THEORETICAL AND PRACTICAL ASPECTS CONCERNING THE ELECTION OF THE PRESIDENT OF ROMANIA

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Abstract

According to art.81 of Romanian Constitution, the President of Romania shall be elected by universal, equal, direct, secret and free suffrage. The candidate who, in the first ballot, obtained a majority of votes of the electors entered on the electoral lists shall be declared elected. If no candidate has obtained such majority, a second ballot shall be held between the first two candidates highest in the order of the number of votes cast for them in the first ballot. The candidate having the greatest number of votes shall be declared elected. At present, according to Romanian legislation, the electors entered on the electoral lists can only vote at polling stations, even if some citizens are abroad. Unfortunately, Romanian regulations in electoral matters did not recognize the electronic voting or postal voting. Last year, media from around the world showed thousands of Romanian citizens from abroad who stood in long lines to vote at Romanian diplomatic offices abroad. But any participatory democracy means guaranteeing to its citizens the right to vote, not only theoretical but also practically, providing them the most effective and modern ways of voting.

Keywords: *right to vote, President of Romania, mail voting, electronic vote, democracy.*

1. Introduction

The constitutional regime in Romania following the Events in 1989 was inspired by the French one, but it did not copy it entirely. A series of constitutional arguments[1], such as the appointment of the candidate for the position of prime minister by the President of Romania (art.85) or the dissolution of the Parliament by the President of Romania only in compliance with certain conditions expressly provided by art.61 par. (1) of the Constitution, justify also in our opinion the classification of our constitutional regime as being an attenuated semi-presidential or a semi-parliamentary one.

Elections are central to the very nature of contemporary democratic rule and they provide the primary means for ensuring that governments remain responsive and accountable to their citizens[2].

The direct election of the head of state by the people is one of the characteristics of modern presidential or semi-presidential republics and represents a proof of the representation of a head of state and, through the attributions which it has, to represent the state at international level, the president has to be representative for the nation, has to be acknowledged by it[3].

2. Content

2.1. The monist executive and the dualist executive

On the other hand, the appearance of the parliamentary regime determined the birth of a second body of the executive power[4], namely the Government politically liable before the parliament, as compared to the head of state – monarch or president – who, from this point of view, is not liable. Therefore, as regards the structure, a distinction can be made between the monocratic or monist executive[5] and the dualist or two-headed [6] or bifurcated [7] executive.

The monist or dualist character of the executive, character determined by its structure, must not be mistaken with the monist or dualist character of the parliamentary regime, case in which the Government is still "in the centre of the attention", but from a different perspective.

The doctrine [8] appreciates that the executive is monocratic or monist when the executive function is held by a single state entity. Nevertheless, it is also

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[1] A. Iorgovan, *Tratat de drept administrative, "Treaty of administrative law"*, All Beck Publishing House, Bucharest, 2005, vol. I, pp. 295-298.

[2] N.C. Bormann, M. Golder, *Democratic Electoral Systems around the world, 1946-2011 in Review "*Electoral Studies" no 32/2013, p. 360.

[3] I. Muraru, S.E. Tănăsescu, coordinators, *Constituția României. Comentariu pe articol*, "*Romanian Constitution. Comment on articles"*, C.H. Beck Publishing House, Bucharest, 2008, p.764.

[4] T. Drăganu, *Drept constituțional și instituții politice. Tratat elementar*, "*Constitutional law and political institutions. Basic Treaty"*, Lumina Lex Publishing House, Bucharest, 2000, vol.II, p.308.

[5] I. Vida, *Puterea executivă și administrația publică*, "*Executive power and public administration"*, Official Gazette Publishing House, Bucharest, 1994, p. 31 and next.

[6] A. Hauroiu, *Droit constitutionnel et institutions politiques*, Montchrestien Publishing House, Paris, 1967, p. 653.

[7] T. Drăganu, *quoted works*, vol.II, p.308.

[8] I. Vida, *quoted works*, p. 31.

stated[9], that this form of the executive can be seen when the decision is focused in the hands of a single body. Therefore we can speak about a monocratic or monist executive when a single public authority of the state exercises the executive power.

Starting from this statement, we can see that an executive with such structure was specific to the absolute monarchies in which there was no separation of powers.

As in the case of absolute monarchies, in the dictatorial regimes, the merger of the powers determined that the holder of the power, implicitly of the executive power, was only one body, either unipersonal or collegial.

