

THE ROLE OF THE PRESIDENT OF ROMANIA IN THE GOVERNMENT INVESTITURE PROCEDURE

Cătălina SZEKELY*

Abstract

Nowadays society is very active and susceptible of continuous, rapid changes in all its sectors, and, therefore, the political geography and its actors are also changing at high speed. In such a context, one needs landmarks and authorities able to operate effectively and to give stability to the society they govern.

The literature identifies a two-headed executive and the President as the representative of the Romanian State and the guarantor of its unity and territorial integrity. One is not to ignore the role of the Romanian president as the mediator between the social system components, mediator which is to provide and guarantee their balance.

The paper aims at analyzing the investiture procedure of the Romanian Government and it will focus on several controversial issues related to the procedure. There will be also investigated a series of laws and the legal doctrine that addresses this topic. In the final section of the article, the author will draw a series of personal conclusions derived from this analysis.

Keywords: *Authorities, mediator, President, Romanian Government, law.*

1. Introduction

The organization and governing of the society concern both political leaders and researchers in various fields. The discussion on the issue of governance and the authorities having powers in this respect is not just a topic in the field of public law, it also represents an object of research in the fields of philosophy of law, political science, sociology and so forth, as all these areas contribute to the proper functioning of a society. It is undisputed that the theme is mainly approached in public law literature. The paper has the following objectives: to analyze the procedure of Government investiture and the role played by the President in this procedure and to analyze several opinions expressed in the doctrine in order to identify aspects that might contribute to a more coherent and efficient government of the Romanian society so that it may achieve the desired development. The existence of clear procedures, and, most of all their compliance, but not least, the good faith of leaders who have not only legal but also moral duties towards the population they represent, may become the keys to good governance. How to govern a society has concerned philosophers ever since Antiquity and in time, it has been taken over and continued by other authors. At the local level, the concerns in this respect manifested from the very foundation of the first forms of state organization and they have continued ever since. We shall analyze not only the literature in the field of public law, but also the legislation in order to make reasonable proposals for a *ferenda* law.

2. Considerations on state organization

Aristotle discusses the Athenian constitution and the functioning of the Greek city, an archetype still valid nowadays, with all the adaptations that naturally occur due to the inherent social evolution. "The constitution prior to Dracon stipulated that: all public offices were in the hands of the noble or the wealthy. Services were at first for life, and then they lasted for ten years. The most significant and oldest were those of King, captain of the army (the polemarch) and of archon. [...] Thesmotets (i.e. law-makers) appeared much later, at a time when jobs were annual, as only in this way one can explain why out of the nine archons, only the thesmotets were elected for just one year. They were commissioned to keep the text of the law and to put it at the disposal of those who had the skills to judge."¹ One can notice that in his work Aristotle tackles the problem of public services and their role in solving state problems. There emerges the idea of separation of powers. The so-called "makers of laws" had the duty of keeping the text of laws and to help those in charge with resolving any disputes that might arise.

"In any state, there are three parties, with which the legislature will deal, if sensible, so that to organize them and to consider their individual interests before anything else. Once these parties are well organized, the state itself, as a whole, is necessarily well organized; therefore, states can not really be distinguished, if not by judging the different organization of these three elements. The first is the general meeting that deliberates on public affairs; the second is the judiciary, on which one must decide the nature, competences and the

* PhD Lecturer, Petroleum-Gas University of Ploiești (e-mail: catalinaupg@yahoo.com).

¹ Aristotel, *Statul atenian*, apud Anuarul Institutului de Studii clasice (1928-1932). Part I, pp. 54-64, Antet Publishing House, Bucharest, sine anno, pp 20- 21.

appointment; the third is the judiciary.”² Aristotle, like his predecessors, was a visionary. The origin of the rule of law is to be found in ancient times, even if it is far from the concept of nowadays democracy. “Over its historical evolution, the political organization of the society, especially through its main institution - the State - has based more and more on perfecting the state structures in relation to citizens and on rigorous laws, which set both the rights and freedoms of citizens, as well as the obligations of state authorities to act within the law.”³

„The Athenian democracy - if one goes from myth to reality - was, though, far from being flawlessly democratic, at least if considering the norms today. It related only to a small part of the population: people exercising their sovereignty represented a mere minority! Slaves were, naturally, excluded, though they were more numerous in Athens than citizens; the metecs (i.e. foreigners) and, obviously, women were also excluded.”⁴

In spite of all these “imperfections”, it is remarkable the concern for how a city should function and, especially, the individuals’ being involved in public affairs, thus becoming true “citizens”. The rule of law turns into a priority and it represents the state where law is applied and all authorities function according to it.

