Republic of Kosovo, 2010).

Of all these regular and extraordinary means of parliamentary control, only two can have the consequence of dissolving the assembly and announcing new elections before the regular constitutional deadline. Meanwhile, the other means are more about putting the moral and political responsibility of the Prime Minister and Ministers before the public opinion - the citizens. Such means by which the Prime Minister and the Ministers are put before the political and moral responsibility for the exercise of their governing work are: Periodic reports of the Government; The control exercised through the approval of the budget proposed by the Government; Parliamentary questions of deputies; The establishment of parliamentary investigative commissions; Parliamentary interpellation.

2.1. Motion of No Confidence

In a parliamentary system, the Government is usually responsible to the Parliament, while in the semi-presidential system, the Government is usually also responsible to the President (Elgie, 1999). Since Kosovo has represented a parliamentary system of governance, the parliamentary and constitutional rules have recognized the motion of confidence-no-confidence as the main instrument for giving and obtaining the confidence of a governing nomenclature. Naturally, today the no-confidence motion is considered one of the strict and extraordinary means for dismissing the Government, namely obtaining the confidence of the people's representatives. Such is the case of Kosovo. In other words, the motion of no confidence in the Government is the last institution through which the Government is held accountable (Bajrami & Muçaj, 2018). Through the motion of no confidence as a permanent threat to the government, the parliament can take its mandate before the expiration of the term for which it was elected (Bajrami, 2012).

The Constitution of the Republic of Kosovo with its article 100 has regulated this instrument of control, which is further concretized with the provisions of article 30 and 31 of the Regulations of the Assembly of the Republic of Kosovo, creating a clear overview of the importance of its use in a certain political situation. According to the provisions in question, at least 40 deputies or 1/3 of the total number of deputies of the Assembly, with their proposal, can initiate the procedure of the no-confidence motion against the Government. The Prime Minister also has such a right, who can ask for no confidence in his government. The provision of Article 100 of the Constitution has an exclusive character for other subjects, so that this right is recognized only by these two subjects, but not by any other subject, such as the President. According to the constitutional provisions, two types of motion of no confidence can be applied in Kosovo: 1. Motion of no confidence in a member of the Government, for example the Deputy Prime Minister or Minister, and 2. Motion of no confidence in the Government as a whole. In the first case, if the motion of no confidence is voted with a majority of at least 61 deputies, it is considered that the Deputy Prime Minister or the designated Minister has lost the confidence of the Assembly, with the consequence of his dismissal from office. However, a motion of no confidence against the Prime Minister alone would be inadmissible, because this would automatically result in the dismissal of the Government if the motion were successful (Constitution of the Republic of Kosovo, 2008).

Since the circle of subjects that can initiate the no-confidence motion is taxatively numerous, then there must be particularly convincing reasons for the deputies, namely the Prime Minister, to start the procedure of obtaining the confidence of the Government. However, the article in question has used a not difficult to reach standard of 40 deputies, with whose proposal the procedure of no confidence in the Government can be started. Giving the opportunity to such a minority of deputies creates a relatively vibrant political environment where opposition deputies can challenge the parliamentary support of the government and eventually attempt to overthrow it by passing a motion of no confidence in the plenary session of the Assembly (Diermeier et al., 2003). The motion of no confidence initiated by the deputies and the one initiated by the Prime Minister should be viewed separately for several reasons.

First of all, the initiation of this means by the deputies, as a typical mean of countries with a parliamentary system, expresses an open tendency of the opposition to topple the majority from power and in this way, sovereignty returns to the people again, for the election of a new government. Also, this instrument can be seen as the adequate means through which the opposition parties can realize their aspiration for taking state power. However, there are not a few cases when in Kosovo the motion of no confidence in the government was initiated or supported by the deputies of the party or parties in power. Among the reasons for supporting or voting the motion of no confidence by the majority deputies can be: 1. The further interruption of the downward trend of electoral support of the party or parties in power, 2. The movement from the governmental principles previously agreed between the majority parties in coalition, 3. Further strengthening of the party or parties in power, as well as other reasons.