On the other hand, it is debatable today if the parliamentary monarchies, constitutionally established, have a monocratic executive or if it was replaced by the dualist one or has become a particular one. If in the United Kingdom the symbolic character of the monarchy is, probably, the most visible because, at least in theory, the holder of the executive power is the monarch, in practice, "Her Majesty's" ministers are those who exercise the power, led by the prime minister, who will answer before the Parliament[10], not before the monarch, the constitutional regulations of other states, such as Denmark, Netherlands, Belgium, etc. can entail a contrary opinion.

Thus, for example, section 12 of the Constitution of Denmark expressly provides that the King, with the limitations provided by the Constitution, has the supreme authority on all Kingdom's affaires and businesses and shall exercise the supreme authority through the ministers, who, according to section 14, he appoints and release, including the prime minister, and to whom he shall establish the tasks. Sections 17 and 18 of the same normative act shall regulate two bodies, namely the State Council, made of ministers – holders of some ministries, the Heir to the Throne and presided by the King, and the Council of Ministers, which is made of the ministers and presided by the prime minister. The distinction between these two bodies is made not only as regards the constituents, but also who presides them, because section 17 par. (2), corroborated with section 18 establishes a priority rule for the State Council, namely all drafts of law and all important governmental measures are to be discussed within this council and only if the King was hindered from calling the State Council they shall be subject to discussion within the Council of Ministers. Moreover, the same section 18 provides that, after the Council of Ministers reaches a decision, the prime minister has the obligation to bring it to the attention of the King, who decides whether to embrace the recommendations of this Council or addresses the respective problem to the State Council. As compared to the Danish constitutional regulations, the Dutch ones only state that the King, together with the ministers, is part of the Government [art. 42 par. (1)]. However, according to art. 45 par. (1)-(3), the ministers, together with the prime minister, form the Council of Ministers, which is chaired by the latter, prime minister who assesses and decides on the governmental policy and also ensures and promotes its coherence. However, also in the Dutch constitutional system in accordance with art. 43, the prime minister and the ministers are appointed and released from their positions by the King, through a royal decree.

In relation to the two constitutional examples, we shall be able to point out that the Danish executive, by the fact that it provided the monarch with a considerable right of decision which is not found in the provisions of the Constitution of the Netherlands, is much closer to the real monocratic executive. On the contrary, the Dutch executive can be classified as such only at a formal level, being more closer to a dualist executive, which, in our opinion, is the case of most of the executives within contemporary monarchies.

The evolution from the absolute monarchy to the parliamentary monarchies or contemporary republics, as well as the influence of the principle of separation and balance of powers in the state, shall determine most of the times the abandonment of the monocratic executive in favour of the dualist one.

Nevertheless, the monocratic executive model was taken also by states with a presidential regime, where the holder of the executive power is the president of the republic. The most eloquent example for this purpose is the President of the United States of America, to whom the executive power is granted by art. 2 par. (1) point 1) of the Constitution.

The American presidential regime crossed the borders of the state where it was born through the 1787 Constitution, but each of the states, such as Argentina or the Russian Federation, which used it as model brought an "institutional innovation"[11], namely the Government, which, together with the President – head of state, forms the executive power. This "alteration" of the presidential regime did not affect the nature of the regime, aspect pointed out both by the doctrine[12], as well as by the

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[9] D.C. Dănișor, *Drept constitutional și instituții politice*. *Exercițiul puterii în stat,* "*Constitutional law and political institutions. Exercise of state power"*, Europa Publishing House, Craiova, 1996, vol. II, p. 99.

[10] S.E. Tănăsescu, N. Pavel, *Sistemul constituțional al Marii Britanii in Actele constituționale ale Regatul Unit al Marii Britanii și al Irlandei de Nord in Constituțiile statelor lumii*, "*Constitutional system of Great Britain. In: Constitutional acts of United Kindom of Great Britain and North Ireland. In: Constitution of the world's states„*, Colection, All Beck Publishing House, Bucharest, 2003, p. 5 and next.

[11] I. Vida, *quoted works*, p. 34.

[12] Ibidem, *quoted works*, p. 34.

constitutional provisions related especially to the functions and attributions of the President.

Therefore, currently, the identification of an executive as being monocratic, monist or dualist can be difficult, having constitutional systems in which it is difficult to estimate that an executive has one of these two forms, the predominance more or less formal of the head of state – monarch or president – in exercising the executive power and, implicitly, its relations with the collegial body – the other component of the Government, influencing this identification.

As regards the relations within the dualist executive, we can notice that within the modern parliamentary regimes, the role of the head of state – president or monarch - tends to be closer to the symbolic role of the monarch, the Government having the task of exercising the executive power.