There can be identified the following features of the rule of law⁵:

- the existence of an adequate legislative framework, i.e. the principle of the Constitution supremacy being applied;
- state bodies, regardless of their position in the system of authorities, should be chosen - where appropriate - by means of universal, direct and secret vote;
- the existence of powers separation, namely the parliament as the legislative authority, the government as the executive power and the judiciary power;
- the distinction between the state and the political parties;
- military forces and the police should be under the supervision of civil society;
- guaranteed freedom of expression and access to information, as well as the political and professional organization of citizens, make possible the control of power by the civil society;
- the guarantee and respect of citizens’ rights and freedoms.

When analyzing the opinions expressed, it can be seen that everything revolves around the law and complying with it. An important role in this respect is played by the Parliament, as the one that creates the legislative framework necessary for a society to function.

“The sovereign, having no other power than the legislative one, works only by means of laws; as the laws are nothing but authentic acts of the general will, then the sovereign would not know to work unless the people gather. One might say: the people gathered, what an idea! It is true, today it is an idea, but it used to be a fact two thousand years ago. Is it possible that people have changed their nature that much?”⁶ Today, one discusses the theory of the mandate and the responsibility that resides in it. People can not actually govern as a whole. For this reason, there shall be appointed representatives to do so. Theoretically, sovereignty and power itself belong to the people, but they can be exercised only by appointing their representatives in public offices.

“As for the modern state, to apply direct democracy is virtually impossible, it can not be doubted that parliamentarism is the only really possible form of the idea of democracy.”⁷ The application of the principle of participation is achieved not only as direct participation, but also as participation through representatives. Based on this general elective rule, there have been attempts to rediscuss the precept of mandate: by voting, the voter gives to the elected a mandate that can not be ignored by the elected one. In other words, the representative is a delegated person; but giving the vote to the delegate, through which the elector frees themselves of their own prerogatives, means not assuming their choices?⁸

When does citizen involvement disappear? Ideally, the individual must be an active citizen and concerned with the „affairs” of their city. They may not just invoke respect for fundamental rights and freedoms. There is no such thing as a part-time citizen. Being an ideal citizen implies taking decisions, but also empowering the political class. It means educating the whole society so that it may become active in a real mode. Awareness should not arise periodically, only when elections. They must be just the climax.

Niccolo Machiavelli has pragmatically developed a number of theories on how to rule a society. Because of his pragmatism, the Italian philosopher and politician was misunderstood. “Everyone understands that one is to appraise a prince

² Aristotel, *Politica*, translation by El. Bezdechi, Antet Publishing House, Bucharest, *sine anno*, p. 152.

³ Călin Vâlsan (coord.), *Politologie*, ASE University Press, Bucharest, 1994, p. 81.

⁴ Lucian Boia, *Mitul democrației*, Humanitas Publishing House, Bucharest, 2015, p. 15.

⁵ Călin Vâlsan (coord.), *op.cit.*, p. 82.

⁶ Jean Jaques Rousseau, *Contractul social, sau Principiile dreptului politic*, translation by N. Dașcovici, Mondero Publishing House, Bucharest, 2007, pagina 99.

⁷ Domenico Fisichella, *apud Kelsen, Știința politică. Probleme, concepte, teorii*, Polirom Publishing House, Iași, 2007, p. 258.

⁸ *Idem*, pp. 260-265.

that keeps his word and proceeds honestly, and not cunningly. However, the experience of our times has proven that the princes who have done great things were in fact those who did not take too much account of their word and who knew, in their cunningness, to play with people's minds, and in the end, to defeat those who had trusted their honor.”⁹ It is a tough lesson addressed not only to political leaders, but to all people. Machiavelli considers that “there are two ways of fighting: one based on laws and the other - on force: the former is intrinsic to people, whereas the latter belongs to animals; but, as the former is not always enough, one has to resort to the latter. Therefore, a ruler has to know how to be both animal and human.”¹⁰

Going even further back in time, Plato analyzed the link between politics and morality, between governance and the human qualities that a sovereign should have: “he is one of the first to consider human qualities and morality as central issues of politics. In this respect, good governance of the city depends only on the circumstances in which laws are established or on the form of the political constitution. A good, correct politics, the one that puts justice into practice, lies in the moral qualities of every citizen, in their virtuous soul, in the aspiration to common happiness and in the contempt towards personal wealth. Government is good when every citizen is able to act according to the Good.”¹¹

Governance may be defined as the activity of political leadership of a state.¹² What is governance in Romania? “Ever since Romania broke with totalitarianism, we have been witnessing acts and deeds of the legislature, of the executive and of the courts, through which they will prove they are separate powers in the state, defining themselves as such.”¹³

According to the Romanian Constitution, the Romanian state is organized and operates according to the principle of separation and balance of powers – namely the legislative, executive and judiciary one- within the framework of the constitutional democracy. Complying with Constitution, its supremacy and with the laws is not optional, it is mandatory.¹⁴ As one can notice, separation of powers does not imply the lack of any form of links. These powers, represented by authorities, be them elected or appointed according to the procedures in

place, collaborate, supervise each other and are in constant balance.

