MAIN TERMS OF LEGISLATIVE AND EXECUTIVE INTERFERENCE IN ROMANIAN CONSTITUTIONAL SYSTEM

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ABSTRACT: *CONSECRATION AND THE PRINCIPLE OF CLASSIC SEPARATION OF POWERS - LEGISLATIVE, EXECUTIVE AND JUDICIAL- IN ROMANIAN CONSTITUTIONAL SYSTEM IS BASED ON BOTH THE DIVISION OF POWERS OF EACH AS WELL AS ESTABLISHING FORMS OF COLLABORATION AND MUTUAL CONTROL WHO CAN STOP EXCESSES AND ABSOLUTIST TENDENCIES OF A POWER OR ANOTHER. MODALITIES OF INTERFERENCE OF POWERS ARE ACTUALLY FORMS OF INTERFERENCE OR METHODS OF THE THREE MAIN FUNCTIONS OF EXERCISING STATE POWER, WHICH, BY ITS NATURE, CAN ONLY BE UNIQUE. WHAT GIVES SPECIFICITY AND ORIGINALITY BUT EXISTING CONSTITUTIONAL SYSTEMS IN THE WORLD TODAY IS THE GREAT DIVERSITY OF WAYS OF INTERFERENCE BETWEEN THE LEGISLATIVE AND EXECUTIVE POWER. NATURALLY THE PUBLIC AUTHORITIES ARE IN RELATIONSHIPS MORE OR LESS CLOSELY WITH OTHER ORGANIZATIONS: POLITICAL PARTIES, UNIONS OR TRADE UNIONS, NONGOVERNMENTAL ORGANIZATIONS ETC, WHICH SOMETIMES AFFECT THEIR OWN DECISIONS, BUT THESE RELATIONSHIPS HAVE ONLY A SECONDARY IMPORTANCE.*

KEYWORDS: SEPARATION OF POWERS, THE BALANCE OF POWERS, CONTROL PARLIAMENTARY MOTION OF CENSURE, PROMULGATION OF THE LAW.

INTRODUCTION

The three specialized state power are exercised by independent authorities; each power / public authority holds and exert a number of its own powers, neither of these powers prevail over the other. The principle of separation of powers has never considering a rigid separation of powers, as regards establishing relationships rather, some forms of collaboration and mutual control between the three powers. Since the Romanian constitutional system consecrated a bicephalous executive consists of the President of Romania, on the one hand, and the Government, on the other hand, the relationship between the legislative and executive concern both the relationship between Parliament and President of Romania and the relationship between Parliament and Government.

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A. RELATIONS BETWEEN THE PARLIAMENT AND THE PRESIDENT OF ROMANIA

According to the constitutional relationship between Parliament and President of Romania are: *addressing Parliament messages (art. 88); convening and dissolution of Parliament (art. 63 par. (3) Article 66 and 89); enactment of laws (art. 77); consultation of Parliament by the President (art. 90); liability of the President in front of the Parliament (art. 95 and 96);*

1. ADDRESSING MESSAGES TO THE PARLIAMENT

From the perspective of constitutional possibility of the President to address messages to the Parliament, the message fulfills a dual role: it is an institutionalized means of communication between the President and Parliament and at the same time is a way the President to attract the attention of the Legislature on priority policy issues or are viewed differently by the two powers, risking jams in state activity or seizure in social life.