However, a particular situation can be seen in the semi-presidential or parliamentary republics, as they are characterized by a part of the doctrine. Especially the relations between the president and the prime minister shall be strongly influenced by the evolutions on the political scene, especially the relations between them and the parliamentary majority, but also by the personality of those who temporarily hold these dignities. Therefore, we can state that not even in a semi-presidential regime, the president does not have the effective power to govern, exclusively, as it does not substitute the Government, not even the prime minister, its role being focused on the capacity of arbitrator[13], statement which is all the more correct in case of attenuated semi-presidential regimes or semi-parliamentary regimes, as our current Romanian constitutional regime was characterized[14].

2.2. Evolution of the executive structure in Romania

The regulations from the Developing Statute of the Convention of August 7th/19th1958, especially those of art. I read in conjunction with those of art. II, III and V, according to which public powers were assigned to the Ruler, and he exercises only the legislative one along with the two Legislative Assemblies establishes a single executive or monist.

Later, through the adoption of the Constitution of 1866 was introduced the parliamentary regime[15], the monarchy being regulated as form of government, the executive being monist as it is reflected from the provisions of art. 35, the executive power being entrusted to the King who will exercise it in the manner regulated by himself. So, we can talk about a single executive or monist, the unipersonal body to whom is entrusted the exercise of this power, initially bearing the title also of "Ruler", as, after the proclamation in 1881 of the Kingdom of Romania, this to be changed in "King".

The Constitution of 1923 will maintain, among other previous constitutional provisions, the provisions of art. 35 of the Constitution of 1866 which will be reflected in art. 39. In contrast, this fundamental law will outline the institution of the Government by specifying in art. 92, the fact that it exercises the executive power in the name of the King as established by Constitution. This attention of the constituent legislator to the institution of the Government or the Council of Ministers has not changed the Romanian executive of that period from a single one in a dualistic one.

The Constitution of 1938 will maintain a single executive, the executive power being entrusted also to the King, so also to a unipersonal body, which, according to art. 32 will exercise it by their own Government.

The adoption of the acts with constitutional character of September 1940, the new regulations abolishing the dictatorship of King Carol II, will not affect the Romanian executive structure, this remaining still a single one, be it about the person of the new King or that of Marshal Ion Antonescu. Thus, the prerogatives of the new King – Mihai I will be reduced gradually until he will be vested only with the honorific ones, such as: head of the army, conferring decorations[16], the assignment of the exercise of the other powers in the state being assumed to the President of the Council of Ministers, "vested with full powers for the administration of the State"[17] and who, thus, becomes "the pivot of the whole Romanian public life".

The period of 1944-1948, marked by numerous social and political convulsions and constitutional transformations, will put its mark on the executive structure, being difficult to appreciate the monist or dualistic character of it even in the circumstances where under the Decree no. 1626 of 31st August 1944, will replace, partially, in force, the provisions of the Constitution of 1923. We base this view on that, although the monarchy is maintained, the Council of Ministers becomes "a supreme body of state, which concentrated in its hands the whole state power"[18]. Subsequently, by Law no. 363 of 30th

[13] M. Duverger, *Les constitutions de la France*, PUF Publishing House, Bucharest, 1944/1987, pp. 106-107.

[14] O. Şaramet, *The Structure of Executive Power. The Structures Evolution of the Executive Power in Romania* in AGORA International Journal of Juridical Sciences, no.4/2014, pp.163-171.

[15] C. Ionescu, *Tratat de drept constituțional comparat*, "*Treaty of contemporary constitutional law"*, All Beck Publishing House, Bucharest, 2003, p. 491.

[16] P. Negulescu, G. Alexianu, *Tratat de drept public*, „*Treaty of public law"*, tome I, School House Publishing House, Bucharest, 1942, p. 232.

[17] Ibidem, *quoted works, p. 232.*

[18] I. Muraru, S.E. Tănăsescu, *Drept constituțional și instituții politice*, "*Constitutional law and political institutions"*, All Beck Publishing House, Bucharest, 2001, p.110.

December 1947 for the constitution of the Romanian state in People's Republic[19], the task of exercising the executive power will return to a collegial body - the Presidium of the Romanian People's Republic - that will subordinate its Government, the executive being qualified as a monist one.

Romanian Constitutions that followed, namely the one in 1948 and the one in 1952 establishes a monist executive, represented by a collegial body, respectively the Grand National Assembly Presidium, the Government or the Council of Ministers being limited to just meet an administrative role.