The legislative power, responsible for passing laws, is the Parliament, in case of Romania - a bicameral parliament, consisting of the Chamber of Deputies and the Senate; the judiciary power is represented by the High Court of Cassation and Law and other courts, whereas the executive is responsible for the enforcement of the laws adopted by Parliament. “The executive is the generic name used for the third branch of power (along with the legislative and the judicial ones) represented mainly by the government.”¹⁵

Most of the opinions expresses in the doctrine identify a two-headed executive consisting of the Government and the President. “The President belongs to the executive, he is one of the two heads of the executive, holding several executive powers, such as those in the fields of defense, foreign policy, appointment to public offices etc.”¹⁶

There have been expressed other theories on the status of the President of Romania, with respect to their falling within the executive or legislative power, suggesting the idea that the President does not belong to either of those powers.¹⁷

We consider that some aspects should be taken into account, such as the duties stipulated by the Constitution for the Romanian President, in relation to several other authorities:

- in relation to the Parliament: the President summons the newly elected parliament, not later than 20 days after the elections; he promulgates the laws adopted by the Parliament; he addresses messages to the Parliament; he dissolves the Parliament after consulting the chairmen of the two Chambers and the leaders of parliamentary groups, unless he gave the vote of confidence to form a government within 60 days after the first request and only after at least two requests for investiture have been rejected. The dissolution may be done in certain circumstances, but never within the last 6 months in office as a President, or when it was decreed a state of war, mobilization, siege or emergency;

- powers in the field of foreign policy: the President concludes international treaties, priourly negotiated by the Government, and then submits them to the Parliament for ratification, within a reasonable time; he accredits and recalls diplomatic representatives of Romania, and approves the

⁹ Niccolo Machiavelli, *Principele*, translation by Nina Façon, Antet Publishing House, Bucharest, *sine anno*, p. 62.

¹⁰ *Ibidem*.

¹¹ Olivier Nay, *Istoria ideilor politice*, translation by Vasile Savin, Polirom Publishing House, Iași, 2008, p. 60.

¹² Verginia Vedinaș, Teodor Narcis Godeanu, Emanuel Constantinescu, *Dicționar de drept public. Drept constituțional și administrativ*, C.H.Beck Publishing House, Bucharest, 2010, p. 71.

¹³ Ioan Alexandru, *Democrația constituțională, utopie și/sau realitate*, Universul Juridic Publishing House, Bucharest, 2012, p. 94.

¹⁴ The Constitution of Romania – revised and supplemented, published in *Monitorul Oficial al României*, Part I, no. 758/ 29 October 2003, art. 1, alin. 4 și 5.

¹⁵ Anton P. Parlăgi, *Dicționar de administrație publică*, Economică Publishing House, Bucharest, 2000, p. 62.

¹⁶ Verginia Vedinaș, *Drept administrativ*, 7th edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2012, p. 34.

¹⁷ *Ibidem*, apud V. Bara.

establishment, disestablishment or change of rank for diplomatic missions, at the proposal of the Government;

- attributions in relation to the judiciary power: the President appoints judges and prosecutors, excepting the ones still in training, at the recommendation of the Supreme Council of Magistracy; he grants individual pardons;

- in the field of defence: the President is the commander of the armed forces and the chairman of the Supreme Council of National Defence;

- duties in relation to the Government include: the President appoints the new government, based upon the vote of the Parliament; he participates in the meetings of the Government; he chairs the meetings where there are debated matters of national interest on foreign policy, defense, public order and, at the request of the Prime Minister, in other situations; the President dismisses and appoints some members of the government at the proposal of the Prime Minister.

Therefore, the President of Romania has a number of responsibilities falling not only within a single category of power. It is undisputed that he cannot be enclosed as constituting only the legislative power along with the Parliament, nor he is superior to other powers. We do not think that the President may be confined only to the sphere of executive power. As already mentioned, the Romanian President has responsibilities in various fields and he plays a mediating role between the state powers. Therefore, provided one placed him exclusively in the sphere of the executive power along with the government, the role as a mediator would be questioned.

