

PARTICULARITIES OF PARLIAMENTARY OVERSIGHT IN DIFFERENT POLITICAL REGIMES

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Abstract:

The quality and intensity of the parliamentary oversight performed over the Government are shaped by several major criteria: political regime, electoral system, structure of the Parliament (unicameral/bicameral), parliamentary culture and tradition. This paper emphasizes some distinctive elements and particular mechanisms of the control exercised over the activities of the executive power, from the point of view of the political regime established in states with modern democracies.

Keywords: *Parliament, Government, parliamentary oversight, separation of powers, state.*

1. Introduction

Ensuring the representativeness of the people in a democracy, the Parliament must exercise one of its functions – the parliamentary oversight – as a necessary balance between the powers in the state in order to prevent the seizing of the state power. Pierre Avril appreciates that it strictly represents a verification, „a material operation, framed by the law by fixing its procedure and consequences”¹.

The Dutch author, Paul Penning, defines the parliamentary oversight as „the legislature's ability to constrain executive behavior”², while Frederick Stapenhurst and Riccardo Pelizzo considers it of „vital importance in ensuring that governments carry out their duties efficiently, democratically, and in a fiscally responsible manner”³.

It is well known John Stuart Mill's opinion, which can be partially applied to the contemporary era: the true mission of a Parliament is to watch and control the Government, to bring its actions to light, to ask for its presence and justification when its acts seem questionable, to blame them if they are contestable, to watch the persons from the Government when they abuse their position or fulfill their mission contrary to the peoples' will and to appoint their successors, whether express or virtually⁴.

Professor Ioan Muraru emphasizes the importance of the parliamentary control and considers it as a „full one”, being exercised upon the entire activities according to the laws and Constitution, a „necessary one”, as the Parliament is called to establish the manner the other state authorities are fulfilling their mission and „differentially” acting⁵.

The Government, the chief of state, the public administration are the main action areas, seconded by other domains as security and intelligence which no longer represent taboo fields. In this regard, we will focus on the most important factors and circumstances that influence and shape the dimension of the parliamentary control.

2. Content

2.1. Political regimes - general remarks

The political system traces significant characteristics and the presidential one states the chief of state as the head of the Government, being directly or indirectly elected, by the vote of the people. Such a pattern is described as a rigid separation of the powers, both the President and the Parliament have their own electoral legitimacy. On one hand, the President cannot be held politically accountable by the legislative body and on the other hand, the latter will not be dissolved, both parties lacking a lethal weapon.

This is the case of the United States of America, where the President is the leader of the public administration but without forming a Government to be fully responsible in front of the Congress. We are facing an incomplete parliamentary oversight, which extends to the veto right regarding some laws, the approval of public appointments and the verification of the foreign affairs policies.

The strong point in such regime is the fact that the political and criminal responsibility are separated, thus the impeachment procedure is applied. The subject of such a procedure may be any civil officer of the Government, even the President, for cases of treason, bribery or other high crimes and

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¹ Pierre Avril, *L'introuvable contrôle parlementaire, Petites affiches*, Paris, July 2009

² Paul Penning, *Parliamentary Control of the Executive in 47 Democracies*, 28th Joint Sessions of Workshops of the European Consortium for Political Research, 14-19 April, 2000, Copenhagen, p. 2

³ C. Stapenhurst and Riccardo Pelizzo, "A Bigger Role for Legislatures", IMF, December 2002, Volume 39, Number 4, p.46.

⁴ Armel le Divellec, *Considérations sur le gouvernement représentatif*, Guillaumin Publishing House, Paris, 1877, p. 135

⁵ Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice (Constitutional Law and Political Institutions)*, 13th edition, vol II, Ed. C.H. Beck Publishing House, Bucharest, 2009, p. 158

misdemeanors (article II of the United States Constitution, section 4). In the history of the United States of America only two procedures regarding the impeachment of a President were finalized, both of them with an acquittal: Andrew Johnson Acquitted on the 26th of May 1868 and Bill Clinton on the 12th of February 1999.