The constitutional development of Romania after the Events of the period 16th to 22nd December 1989 can be characterized by three stages[20]: revolutionary power stage, revolutionary power stage organised under the form of government assembly and the stage of the Revolution legalization. By the Communication to the country of the National Salvation Front, published in the Official Gazette no. 1 of December 22nd 1989, the only central state bodies kept were the ministries. The state power concentration in the hands of a collegial body emanated from the lines of the National Salvation Front Council was equivalent to "a government of fact performed by a group of people who have taken themselves this responsibility and acted according to the needs of the moment"[21]. It is a reason for which it is almost impossible to distinguish, for this period, between organs or state authorities in the sense of the theory of separation and balance of powers in state, especially to determine the dualistic or monist character of the executive.

Defined as a "revolutionary mini-constitution"[22], the Decree-law no. 2 of 1989 on the establishment, organisation and functioning of the National Salvation Front and territorial councils of the National Salvation Front formed a new body - the National Salvation Front Council, whose President was vested with specific powers of a head of state. The same newly created Council will have as attribution, according to art.2 par. (1) letter b), the appointment and revocation of the Prime Minister as well as the approval of the Government component, at the Prime Minister's proposal. The consecration of these attributions of the National Salvation Front Council, which by all the powers conferred, resembles a legislative assembly, will allow the characterization of the new regime as being one of "assembly" within which the "executive power is an emanation of the legislative body at any time revocable by it"[23]. In terms of structure, the executive is a dualistic one, being represented by the President of the People's Republic, respectively by the Government[24], but the subordination of the Government to it, as well as limiting the attributions of the former to the ones specific to the representation function and implicitly the impossibility of the President to dissolve the legislative, deprives the executive of the possibility to preserve its "profile of true power in the state"[25].

By the Decree-law no. 92/1990 for the election of the Parliament and the President of Romania, a new legal-political institution has been created – President of Romania, the executive power being exercised along with the Government, headed by a prime minister, thus, being confirmed the dualistic structure of the executive.

The structure dualism of the executive will be maintained by the constituent legislator of 1991, as well as later to the revision of 2003 of the Constitution, being represented by an unipersonal body - the head of state and a collegial body - the Government, with the proviso that in achieving its constitutional role, in terms of its administrative dimension, the Government will benefit from the contribution of the public administration of which general administration exercises.

Within this dualistic executive, according to the nature of the political regime established in our Constitution and that bears influences of the parliamentary one, the attributions are shared therefore between a head of state represented by a president of the republic elected by direct universal suffrage, and a government appointed by this after the vote of confidence granted by the parliament, to whom is also responsible[26].

2.3. The appointment of the head of state in Romania

The appointment of the Romanian head of state experienced different modalities starting with the Developing Statute of the Paris Convention of 1858. Thus, if Cuza's Developing Statute will maintain the principle of elective or "lifelong" monarchy, as P. Negulescu said, principle introduced by the Paris Convention with the Ruler's choice by the Elective

[19] Was published in the Official Gazette, Part I, no.300 bis of 30th December 1947.

[20] T. Drăganu, *Drept constituțional și instituții politice. Tratat elementar*, "*Constitutional law and political institutions. Basic Treaty"*, Lumina Lex Publishing House, Bucharest, 2000, vol.I, p.390 and next.

[21] T. Drăganu, *quoted works*, vol.I, p.392.

[22] Ibidem, *quoted works*, vol.I, p.392. This Decree-law was published in the Official Gazette no.4 of 27th December 1989.

[23] T. Drăganu, *quoted works*, vol.I, pp.274-276, and p.393.

[24] By the Decree-law no.10/1989 on the establishment, organisation and functioning of the Romanian Government will be established, as the highest body of the state administration, the Government of Romania.

[25] T. Drăganu, *quoted works*, vol.I, p.276.

[26] O. Șaramet, *The Structure of Executive Power. The Structures Evolution of the Executive Power in Romania* in AGORA International Journal of Juridical Sciences, no.4/2014, pp.163-171.

Assembly, both the Constitution of 1866, according to art. 82 and the one of 1923, according to art. 77, respectively the one of 1938 by art.35, will abandon this principle in favour of the hereditary monarchy. It is necessary also to state that the transmission of the monarchy was established "in downward line, direct and legitimate of His Highness Prince Carol I of Hohenzollern Sigmaringen", but only in the male line, with primacy of primogeniture and exclusion of women and their successors forever. Socio-political and historical context of the time imposed waiving to reigns and thus replacing them by a ruler who came from one of the ruling families of Europe.