In the absence of express provisions concerning the form and content of the message, Romanian doctrine held that the message can be: submitted directly by the President read a presidential sent or forwarded in the form of open letters and scope of problems that may be subject message is left to the discretion of the President, who may decide on its content[2]. Presentation of messages by the President of Romania is not a head of state interference in the work of the legislative body of the country, since it does not also require Parliament to debate them and approving them. Art. 65 para. (2) a) of the Constitution establishes the obligation only to the Chambers of Parliament in joint session to receive the message of the President of Romania. It is an act sole discretion of the President, that no legal effect similar decree. Message from the President can not be a breach of the principle of separation of powers, since it does not cause determines or directs decisions legislative power, Parliament having full freedom to decide as it sees fit. Constitution distinguishes itself message associated with the duty of Parliament to receive, and issues contained in the message to be debated only if Parliament considers it necessary and not because they have a constitutional obligation in this respect. Another legal regime is presidential message to Parliament under Art. 92 para. (3) of the Constitution, which informs Parliament Chairman measures to repel an armed aggression. If this message Rooms are obliged not only to meet in order to receive the message, but also to discuss. Since the message turned into a tool that wants to impose solutions even endorsed by Parliament, we would not be without interest that *ferenda law*, to interfere with the current rules, to clarify the legal status of this procedure and specify that the themes of the message must be within the existing constitutional order.

2. THE CONVOCATION AND DISSOLUTION OF PARLIAMENT

According to constitutional provisions, Romanian President may convene the newly elected Parliament no later than 20 days after the election and request the convening of Parliament in extraordinary session, convened this time being made by the Presidents of Chambers. Convening by the President of Parliament resulted from elections is justified by the fact that after the elections it is a new Parliament, and the presidents of the two Chambers have not yet been elected to exercise the power to convene the legislature. Act by the President of Romania accomplishes this task is constitutional decree. As Parliament convened in special session request, please note that this is not an exclusive option to the President of Romania, which can be exerted by the Bureau of each Chamber, and at least one third of the Deputies or Senators.

[2] Antonie Iorgovan, *Administrative Law Treatise*, vol. I. (Bucharest: Ed. All Beck, 2005), 299.

Constitutional rule does not clarify whether the request of the President to convene an extraordinary session or not binding on Parliament. In this regard, we believe that Parliament can not refuse meeting in special session, but plenum has full freedom to agree with the majority of senators and deputies present, or to reject the agenda of the extraordinary session (art. 81 of Regulation Senate or art. 84 of the Regulations of the Chamber of Deputies). The vote to reject the agenda of the extraordinary session shall result in rejection of the conduct of the extraordinary session. The legal doctrine is considered that special reasons would justify and request the President to convene only a single chamber[3].

Exercising the right to dissolve Parliament by the President is subject to multiple conditioning and prohibitions concerning: a) consultation with the Presidents of both Chambers and the leaders of the parliamentary groups; b) censorship to form a government within 60 days after the first request, in conjunction with the decline of at least two requests for investiture; c) prohibition to dissolve Parliament during a state of mobilization, war, siege, emergency, in the last six months of office of the President or more than once in a year. According to art. 89 of the Constitution, dissolve Parliament remains a decision which is at the sole discretion of the President of Romania, even if the conditions mentioned.

3. PROMULGATION OF LAWS

Promulgation of laws passed by Parliament is the final stage of the legislative procedure or operation that allows the president to submit a final inspection law in terms of content and even its constitutionality. President promulgates the law within 20 days of receiving it, but before promulgation has two possibilities: a) to ask Parliament, once reconsideration of the law; b) to the Constitutional Court, if it considers that the law, in whole or in part, is unconstitutional.

=If the President has requested review or verify the constitutionality of the law, promulgation is made within 10 days of receiving the law passed after review, or the receipt of the decision of the Constitutional Court confirmed the constitutionality. Art. 77 of the Constitution provides that the law is sent for promulgation, without distinction, but if corroborate art. 77 and art. 151 para. last, that are subject to promulgation only organic and ordinary laws, but laws amending the Constitution. Constitutional rule of law on the review indicates that Parliament must amend the law following the review, taking into account the comments of the President or Parliament may adopt the new law in the same form, without taking into account the comments of the President. In this respect, the Constitutional Court no. 991/2008 stated that:

- Review is a new deliberation in each of the two Houses, or in rooms combined, the law was passed in joint session;
- Parliament must review only issues raised by the President in his request for review but to decide on all the provisions of the law under review, related to those covered by the President;
- Parliament may take any decision on the law reviewed: may accept all or part request, reject, or may amend all or part of certain texts relating to the review request.