On the other hand, the possibility for the Prime Minister to start a motion of no confidence in his government is constitutionally justified by the fact that: 1. In this way he/she tests himself/herself for the work done, in front of the representatives of the people-deputies, 2. In this way avoids any opposition tendency for the overthrow of the government and the end of the government mandate. On the other hand, the possibility for the Prime Minister to start a motion of no confidence in his government is constitutionally justified by the fact that: 1. In this way he/she tests himself/herself for the work done, in front of the representatives of the people-MPs, 2. In this way avoids any opposition tendency for the overthrow of the government and the end of the government mandate. Unlike the deputies' initiative, the prime minister's initiative to start the no-confidence procedure can be seen as an individual authoritative action, which does not require reaching a consensus of the political spectrum for the overthrow of the government. Naturally, since the motion starts with the proposal to the 40 deputies, a prior agreement is required between the political parties that support such an initiative.

The proposal of the deputies or the prime minister for a motion of no confidence in the Government in power, cannot be put on the agenda in the Assembly, earlier than 2 days nor later than 5 days (Regulations of the Assembly of the Republic of Kosovo, 2010). The time limit for putting the motion of confidence on the agenda in the Assembly is also provided by the constitution of other countries in the region (Constitution of the Republic of Albania, 1998 & Constitution of the Republic of Macedonia, 1991). It will be considered that the Government has lost confidence if more than half of the total number of deputies of the Assembly of Kosovo or at least 61 deputies have voted for the motion of no confidence, in which case the Government is considered to have resigned. A worthy place for clarification in this part of the paper is the part of the actions that follow in the case of the successful vote of the motion of no confidence by the Assembly. In such a situation, the President of the State enters "on stage", who has two options:

1. To issue a decree for the dissolution of the assembly and the announcement of new elections;
2. To mandate another candidate for Prime Minister in compliance with Article 95 of the Constitution of the Republic of Kosovo (Judgment of the Constitutional Court of the Republic of Kosovo, 2014).

Although it is at the discretion of the president to use one of the above-mentioned alternatives, the President in such a situation has the best opportunity to prove himself as a factor of the unity with which he is responsible in Article 4 of the Constitution (2008), so that there is an obligation to apply the first alternative, if the second alternative is not possible, or to apply the second alternative, if with the first the state interests would be damaged and the announcement of new elections would only deepen them political or institutional crisis. In the event of the dissolution of the assembly and the announcement of new elections, after a successful vote of no confidence, the new elections must be held within 45 days.

In parliamentary practice, the motion of no confidence is often used to extend the life of the majority in power. According to Article 100 para.5 of the Constitution (2008), if the no-confidence motion against the government fails, the next no-confidence motion cannot be raised during the next 90 days. This provision provides a guarantee for the majority that there will be no motion of no confidence from the parties that aim to "overthrow" the government at least for the next 3 months. In such a situation, the failed motion would have an effect for two parties, the party seeking to obtain the confidence of the executive, so as to prepare for a greater mobilization for the next no-confidence motion, as well as the effect for the majority by showing that there are opposition tendencies for the dissolution of the assembly and new parliamentary elections. According to Bajrami (2010), for its responsibilities and duties, the Government answers to the Assembly, while the Prime Minister, Deputy Ministers and Ministers are jointly responsible for the decisions of the Government as a whole and individual responsibility for the decisions they take within the framework of their areas of responsibility.

2.2. Other Cases of Dissolution of the Assembly

As it was emphasized above, the motion of no confidence in the government as a whole does not necessarily result in the dissolution of the assembly and the announcement of new elections. With Article 82 of the Constitution of the Republic of Kosovo, the cases of mandatory dissolution of the assembly have been enumerated, with consequent announcement of early parliamentary elections. As cases of mandatory dissolution of the assembly are the following:

- **If within the period of 60 days, from the day of appointment of the candidate for Prime Minister by the President of the Republic of Kosovo, the Government cannot be established;**
- **If 2/3 of all the deputies of the Assembly vote for the dissolution of the Assembly, where the dissolution is done by decree of the President;**
- **If the President of the Republic of Kosovo is not elected within the period of 60 days from the day of the beginning of the election procedure** (Constitution of the Republic of Kosovo, 2008).