Changing the form of government of Romania by Law no. 363/1947, by transition from monarchy to republic, will result also the transfer of the prerogatives of the head of state from a unipersonal body to a collegial one, represented either by the Presidium of the Romanian People's Republic or the Grand National Assembly Presidium or the Council of State. Appointing members of these collegial bodies will not be made hereditarily, but either by appointment or by election by the legislative body of the time, respectively the Grand National Assembly. The amendment of the Constitution of 1965 will determine, through the creation of the presidential institution, only the transformation from collegial body in unipersonal body of the one that exercises the function of head of state, the manner of designation being kept because, according to art. 72, the President of the Socialist Republic of Romania was to be elected by the Grand National Assembly.

The election of the President of the National Salvation Front Council – body of provisional character which can be assimilated, by the nature of its attributions to a head of state, was made in the same conditions, so this election were made by a legislative assembly, respectively.

By the Decree-Law no. 92/1990 it will be adopted as a method to designate the Romanian head of state, the one specific to a presidential republic (for example Section 94 of the Argentinean Constitution provides that the President and the Vice-President of the Nation will be elected directly by the people, following the second tour of elections, according to the provisions of the Constitution), but which was also adopted by other states such as France, Austria, Portugal, the dualist executive of which "has permitted the conservation of certain aspects of the parliamentary system"[27], solution which has been maintained by the constituent legislator of 1991, neither being modified with the occasion of the review of the Constitution in 2003[28]. Thus the Romanian head of state – The President is elected, according to art. 81 par. (1) of the Constitution, by universal vote, equally, directly, secretly and freely expressed. The election is done according to par. (2) and (3) of the same article, by uninominal majority elections in two rounds so that in the case that neither of the candidates subscribed for the election race meets in the first round the absolute majority of the votes from the voters recorded on the election lists, in the second round they will be elected President of Romania they who, out of the first two candidates established in the order of the number of the votes acquired in the first round, have gathered the greatest number of votes, just a relative majority respectively. Similar procedures of election of the head of state – president are regulated also by other constitutions, such as: that of Austria (art. 60); that of France (art. 7); that of Portugal (art. 121). The election of the head of state by universal and direct vote by the citizens, following a uninominal majority voting, in two rounds, is preferred in parliamentary republics. In this sense, there are for example, the provisions of the Constitution of Bulgaria, namely those of art. 93.

The orientation of the Romanian constituent legislator towards adopting this method of electing the head of state was not a random one and did not have as purpose just the desire of implementing certain new constitutional procedures of designating the Romanian public authorities as opposed to those prior to the Constitution of 1991. The embracing of a semi-presidential regime in an attenuated form or semi-parliamentary, to the detriment of the parliamentary one devoted to the previous constitutional norms and implicitly, the accentuation of the mediating position of the head of the state have imposed, at least for the moment, the renunciation of their election by the parliament, which would have allowed this to be the result of the political confrontations of the parties represented at the legislative level. Moreover, knowing that the head of state exerts this office mediating not just between the powers of the state but also between the state and society, their neutrality, their lack of any influence from the political parties could ensure the objectivity, the impartiality as much by actions of mediation, as well as its result. Also in order to consolidate the neutrality of the President, confirming their independence, art. 84 par. (1) of the Constitution has registered as specific incompatibilities of the Romanian President, those that relate to: the capacity of member of a political party and the impossibility of fulfilling any other public or private position.

However it should not be understood that by implementing these methods of their designation, the head of state becomes a superior authority in relation

[27] I. Muraru, S.E. Tănăsescu, *quoted works*, 2001, p.557.

[28] The constitutional provisions concerning the election of the Romanian President have been supplemented and developed by those of Law no. 69/1992 for the election of the Romanian President, with subsequent amendments and completions, published in the Official Gazette, Part I, no. 164 from July 16th 1992.

to the Parliament, more so as both authorities benefit, following the universal vote of "an originally democratic legitimation"[29]. In fact this statement is valid in relation to any other authority or political formation.

With respect to the conditions which have to be met by a person in order to run for the office of President of Romania neither the Constitution not the present regulatory act which regulates the organisation and development method of the elections for the President of Romania – Law. No 370/2004[30] for the election of the President of Romania, do not comprise a unitary regulation of them, their deduction being made by a systematic and logical interpretation of the provisions of these regulatory acts. Art. 10 of Law no. 370/2004 expressly specifies, however, exactly who can't run for this office, identifying two possible situations: the failure to fulfil by the candidate to the presidential office of the conditions provided by art. 37 of the Romanian Constitution, republished, and also that according to which they were previously elected, twice, as President of Romania. The absence of express dispositions regarding these conditions and prior to the entry into effect of the new law in the field, but even prior to the review of 2003 of the Constitution, has determined the Constitutional Court[31] to decide which are in accordance with the constitutional provisions, the cumulating conditions which the person running for the office of President of Romania has to meet namely: to have a right to vote according to art. 34 par. (2); to have only Romanian citizenship and the residence in the country, according to art. 16 par.(3); to not fall in the category of people who cannot be part of a political party art. 37 par.(3); to have reached by the day of the elections inclusively, the age of at least 35 years – art. 35 par. (3); to not have fulfilled previously two mandates in the office of President of Romania art. 81 par. (4).