In the absence of express legislative clarifications related to the possibility of the President to ask the same law review and finding its constitutionality, we believe that the President is able to notify Parliament and the Constitutional Court with the same law but different in legal matters.

[3] Mircea Preda, Benonica Vasilescu, *Administrative Law. The special part.* (Bucharest: Ed.Lumina Lex, 2007), 31.

4. CONSULTATION OF PARLIAMENT BY THE PRESIDENT

President's decision to hold a referendum on issues of national interest, is preceded by its obligation to consult Parliament. Law, consultation is an administrative procedure prior to submitting an act or exercise an authority which is required to be covered, without the subject turned to her and bound to consult the opinion; this does not mean that the state authorities should remain passive wishes of the people and you do not have to fulfill his desire for change in the field has been consulted. The doctrine was shown that such a legal regime can not be interpreted in any way in the sense that the view of the body that was found has no effect on those who resorted to consultation[4].

5. LIABILITY PRESIDENT TO PARLIAMENT

If the exercise of its Romanian President enjoys immunity, namely is not responsible for the opinions, acts or acts committed in the exercise of their office, respectively those that are part of the powers conferred on him by function instead for offenses unrelated to the prerogatives function The President will meet political and legal[5].

In connection with the political responsibility of the President of Romania, constitutional provisions governing the liability of the President, states that, if committed grave acts that violate the Constitution, the President of Romania may be suspended from office, in a joint session of both Houses by a majority vote Senators and Members, after consulting the Constitutional Court. The procedure of suspension from office of President of Romania, may be initiated by at least one third of the deputies and senators; it is submitted simultaneously to the Standing Bureaus of the two Chambers and communicated immediatelyto the President that he can give explanations about the facts he is being held. If the proposal of suspension from office has been approved by Parliament no later than 30 days is held a referendum for dismissal of the President. Depending on the outcome of the referendum, President of Romania will resume the exercise of constitutional rights and obligations (if the referendum was rejected) and will be dismissed (if voters decided to dismiss the President of Romania).

While temporary suspension from office means termination, for a fixed period of exercise of the rights and obligations arising from such public office, dismissal results in permanent loss of office of President of Romania and, implicitly, the rights and obligations related to it . Because no clear constitutional provisions which are acts committed by President genuine serious violations of the Constitution, propose ferenda law, constitutional clarification of such facts.

As for the criminal responsibility of the President of Romania, this occurs only when the impeachment of the President for high treason. Proposal for impeachment of the President of Romania may be initiated by a majority of deputies and senators and may be approved by a vote of at least two-thirds of them; this proposal brings neântârziat informed the President of Romania in order to give explanations about the facts he is accused. If you decide to indict the President, Parliament and signed by the presidents of the two Chambers, notify the Attorney General's Office attached to the High Court of Cassation and Justice, which has jurisdiction proceedings. From the impeachment date and up to the dismissal date, the President suspended the law and the date of the final judgment of conviction is dismissed as President. The act of high treason is defined by the constituent legislator, but the organic and is regulated by art. 398 of the new Criminal Code.

[4] Verginia Vedinaș, *Procedural Orgies*, (Bucharest: Ed. Legal universe, 2011), 50.
[5] Dana Apostol Tofan, Liability of Republic presidents in AUB (Law Series) nr.III-IV / 2008, 20.

B. RELATIONS BETWEEN PARLIAMENT AND GOVERNMENT

According to the Constitution, Parliament relations with the Government refers to: *inform Parliament (Art. 111); questions and interpellations to the members of the Government (Art. 112 para. (1)); possibility of introduction of simple motions and censure (Art. 112 para. (2) and art. 113); Government liability (art. 114); Government liability and its members (art. 109).* These links between legislative power and executive control function are elements of Parliament on the Government. Control function of the Legislature does not mean that the Government body which exercises the executive is subordinate to Parliament, but expresses only a way of cooperation between the institutions of legislative and executive power[6]. Parliamentary oversight is a means to subordinate Government Parliament, but only to ensure that his work received the investiture Government fulfills its mandate in terms of legality.