The 60-day deadlines for the establishment of the government, namely for the election of the President by the Assembly, are optimal deadlines for gaining the confidence of the Prime Minister and the future President in the Assembly, therefore, the granting of the confidence of the heads of state by the parliament, in countries with a parliamentary system constitutes a necessity for the functioning of state institutions. The impossibility to elect the Government and the President paralyzes the institutional life, therefore, constitutionally, a solution is required which exceeds such a political crisis. The threat of dissolution if the Government is not formed within a reasonable time may be an incentive for the negotiating parties to reach a compromise (International Institute for Democracy and Electoral Assistance, 2016). The solution is the elections. Due to the impossibility of the Assembly to constitute the new government and to elect the President of the State, the new elections through which a new legislature emerges, are the solution that, in the sense of Article 82, would bring the state out of the failure of the formation of institutions.

3. Motion of Confidence-No-Confidence, as a Means of Parliamentary Control in Other Countries Such as France, Germany, Italy and Spain

In this chapter of the paper, an attempt has been made to draw parallels in the motion of confidence-no-confidence, as a means of parliamentary control in Kosovo, with other countries with the same or similar constitutional system, such as France, Germany, Italy and Spain. In all these states, the legislative body is the one that gives and takes away the confidence from the government in power. Although the French Republic, as a country with a semi-presidential system of government, has slightly different constitutional rules regarding the functioning of constitutional institutions in relation to countries such as Germany, Italy and Spain, the constitutional rules regarding the motion of no confidence in the government are slightly or very similar to the aforementioned countries. The French National Assembly has the right to demand accountability from the Government by adopting a resolution of no confidence in it. Such a resolution shall not be valid unless it is signed by at least 1/10 of the total number of members of the National Assembly. So, from the total of 577 members of the assembly, at least 58 deputies of the assembly must sign for the initiation of the resolution of no confidence in the Government, so that it will then be put on the agenda for voting, no earlier than 48 hours. For the resolution of no confidence in the French government to be successful, it is required that at least half of the 577 members of the Assembly, or at least 288 members, vote in favor of it. (Constitution of the Republic of France, 1958). As can be seen, the French constitution has used a lower criterion than is usually used by countries with a parliamentary system, regarding the number of deputies who can initiate a process of no confidence in the government. Naturally, this can also be explained by the fact that the bearer of executive power in France is also the President of the State, so even though there may be frequent resolutions of no confidence in the government by the opposition parties precisely because of this low criterion, the power executive, however, will not remain vacant due to the political and constitutional power of the President in France.

Apart from the initiative of the National Assembly, the procedure of obtaining the confidence of the Government can be initiated by a request to the Prime Minister. This competence is typical of the Prime Minister in countries with a parliamentary system. In both cases, both in the scenario of the initiation of the resolution of no confidence by the Prime Minister, and in the case where it is initiated by the deputies of the Assembly, if at least half of the members of the Assembly (288 deputies) have voted in favor of it, the Government is obliged to resign. Also, in such a situation, it is the responsibility of the President of the State to decide on early elections. In parliamentary democracies, including France, parliamentary elections are the primary mechanism through which accountability is created and maintained between elected representatives and citizens (Deutscher Bundestag-Wissenschaftliche Dienste, 2009). In this way, it is possible to create a new governing nomenclature as a source of popular will through elections. If we draw parallels between the French and German governing systems, which will be treated in the following part of the paper, we can say that there are differences in terms of the political power of the Prime Minister. France, as a semi-presidential system, has a formal Prime Minister, while Germany has a formal President and a strong and proactive Prime Minister in terms of his role in the constitutional system (Martinez, 2006).