In the procedure of designating the President of Romania, along with the election offices which have according to Law no 370/2004, specific attributions with respect to the organisation and running of the presidential elections, an effective role is also played by the political legal institutions, such as the Constitutional Court, the Parliament or the Government[32].

2.4. Duration of the head of state mandate in Romania

The revision from 2003 of the Romanian Constitution implied also the reconsideration of the head of state mandate, being chosen a duration of 5 years compared to 4 years, as it was initially provided by the Constitution from 1991. Justified by the necessity of an additional guarantee for the political stability of the country by maintaining the continuity of the presidential institution in the period of parliamentary electoral campaigns[33], this new duration of the presidential mandate is according to the constitutional provisions in force of most states, mostly of those from the European continent[34]. Although the justification of modifying the head of state mandate is grounded, we think that for the moment, as well as for the following 10-20 years, neither the political class from Romania nor the citizens do not and will not have the political maturity necessary to fully understand the motivation of adopting this measure. In supporting those declared, we mention that, for example, following the local and parliamentary elections from

[29] I. Deleanu, *Instituții și proceduri constituționale în dreptul comparat și în dreptul român*, "*Constitutional institutions and procedures in comparative law and Romanian law"*, C. H. Beck Publishing House, Bucharest, 2006, p.627; H. Portelli, *Droit constitutionnel*, Dalloy Publishing House, Paris, 1999, p.176; C. Călinoiu, V. Duculescu, *Drept constituțional și instituții politice*, "*Constitutional law and political institutions",* Lumina Lex Publishing House, Bucharest, 2005, pp.191-192.

[30] It was published in the Official Gazette, no. 887 from November 29th 2004, previous law – Law no. 69/1992 for the election of the Romanian President, with subsequent amendments and completions, being implicitly abrogated.

[31] The Constitutional Court Order no 10/1992 related to the challenge no. 233 of September 7th 1992 of mister Ioan Adrian Mihalcea related to the recording of the candidacy to the office of President of Romania of mister Ion Iliescu, published in the Official Journal 1st Part no. 238 of September 25th 1992. Although following the review of the Constitution in the year 2003, some of these art. have changed their numbering becoming – art. 34 – art. 36, art. 35 – art. 37, and art. 37- art. 40, their content has stayed the same, exception making the dispositions of par. (3) of art. 16 by which it is has been considered unjustified to prohibit the access to the public offices and titles of the Romanian citizens who have also another citizenship aside from the Romanian one, (M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, *Constituția României revizuită – comentarii și explicații*, "*The revised Constitution of Romania – comments and explanations"*, All Beck Publishing House, Bucharest, 2004, p. 22), the access to the public civil service offices and titles has no longer been conditioned by the owning of *only* the Romanian citizenship, we consider the specifications of the Constitutional Court as current. On the other side, in order to avoid any future controversies and potential challenges to the Constitutional Court with regard to any candidacy to the office of President of Romania, it would have been beneficial to record these mentions in the Law no.370/2004, reason for which we propose that a future modification of this regulatory act include this aspect as well. Even in these conditions we should not omit the fact that according to art. 147 par. (4) of the Constitution, the court orders of the Constitutional Court are generally obligatory and have power only for the future, constitutional disposition which, along with the review of the Constitution, has consolidated the obligatory nature of the decisions of this authority, provided also prior to the year 2003.

[32] O. Șaramet, *Head of State in Romania. Designation. Duration of Mandate* in Bulletin of the Transilvania University of Brasov, no.7 (56)/2014, pp. 277-284.

[33] M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I.Vida, *quoted works*, p. 143.

[34] Constitutions of states such as: Albania [art. 88 par. (1)]; Bulgaria [art. 93 par. (1)]; Czech Republic (art. 55); Cyprus [art. 43 par. (1)]; Croatia [art. 95 par. (1)]; Estonia [art. 80 par. (1)]; Lithuania [art. 78 par. (2)]; Macedonia [art. 80 par. (1)]; Poland [art. 127 par. (2)]; Portugal [art. 128 par. (1)]; Slovakia [art. 101 par. (2)]; Slovenia [art. 103 par. (3)]; France [art. 6 par. (1)] Germany [art. 54 par. (2)] provide a duration of President mandate of 5 years, being relatively a few which establish a mandate duration bigger or smaller than 5 years.