1. REPORTING TO PARLIAMENT

According to the constitutional text, both the Government and other public administration bodies are obliged to provide information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents and for legislative proposals that involve an amendment to the state budget or state social insurance budget request for information is mandatory. If the Government does not send the information and documents requested Parliament, two consequences may occur:

a) if the request for information is considering proper documents or information if the Government did not submit to Parliament, its members have the opportunity to return with a new request may submit inquiries and even simple motions against the Government member late submission of documents or information;

b) if the request for information is considering the submission by the Government of its views on a legislative proposal involving budgetary changes, and this information was not provided within 60 days, it is considered that the point Government of view is to accept or support these legislative proposal.

As the obligation to inform mention that it acts in reverse, meaning that Government members have access to parliamentary proceedings, and when they are required, and their presence is required. It is clear that a request for the provision of information and documents should be confined to those data, information and non-public documents that can and should be known by the general public. If such a request is made by the presidents of the two Chambers or committee chairmen, without debate in plenary of these bodies shall be considered null and void.

2. QUESTIONS AND INQUIRIES TO THE GOVERNMENT OR ITS MEMBERS

According to constitutional provisions, the Government and each of its members are bound to answer questions and interpellations raised by Deputies or Senators, as provided in the regulations of the two Chambers. In the Chambers, the question is presented as a simple request to answer whether a fact is true, if the information is accurate, if the Government and other public administration bodies will release to the Chamber, information or documents required or, where applicable, filed to rule on a specific problem and the request is understood as a request to the Government requesting an explanation of its policy on important matters of internal and external activities.

[6] Adrian Gorun, *Political Theory. Basic concepts and political phenomena*, vol. I. Power, legitimacy state. (Cluj: Ed.Cluj University Press, 2005), 144

According to these regulations can not be formulated questions regarding matters of personal or private interest, the work of people who do not hold public, obtaining legal advice, lawsuits are pending in the courts. Questions can be submitted in writing or orally and the answer can be given immediately in writing or orally according to the desire questioner. If the lawmaker who formulated the question is considered dissatisfied with the response received, it may issue a query to the Government or a member thereof. Questions not answered during a parliamentary session be published in the official gazette of Romania, at the end of each regular session.

As interpellations, they shall be made only in writing and motivation object presentation addresses the Government or a member thereof, shall be presented at a public hearing, shall be recorded in a special register and displayed at the Chamber to which it belongs their author. Responding to inquiries must be made within two weeks this period being extended only for serious reasons.

3. INTRODUCTION OF SIMPLE MOTIONS AND CENSURE

If questions and interpellations are legal instruments of parliamentary scrutiny of secondary importance, and that may be initiated by any parliamentarian, through a simple motion expressing the Senate and Chamber of Deputies position on an issue of domestic or foreign policy or, as case on an issue that has been the subject of an interpellation. The simple motion is a more effective tool for achieving control function of Parliament over the Government. At the doctrine is considered simple motion is a legal and not a political one, although it is the result of political debate, and the effects are still politically. An undeniable aspect is that simple motion no legal effect *ipso jure* but *ipso facto* legal effect because, if the executive ignores the simple motion, the two Houses of Parliament are able to use, if necessary, the motion of censure. In terms of the number of parliamentarians who can initiate a simple motion, both parliamentary regulations establish that simple motion is initiated by at least a quarter of the Senators or at least 50 deputies, must be substantiated and submitted during a plenary session its president.