Also, the constitutional system of the Federal Republic of Germany recognizes the motion of no confidence in the government as a parliamentary tool for political responsibility towards the government in power regarding its work. A characteristic of the German constitutional system is the fact that it is among the few countries that the bearer of the government-executive is not called the Prime Minister, but the Chancellor, who also has the same constitutional powers as the Prime Minister in countries with a parliamentary system. Regarding the procedure for giving and obtaining the confidence of the Government, namely the Chancellor and the federal ministers, the Basic Law of Germany has provided more specific rules, unlike other countries that are the subject of the study of this paper, regarding the motion of confidence-no-confidence as a means of parliamentary control. The German Bundestag can express no confidence in the Federal Chancellor by electing a successor to the position of Chancellor with

a majority vote of all members of the Bundestag, so the Chancellor in state power is dismissed from his position by presidential decree (Basic Law for the Federal Republic of Germany, 1949). From this provision of the Basic Law of Germany, it appears that in order to propose the no-confidence in the federal chancellor, it is required that a new Chancellor be proposed at the same time, so that if the motion of no confidence is voted for by the majority of all members of the Bundestag and voting for another person as Chancellor of Germany, then the Federal President must dismiss the current Chancellor and the position be entrusted to a new candidate. The absolute majority of votes for obtaining and giving confidence to the chancellor in the German Bundestag is at least 355 votes. Forty-eight (48) hours must pass between the moment of obtaining confidence in the chancellor and the election of the new chancellor, this time criterion defined by the Basic Law.

As in other countries with a parliamentary system, even in Germany, the Federal Chancellor has the right to test his support from the German Bundestag, by initiating a vote of confidence procedure against his government. In such a situation, if the Federal Chancellor manages to get at least 355 votes in favor of his government, he/she will continue to be in the position of Chancellor. In the other case, if this majority is not secured in the Bundestag, the Federal President, following the Chancellor's proposal, has the constitutional authority to dissolve the Bundestag within 21 days and announce new elections. In contrast to the first situation when obtaining or confirming the confidence of the Chancellor in the Bundestag is proposed by the members of the Bundestag, whereby if a new candidate receives at least 355 votes he is elected as Chancellor, in the second scenario when the vote of confidence is requested by the Chancellor himself, if not supported by at least 355 members of the Bundestag, this may result in the dissolution of the Bundestag and the announcement of new elections. The German model of the operation of legislative-executive relations represents an exemplary model for countries with a parliamentary system of government. In German parliamentary practice, cases of dissolution of the parliament (Bundestag) have been very rare. (Bajrami, 1997).

Another special model of the functioning of parliament-government relations is represented by the Italian constitutional system. The Italian constitution is presented as very specific in relation to other countries regarding the obtaining of confidence in the executive from the side of the parliament. Although in France and Germany, the legislative body is bicameral, only one chamber is involved in raising the no-confidence motion, in contrast to Italy, where the involvement of both chambers of the legislature, namely the Chamber of Deputies and the Senate, is foreseen in the initiation of the no-confidence procedure to the government (The Constitution of the Italian Republic, 1947).

At least one-tenth of the members of the Chamber of Deputies, or the Italian Senate, can initiate the no-confidence procedure against the government. Expressed in numbers, in a composition of 630 deputies of the Chamber of Deputies, at least 63 deputies must sign to start the no-confidence procedure from this chamber, namely at least 32 senators of the Italian senate, which consists of 315 senators. Also, as in the constitutional system of Kosovo, which recognizes the right of members of parliament to raise the issue of no confidence against a Minister or Deputy Prime Minister, in addition to the government as a whole, the Italian system also recognizes this individual instrument of control over the work of a Minister or Deputy Prime Minister (Judgment of the Constitutional Court of the Italian Republic, 1996). As in the case of obtaining the confidence of the whole government or an individual Deputy Prime Minister or Minister, it is the constitutional authorization of the Italian President to implement the procedure of dismissal of the government or the Minister or Deputy Prime Minister, replacing him with another Minister or Deputy Prime Minister. In the case of obtaining the confidence of the government from one chamber of the legislature, the President can entrust the position of Prime Minister to another candidate who secures the majority in the chambers of the Italian parliament. Otherwise, the President has the authority to dissolve the parliament and announce new elections.