June, namely November 2008, the political parties from Romania and not only, have been in electoral campaign, masked or not, its conclusion taking place only at the end of 2009, after the second tour of presidential elections. For the same purpose, we can also mention the intention, even declared, of some opposition parties or coalitions of parties that along with the election as President of Romania of that supported by them, to obtain also the power in the Parliament, following the initiation and adoption of the censure motion. Such situation was also encountered after the presidential elections from 2014, when the elected president came from one of the opposition political formations. The arguments brought in order to justify the introduction of these censure motions (the one from May 5, 2015, and the other from September 21, 2015, both rejected) aimed certainly also economic, social, political dissatisfactions but it was claimed, sometimes expressly, other times euphemistically, the necessity of changing the relation of forces for corresponding at parliamentary level to the will expressed by the electorate at the election of the president. Or, on one hand, the intention of the constituent legislator expressed through the revision from 2003 was not for this purpose and on the other hand, the democratic legitimation of the Romanian President, through the vote expressed by the electorate, does not automatically imply that such legitimation was given indirectly to the parliamentary political formations from which comes the person who obtained the presidential mandate. Only the electorate, within a new electoral exit poll, organised in constitutional and legal conditions in force, can offer or not such legitimation.

The Romanian President shall exercise the five years of mandate, according to art. 83 par. (1) and (2) of the Constitution, from the date of making the oath provided by art. 82 par. (1) from the same normative act, before the Chambers of the Parliament reunited in joint session and until the date of making the oath by the new elected President. In these conditions, the value of the oath is not only symbolical, formal but also legal, having also legal consequences, offering the mandate effectiveness[35].

The President mandate can be also concluded before the expiration of its 5-year duration and the circumstances in which the presidential mandate can be concluded before full term, provided by art. 96 par. (1) from the Constitution, are: resignation; dismissal from position; impossibility to finally exercise the attributions; death.

Art. 81 par. (4)[36] of the Constitution stated, *expresis verbis*, in order to be avoided the transformation of the presidential institution in a personal one, the fact that no person can fulfil the position of Romanian President for more than two mandates, which can be successive. It is thus written in our Constitution a rule which was initially a constitutional common law born in the United States of America, where no President, except Franklin Roosevelt, who had 4 consecutive mandates between 1933 and 1945, had more than two mandates and along with the ratification of the 22nd Amendment in 1951, no President will do this anymore[37].

The above-mentioned interdiction concerns only those mandates which were, are and will be exercised under the Romanian Constitution in force in the present, the Constitutional Court [38] acknowledging the fact that "any judgement concerning the logic, significance and implications of texts of Constitution, including those that concern the institution of the Romanian President, is analyzed and interpreted starting with the situations that occur after its entry into force", therefore the provisions of art. 81par. (4) can be only applied in the future[39].

2.5. Constitutional Court in the context of the procedure for Romanian president election

The Romanian constituent legislator considered highly necessary to grant the Constitutional Court attributions not only concerning the constitutionality control on legal acts mentioned by the Constitution but also concerning the constitutionality of measures or actions undertaken by some authorities, legal acts with constitutional nature. Most of these attributions have as common and central element the Romanian head of state.

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[35] I. Deleanu, *quoted works*, p.629.

[36] The Romanian constitutional provisions are according to most of those from other states. In the same sense, for example, are the provisions of Finnish Constitution – art. 54 par. (1), those of Bulgarian Constitution – art. 95 par. (1) or those of Irish Constitution – art.12 point 3.2. Other fundamental laws such as that of Austria [art.60 par. (5)] or that of Argentina (section 90), nuance this interdiction specifying the fact that the re-election for the immediately following mandate is admissible once. But because Argentina has not only the position of President but also that of Vice-president, it is mentioned in addition that this interdiction operates also if both the President and Vice-president ran the second time for the position held previously by the other.

[37] J. Q. Wilson, *American Government. Institutions and Policies*, Lexington, Massachusetts. Toronto: Heath and Company, 1986, pp.351-351; I. Muraru, S.E. Tănăsescu, *quoted works*, 2001, p.559.