In parliamentary regimes, the President is elected, politically accountant to the legislative body and, by symmetry, dismissed by the Parliament after a vote of non-confidence.

As a part of an oversight institution, the members of the Parliament belonging to the party in power must verify the activity of the executive, based on the mandate entrusted by the people. But, at the same time, the performance of the Government influences, in a decisive manner, their political and electoral fate; this is that „paradox”⁶ of the parliamentary systems, a dilemma often solved when the point of view of the political parties prevails.

There are some exceptions in the parliamentary systems as well, in Germany, for example, where the Chancellor concentrates in his hands the executive power and also has the right to request the President to dissolve the Bundestag. The President has prerogatives to appoint persons in public positions, including judges, to represent the state, to sign treaties, but he doesn't answer in front of the Parliament.

In such regimes, an important element which influences the Parliament - Government relationship is the electoral system and Philip Norton emphasizes the existence of „powerful correlation, but not total”⁷ between the majority election system and the British Government model, and between the proportional representation system and the continental model. The first one facilitates the victory of one party, so a powerful government can be formed, which prefers to debate on major themes during the plenary sessions and not during the special or permanent committees, in order to avoid the oversight. On the other hand, the proportional system resides in the formation of minority governments, as no party is able to gain absolute power, the activity in the committees is very intense, and so the executive is often forced to negotiate.

Having a unicameral Parliament or one with two chambers also shapes the dimension of the parliamentary oversight. After analyzing legislative bodies of United States of America, Russia and the 28 member states of the European Union, we came to the

conclusion that 16 have a bicameral parliament and 14 a unicameral one.⁸ Without making a strict rule, it is noticeable that the Parliament with one chamber is specific to unitary centralized countries, while, the decentralized federal ones⁹, have two chambers.

There are states where both chambers have prerogatives to exercise the parliamentary oversight and this procedure is more efficient (especially in case of a minority Government in the superior chamber); generally, the inferior chamber plays a major role. The relationship between the two institutions is also influenced by the existence of a strong and active opposition and by its capacity to organize and put the Government in difficulty.

In semi – presidential regimes, a specific set of rules is instituted between the President, the Parliament and the Government. The new element is the accountability of the chief of state in front of the legislative body, even if both institutions are extracting their power from the direct vote of the citizens; thus, the President can be suspended or put to trial for high treason.

No matter the political regime, a certain aspect must be mentioned, the situation when the members of the Government or some of them are also members of the Parliament. In Germany and Great Britain, there is such a custom, while in Austria, generally, the ministers are not members of the legislative body.

2.2. Instruments of the parliamentary oversight

This chapter displays the means of the parliamentary oversight, the way it is reflected in national Constitutions and Rules and Regulations of the parliamentary Chambers: questions, interpellations, motions, hearings in permanent committees, committees of inquiry, messages, reports, programs, citizens' petitions, Ombudsman. In order to have a more global image, we chose to analyze the legislation in the member states of the European Union, United States and America and Russia (two states in which the administrations are only indirect responsible in front of the Parliament).

Yves Mény distinguishes three types of parliamentary oversight on the Government¹⁰:

- Partisan control, orchestrated by the opposition and efficient when the Government is vulnerable;
- Non-partisan control: questions, hearings, committees, etc;
- Control with a sanction: motion of no

⁶ Philip Norton, *La nature du contrôle parlementaire (The Nature of the Parliamentary Oversight)*, Pouvoirs Magazine, 2010/3 n° 134, p 11. 5-22. DOI : 10.3917/pouv.134.0005

⁷ Philip Norton, *op. cit.* p. 11

⁸ European Union: 14 states with bicameral Parliament (Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Netherlands, Poland, Romania, Slovenia, Spain, UK) and 14 with unicameral parliament (Bulgary, Croatia, Cyprus, Denmark, Estonia, Hungary, Greece, Latvia, Lithuania, Luxemburg, Malta, Portugal, Slovakia, Sweden)

⁹ Arend Lijphart, *Modele ale democrației. Forme de guvernare și funcționare în treizecișase de țări (Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries)*, Polirom Publishing House, Bucharest, 2000, p. 193

¹⁰ Yves Mény, *France: The Institutionalization of Leadership*, in *Political Institutions in Europe* (edited by Josep M. Colomer), Routledge Publishing House, London, 2002

confidence, but which cannot be used very often without destabilizing the system.