The object of treatment in this comparative analysis for the constitutional role of the vote of confidence as an instrument of parliamentary control over the government is the constitutional system of Croatia. The constitutional rules in this country are clearly more specific regarding the procedure of giving and obtaining confidence to the government, compared to the countries treated so far. This is proven by the fact that this instrument of parliamentary control over the government is regulated by several constitutional articles. The Croatian constitution becomes more special in this regard due to the fact that, in addition to obtaining confidence in the government, as a reason to dissolve the assembly by the President, it also foresees the disapproval of the state budget, within 120 days from the date of its proposal by the government. The President of the State, with the proposal of the Government, can dissolve the parliament if, after the successful granting of confidence to it, later the confidence was received or the state budget was not approved within 120 days, from the moment of the proposal. Both for giving and obtaining confidence in the government, an absolute majority of the votes of the Croatian parliament is required, namely at least 76 votes, out of all 151 members of the Croatian parliament, called *sabor*. The vote of confidence towards the government as a whole, a minister or the deputy prime minister, can be requested by at least 1/5 of the members of the parliament, respectively at least 31 deputies (Constitution of the Republic of Croatia, 2014). Also, the vote of confidence can be requested by the Prime Minister himself for his government. The deadline for putting the motion of confidence on the agenda in the parliament is significantly longer in Croatia, compared to other countries with a parliamentary system. The vote of confidence-no-confidence motion cannot be placed on the agenda earlier than 7 days nor later than 30 days from the day of its submission. In the event of failure of the opposition parties to obtain confidence in the government and its dismissal, another no-confidence motion cannot be raised for the next six months. This expresses a kind of security for the government majority and on the other hand it only confirms its parliamentary support. Naturally, since the motion has a two-way effect for its proponents, finding the political moment to start the procedure for obtaining the confidence of the government is very important, that is, it should happen when an absolute parliamentary majority is supposed to have been secured for the overthrow of the government. In the case where the issue of no confidence has been presented to a member of the government, for example a Minister, so that it has been voted in favor of his dismissal, then the Prime Minister has the right to offer the parliament another candidate for Minister. In the case when even the new candidate has not received the confidence of the parliament, depending on the circumstances of the specific case, the Prime Minister may offer to resign.

Conclusion

Realizing good governance is supposed to be the mission of any governing nomenclature that comes to power through elections. However, this assumption remains in the framework of a rebuttable assumption. In order to ensure a better governance by the majority, it is a typical characteristic of countries with a parliamentary system, semi-presidential but also presidential, to define the means for controlling the work of the government by the parliament through which in some form the work of the government is kept under pressure. Among the main means of this control, the vote of confidence-no-confidence is an extraordinary means of parliamentary control, through which the moral and political responsibility of the government in power is brought out.

In principle, the government mandate lasts as long as the mandate of a legislature, namely in most cases it is 4 years. However, through the vote of confidence, especially the opposition parties are enabled to shorten the government mandate before this period. Usually, for the initiation of the no-confidence procedure against the government majority, a certain majority of deputies is required, such as 1/3, 1/4, 1/5, 1/10, etc. Meanwhile, in order to receive the confidence or for the no-confidence motion to be successful against the government, it is required that the motion be voted with the same majority with which after the general elections the confidence for the establishment of the government was given to the

parties or the specific party. The trust given can be taken collectively towards the government as a whole, but also individually towards, for example, a Minister or the Deputy Prime Minister. A successful vote of no confidence in the government does not necessarily mean the dissolution of the assembly and the announcement of extraordinary elections. It is usually at the discretion of the President, in this case as a factor of the unity of the people and the political scene, to decree the dissolution of the assembly and the announcement of elections or the appointment of another candidate as a potential formator of a new government.

In this paper, through the cooperative method, efforts have been made to highlight the basic characteristics of the vote of confidence-no-confidence in states that have governing characteristics similar to Kosovo, with countries such as Italy, Germany, Croatia and France. From all this, it appears that such a means of parliamentary control over the government guarantees good functioning and good governance in a country, with the fear of the majority that there is always a potential risk of losing confidence in the parliament. However, the possibility is not excluded that the motion of no confidence initiated against the government will turn into a vote of confidence, in which case the support of the parliamentary majority for the government is re-confirmed.

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