We appreciate that no legal nature or intended purpose by initiating a simple motion, do not justify large number of parliamentarians needed to submit a simple motion. Thus, under the Constitution, on the one hand, the legal acts may be initiated even a member of Parliament and, on the other hand, simple motions can be claimed and a simple query, which also can be initiated only by a single parliamentarian. Therefore, I think that the *ferenda law* should be amended by two parliamentary regulations, downward the number of parliamentarians who can initiate a simple motion. After receiving the simple motions President of the Senate or the Chamber of Deputies shall forthwith communicate them to the Government, to notify the plenum, then have it displayed in the Senate or the Chamber of Deputies, simple motion debate taking place within six days after deposit. According to parliamentary rules, a simple motion is adopted in the Senate by a majority of Senators and the Chamber of Deputies, by a majority vote present. The effects of a simple motions are not to remove the Government or the Minister responsible for the simple motion which has been, is compulsory only for the Government to consider the position expressed in the contents of that motion and correct the issues flagged as inappropriate. Constitutional Court Decision no. 148/2007 shows that adopting a simple motion by Parliament for the work of a member of the Government Prime Minister does not oblige the dismissal of the minister concerned.

Regarding the motion of censure, this is the ultimate manifestation of the exercise parliamentary control over government. The constitutional text states that, in joint session, the two Houses of Parliament can withdraw confidence from the Government by adopting a motion of censure by a majority of deputies and senators. The adoption of a motion of

censure results in the withdrawal of confidence to the Government and its dismissal by Parliament. If censure motion was passed, the situation is brought promptly informed the President of Romania signed by the presidents of the two Chambers, the designation of another candidate for prime minister. If the censure motion was rejected, MPs and Senators who signed it, may not submit, during the same session, a new no-confidence motion unless the Government assumes responsibility under Art. 114 of the Constitution. Following the adoption of the motion, the outgoing government will continue to manage public affairs to sworn members of the new government, that fulfill only the acts of individual or normative need for administration of public affairs, without promoting new policies. During this period, the Government cannot issue orders, cannot initiate bills, except bills on ratification of international treaties, the state budget and state social insurance budget.

4. ENGAGE THE GOVERNMENT'S RESPONSIBILITY TO PARLIAMENT

Government may assume responsibility before the Chamber of Deputies and the Senate, in joint session, upon a program, a general policy statement or a bill. From presentation by the Prime Minister, in a joint session of the program, the general policy statement or a bill on which the Government commits its responsibility, commences within 3 days, which may be filed a motion to censorship. Failure to submit a motion of censure, the expiry of the above program, foreign policy statement or bill presented shall be considered adopted. If, however, within 3 days in the Constitution, a censure motion is filed, the adoption of that motion has the effect of rejecting the program, the general policy statement or bill and dismissal of the Government. If the motion of censure, not get a majority of lawmakers of both Chambers (art. 82 in conjunction with Article 74 of Regulation joint meetings of the Chamber of Deputies and the Senate), the bill shall be considered adopted and the application program or general policy statement becomes binding on the Government.

In our case, we share the view that the general policy program outlines the Government intends to implement it in practice and general policy statement is a Government position or opinion about an aspect of the government program[7]. Liability on a bill is an indirect legislative means adopting a law, but not by discussing it in the ordinary legislative procedure, but by a motion of censure debate taking place in rooms combined[8]. Adoption of a bill in this way, is not only a measure to avoid the rules of the legislative procedure, but also a way of adopting legii.În ultrafast time between the submission by the Government in Parliament intention to liable on a bill and date of submission of the joint meeting of the Prime Minister, the draft law, lawmakers are able to formulate and submit amendments on the bill in question, subject to their acceptance by the Government.

The law over which the Government has assumed responsibility, once adopted by Parliament, is a law like any other. Such a law is under review or at the request of the President of Romania (Article 77 of the Constitution), whether as a result of the finding of unconstitutionality them, in whole or in part, by decision of the Constitutional Court. However, a law passed by accountability must comply with the rules laid down by law on drafting laws and may be amended or repealed in accordance with the ordinary legislative procedure (Law no. 24/2000 on legislative technique for drafting laws).

In the absence of statutory or constitutional provisions, the Constitutional Court ruled in its case following:

[7] Ion Deleanu, *Institutions and Constitutional procedures, in Romanian law and comparative law*, (Bucharest: Ed.CH.Beck, 2006), 656.
[8] Ion Vida, *Executive power and public administration official,* (Bucharest: Ed.RAMonitorul, 1994), 52.