2.2.1. Questions

A parliamentary question is, in principle, a request of an information which the Government has to provide, which can be made available only to the author or to all the members of the legislative body; moreover, the Government can be called to clarify if facts/data are precise or correct.

In Great Britain, this procedure is one of the oldest prerogatives, dated 1721, the House of Lords. Generally, the Parliament has a question time section in its agenda, broadcasted live on national TV stations or radios. Additional questions may be formulated, usually only on urgent matters.

Written questions are the most used instrument in the oversight activity, given the possibility of the members of the Parliament to ask for detailed explanations from the executive body. In order to prevent the agenda of the Parliament from being blocked, in some countries there are certain regulations such as: the number of persons which can sign such a question (for example five persons in Austria /Latvia or nine in Lithuania) or pre authorization from the Parliament related to the subject of the question. The areas covered by the content of the questions may address a local issue, from the constituency of the author or general ones.

Just to give some examples, in Germany, the Federal Government has to answer to 5000 questions per year, while in Romania, in 2014, the Government had to answer to 3959 questions.

This instrument is sometimes used by the members of the Parliament in order to increase their image in public or inside their political party. The Russian author, Maria Sivenkova, in a comparative study¹¹, appreciates that this is the case in a quarter of the questions addressed to the British Government and in a tenth in the Russian Parliament. Matti Wiberg also notices that using this mechanism represents one of the means to assume merits and have publicity.¹²

A particular situation is encountered in the United States of America, where the Congress cannot put forward questions for the executive body to answer, which is due to the fact that, as we explained above, the Government is not held politically accountable. However, article II, section 3, states that the President must give the Congress information on the "State of the Union" "from time to time" and make recommendations which he deems as "necessary and expedient".

2.2.2. Interpellations

Usually, the interpellation is a request to get information or clarify a situation regarding the Government's program. It refers to situations related to the national interest and this makes the difference in comparison to a question. For example, in Belgium, House of Representatives, it is not allowed to formulate an interpellation if it refers to local or special issues. An interpellation is initiated in written with the intention to launch a debate and in some legislative bodies it is necessary the agreement of the Parliamentary group in order to be filed.

2.2.3. Motions

The motion is the instrument used by the Parliament to initiate the procedure to partially or fully replace the Government and its radical form is the censure motion/motion of no confidence, „the supreme manifestation of the oversight exercised upon the Government“¹³. Generally, the inferior chamber is the one armed with such means, but we also found exceptions (joint session of the two chambers in Romania). The number of the necessary signatures varies from country to country, as well as the necessary number of votes to pass (two thirds, three fifths, simple majority), while in states like Germany, Spain, Slovenia, the non - confidence vote is given unless the successor is also elected with a majority.

The first motion of no confidence occurred in Great Britain in 1792 and the last one in 1979. In France in 1962, while the most recent in Eastern Europe happened in April 2012 in Romania and it became a very rare thing to be seen.

In presidential systems, the Parliament can occasionally give a no confidence vote, for example the negative vote received by State Secretary Dean Acheson in 1950 from the Congress of the United States of America. There is also the possibility for a minister to be held accountable individually, but the Government is not in danger and it has the possibility to nominate another person for that portfolio. Latvia is a special case, as, when more than half of the members of the Cabinet have been replaced, the entire Government has to receive a confirmation vote.