[38] To see for this purpose the Decision of the Constitutional Court no. 18 from September 7th 1992 on the appeal of the Party of the Romanian House of Democratic Europe concerning the candidacy of Mr. Ion Iliescu for the position of Romanian President, published in the Official Gazette, Part I, no. 238 from September 25th 1992, as well as the Decision of the Constitutional Court no. 1 from September 8th 1996 related to the settlement of appeals concerning the registration of the candidacy of Mr. Ion Iliescu for the position of Romanian President at the elections from November 3rd 1996, published in the Official Gazette, Part I, no. 213 from September 9th 1996.

[39] O. Şaramet, *Head of State in Romania. Designation. Duration of Mandate* in Bulletin of the Transilvania University of Brasov, no.7 (56)/2014, pp. 277-284.

Thus, art.146 letter f) compels the Constitutional Court to supervise the compliance with the procedure for the election of the Romanian President but to also confirm the results of the suffrage only following the validation of these results through a decision will the newly elected Romanian President take over its mandate, after making the oath provided by art. 82 par. (2) from the Constitution. For this purpose, the Constitutional Court will be the one which will publish the result of elections in the media and in the Official Gazette of Romania, for each exit poll tour and validating the results of elections, will submit, according to art.25 par. (1) from Law no. 370/2004 for the election of the Romanian President, one copy of the validation document to the Romanian Parliament for making the oath by the President.

During the electoral process, incidents can appear, such as the submission of appeals concerning the registration or non-registration candidacy for the position of Romanian President or concerning the prevention of a party or political formation or candidate from performing its electoral campaign according to the law. On the other hand, the Constitutional Court has the obligation to supervise the procedure for President Election, therefore not only all technical and material operations, legal material acts, the incidents following to be also solved by the Constitutional Court, according to art. 38 from Law no. 47/1992, republished.

In order to fulfil this attribution by the Constitutional Court[40], one copy of the candidacy proposal will be submitted by the Central Electoral Office and up to 20 days before the date of elections, the candidate, political parties, political alliances and citizens can appeal the candidacy registration or non-registration. In this situation, the appeal is sent to the Constitutional Court by means of the Central Electoral Office which will also submit in 24 hours the file of the candidacy. In 48 hours from the registration, the Constitutional Court will settle the appeal, the decision being final, for which there are no other means of appeal before neither the constitutional nor the ordinary court, following to be published in the Official Gazette of Romania.

By virtue of the role and attributions established by Law no. 370/2004, the Central Electoral Office is also the one which, for each exit poll tour, will submit the Constitutional Court the protocol with the files of the circumscription electoral offices within 24 hours from the registration of the last file, in order for the constitutional authority to be able to validate or cancel, depending on the case, the presidential elections. Law no. 370/2004, through art. 24, establishes expressly and restrictedly both in the cases in which the Constitutional Court can cancel the elections, namely when the voting process and determination of results took place by fraud in order to modify the mandate attribution or, depending on the case, the order of the candidates who can participate to the second exit poll tour and also the fact that a request for cancellation of elections must be submitted for this purpose either by the parties or candidates, the Court not being able to refer the matter to itself. The Court will decide until the date established by law for publicly informing the results of elections.

3. Conclusions

Popular election provides democratic legitimacy and, especially in combination with more than minimal powers specified in the constitution, can tempt presidents to become active political participants – potentially transforming the parliamentary system into semi-presidential one[41].

Starting from this statement, in case of a revision of the Constitution, we do not advocate the modification of the modality in which the President of Romania is elected, or the duration of its mandate. Therefore, we advocate that the current semi-presidential regime is maintained, eventually, with some adjustments, the President of Romania is to be elected further by the citizens with a right to vote and not by the Parliament, case in which we could speak also about a chance of the political regime into a parliamentary one. As regards the revision of the Constitution of Romania, we appreciate that it is necessary only if we consider that the last revision took place in 2003, including in order to integrate Romania in the Euro-Atlantic structures, situation which was modified, finally, in 2007, once with the accession of Romania to the European Union, but not established as such by the constitutional provisions in force.

The mandate duration of the President of Romania should remain the same, not being optimum, in our opinion, to come back to the 4 years mandate and the organisation, at the same time, of the elections for Parliament and President, precisely for the latter to have the possibility to express its constitutional role focused on neutrality and to be able to ensure the political stability during the parliamentary elections.

[40] The attributions of the Constitutional Court concerning the procedure for electing the Romanian President are developed through Law no. 370/2004 for the election of the Romanian President, published in the Official Gazette, Part I, no. 887 from September 29th 2004.

[41] A. Lijphart, *Constitutional design for divided societies* in *Journal of Democracy*, Volume 15, Number 2, April 2004, p. 104.

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