- Liability is a mixed procedure, parliamentary scrutiny, as it allows initiating a motion of censure and legislative proceedings, because the bill on which the government assumes responsibility shall be deemed adopted if such a motion was not filed or being initiated, was dismissed (Decision no. 34/1998);
- Adoption of a draft law prepared by the government, by way of government liability, law-abiding ordinary procedure of adopting specific law, but with some exceptions: suppression committee and plenary debates (Decision no. 34/1998);
- Government liability procedure is a simplified way of regulation that must be reached in extremis, when the adoption of the bill in the ordinary procedure or emergency procedure is possible only times when Parliament's political structure does not allow adoption of the bill the usual procedure or emergency (decision no. 1557/2009);
- Because the Government may assume responsibility before Parliament on a bill, you must meet the following conditions: 1. The existence of an emergency the adoption of measures contained in the law on which the Government has assumed responsibility; 2. the need for regulation in question be taken with the utmost celerity; 3. The importance of the area covered; 4. The immediate application of the relevant law (decision no. 1655/2010);
- The draft law on which the Government may assume responsibility may be the nature of the organic laws, ordinary, but there may be constitutional laws of nature, for which a special procedure (Decision no. 34/1998);
- The draft law on which the Government commits its responsibility not deviate from the rules of drawing up a bill, that can be divided into several titles, chapters and sections and may cover several areas (Decision no. 147/2003);
- The Government may assume responsibility on several bills on the same day or the same parliamentary session (decision Nr.14154 / 2009).

From the consecration of express constitutional Parliament's role as supreme representative body and sole legislative authority of the country that government should not use, unless an exception the the primary rules of social relations, which are and must remain within the scope of Regulation Parliament[9]. If excessive use of this method of regulation by government liability, risks undermining the role of Parliament, distort relations between Government and Parliament, established in accordance with the principle of separation of powers and constitutional provisions.

5. THE LIABILITY OF THE GOVERNMENT AND ITS MEMBERS

If government responsibility, as a whole, is a political responsibility, the responsibility of each member of the Government can be political or criminal. Government is politically responsible only to Parliament for all its work and each member of the Government is politically and jointly with others for the activity and acts of the Government in the sense that, for the offense of government can be dismissed entirely, because this mistake the team government as a whole, and not only the one who did it.

The most severe penalty occurs when government is dismissing political accountability by withdrawing confidence granted by the Parliament, and the procedure is applied to the sanctions motion of censure.

The analysis of constitutional provisions that relate specifically to the criminal liability of members of the Government or of art. 109 para. (2) of the Constitution, it follows that:

[9] Radu Carp, *Ministerial Responsibility*, (Bucharest: Ed. All Beck, 2003), 46.

- The criminal liability of members of the Government has a derogation of the common law, as a special criminal liability;
- Special criminal liability of members of the Government refers only to acts committed in the course of their duties, ie facts that are directly related to the tasks arising from this function; Government members responsible for other acts under the rules of the common law;
- For criminal offenses committed in the exercise of a member of the Government, the prosecution may be requested only by the Chamber of Deputies, Senate and President of Romania;
- If the prosecution asked Romanian President may order the suspension of the person concerned. This is a faculty of the President, not its obligation. Regarding the suspension of a member institution of the Government, the doctrine held that the Prime Minister may, even after suspension, revocation Government member concerned, given the seriousness of the alleged facts [8];
- If the prosecution ended with the prosecution of a member of the Government, suspension from office is no longer at the discretion of the President of Romania, but he is obliged to suspend from office;
- Competent court of a member of the Government was suspended from office belongs High Court of Cassation and Justice.

CONCLUSIONS

The implications of the way it is designed the executive-legislative report are multiple and complex, beyond the political sphere. The essential aspect in the relationship between the two powers take control over the executive and the legislature to regulate its *de jure* and how it is exercised *de facto* affect the operation of the entire political system and everything that the rule of law and the rule of law.

Legislative and executive powers should be clearly divided not only to avoid overlapping of functions but also judiciously combined together through a counterweight system that ensures the final balance of political balance.

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