2.2.4. Hearings in permanent committees

Lately, it is noticeable the increase of the role given to permanent parliamentary committees. The public hearings are often an efficient vehicle to retrieve information related to the public agenda.

2.2.5. Committees of Inquiry

The committees of inquiry represent the mean by which particular situations, considered to be unclear or critical are investigated and are specific to the inferior

¹¹ Maria Sivenkova, *Expressing Commitment When Asking Multiunit Questions in Parliamentary Debates: Journal of Language and Social Psychology*, 2008, p. 369

¹² David Nayhew, *Congress: The Electoral connection*, London, 1974, Yale University, cited by Matti Wiberg, *Parliamentary Questioning: Control by Communication*, published in *Parliaments and Majority Rule*, edited by Herbert Doring

¹³ Marian Enache, *Marian Enache, Controlul Parlamentar(Parliamentary Oversight)*, Polirom Publishing House, Iasi, 1998, p. 181

chambers of the Parliament. In Slovenia, only the upper chamber can use this instrument.

The final report do not stand judicial courts, but the public opinion can be influenced by the conclusions contained by such documents and it is well known the case of the special committee in the Congress, which led to the resignation of President Richard Nixon in 1974.

The domains approached in a committee of inquiry are limited and Eric Thiers mentions the vivid debates that took place in France, in 2010, regarding the studies ordered and financed by the President of the Republic. The vote on establishing such a committee did not pass, as, according to the Constitution, the accountability of the chief of state is possible only for high treason and only in front of the High Court¹⁴.

2.2.6. Messages, reports, programs

The chief of states/governments, certain state authorities have the constitutional obligation to present in front joint chambers/single chamber these types of documents. In the presidential system, the chief of state presents, once elected, the political program of the newly elected Government, while in parliamentary and semi – presidential systems, the Government is the one to reveal its objectives. These sessions may be followed by debates, when the members of the parliament or the parliamentary groups can ask for some aspects to be clarified.

Professor Muraru remarks that using the term *parliamentary oversight* in these situations is „conventional, marking the existence of the relations between these high public authorities“¹⁵.

2.2.7. Citizens' petitions

The citizens are allowed to make petitions to one or both of the chambers of the Parliament in order to defend their rights and interests; this way, the Parliament is an intermediate between the citizens and

the Government. There are special committees dealing with these petitions and their members have the possibility to ask oral or written references from the Ombudsman.

2.2.8. Ombudsman

Such an authority has Nordic origins, the first Ombudsman being elected in 1766 in Sweden. It has general or special competence, acting to defend the rights of the citizens in relation to the public authorities and functions under different names. In some states it was kept the original name of Ombudsman (UK, Hungary, Northern Ireland) while in others we can find names like commissary (Poland, Cyprus, Russia), chancellor (Estonia), mediator (France, Luxembourg) or lawyer (Romania, Greece). In Italy the institution has only a regional role while in the United States of America can be found the federal Ombudsman.

A special Ombudsman is appointed in areas such as minority rights (Hungary), Gender equality (Sweden), armed forces (Germany), etc.

3. Conclusions

The intensity and quality of the parliamentary oversight are shaped by many factors, which are joined by the parliamentary culture, tradition specific in each state. As a general trend, lately, the parliamentary oversight proves to be a prerogative difficult to exercise, both by the majority and opposition, in their pursue of influencing the adoption of the legislation.

In any democracy, the purposefulness of the parliamentary control has to overcome the statute of confrontation, sometimes duel, between the executive and legislative bodies, so that it becomes the equilibrium point from which the needs of the citizens are met, according to the mandate they have granted.

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¹⁴ Eric Thiers, *Le contrôle parlementaire et ses limites juridiques: un pouvoir presque sans entraves (Parliamentary oversight and legal limits: a power almost unhindered)*, Pouvoirs Magazine, 3/2010, p. 7-8

¹⁵ Ioan Muraru, Elena Simina Tănăsescu, *op. cit.* p. 159

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