Article 80 from the Constitution identifies the roles of the President of Romania, as follows:

“1. President of Romania represents the Romanian state and is the guarantor of the national independence, of the unity and territorial integrity of the country.

2. The President of Romania shall guard the observance of the Constitution and the proper functioning of public authorities. To do so, the President shall act as a mediator between the powers of the state and between the state and the society.”

The Head of State also has popular legitimacy, just like the Members of Parliament, as he is elected by means of uninominal vote, within a constituency covering the entire statal territory. If one candidate obtains the majority of votes, he would effectively ensure representativeness and legitimacy. If no candidate wins a majority of votes in the first round, there will be hold a second round in which there participate the top two candidates, as determined by the number of votes obtained.”¹⁸

After the validation of the results, the President shall take the oath, as stipulated in the Constitution, and will exercise his office for five years. Of course, there may be circumstances when the mandate may end earlier than 5 years. Presidential vacancy occurs in the following situations: resignation, dismissal from office, permanent inability to complete duties, or death. The interim is ensured, in order, by the President of the Senate or by the President of the Chamber of Deputies. When analyzing the text of the Constitution, it can be concluded that the order of the most important positions in the state is the following: the President of Romania, the President of the Senate, the President of the Chamber of Deputies and the Prime Minister.

The Constitution also stipulates the possibility of the President being suspended from office in case of committing serious deeds. This may be done by the Chamber of Deputies and the Senate, in joint session, by the majority of deputies and senators and after the consultation of the Constitutional Court.

Several explanations are to be provided in this respect:

- Constitution does not specify the “serious facts” that a President may be dismissed for, so it is up to the MPs to consider and decide on these grave facts. Maybe, clearly determining what deeds are considered “grave” would help to balance the political scene and will avoid events such as the two attempts of suspending and then dismissing the Romanian President in 2007 and 2012;

- the approval of the Constitutional Court is a consultative one, and, therefore, the Parliament can disregard a possible negative notification of the Court, whom it considers merely “a simple consultative role.” If the approval of the Constitutional Court, became reglatory, and the way of appointing judges of the Court were different, perhaps there would not be discussions on whether expressing or not these opinions in case the President is suspended from office. In our opinion, transferring the powers of the Court in the jurisdiction of High Court of Cassation and Justice, by establishing special sections, would lead to the stability of our society.

“In the Romanian constitutional system, the presidential institution and the Government have different legitimacies, derived from different political wills. Thus, the President of Romania has a popular legitimacy, resulting from him being elected directly by the electorate - whereas the government, as a whole, is appointed by the Head of the State, based on the investiture vote of the Parliament.”¹⁹

The procedure of investing the Government is clear and, according to constitutional provisions, it consists of the following steps:

¹⁸ Ioan Alexandru, Mihaela Cărăușan, Sorin Bucur, *Drept administrativ*, Lumina Lex Publishing House, Bucharest, 2005, p. 184.

¹⁹ *Idem*, p. 183.

- the President designates a candidate for the position of Prime Minister. This is to be done after the consultation with the party which has the majority in Parliament, and in case there is no absolute majority, with the parties represented in the Parliament;

- within 10 days of their designation, the candidate for Prime Minister will ask for the Parliament's vote of confidence upon the governmental programme and on the complete list of the Government;

- the government programme and the list of ministers shall be debated in a joint session of both parliamentary Chambers and then given or not the vote of confidence. It is an attribute of the Parliament to do this, but in case they reject at least two requests, they risk dissolution;

- the Government is officially appointed by the President, by presidential decree and based on the Parliament's vote of confidence, and then the Cabinet members take their oath.

In order to make this appointment, the President must first consult the Parliament. Without the political support of MP-s, a new government can not be appointed. Therefore, it depends on this support. Unfortunately, the actors of the Romanian political

scene have often ignored popular reality and have served their party interests.

3. Conclusions

The Government is responsible with domestic and foreign politics, as well as with the general governing of public administration. The President of Romania plays an important role in appointing the Government due to their influence and balance and to their role of mediator between state powers.

We, though, consider that amending the constitutional text, in order to invest the President as Head of the Romanian Government may prove beneficial, in that he might choose the governmental team and, thus, become responsible with the way the governance is fulfilled.

As a conclusion, it is important that there were a coherent governing policy, given the fact that reforming a society implies time, coherency and, most of all, responsibility. It would be ideal for the Romanian society that the new governments took over measures and viable solutions of former cabinets and developed them in the pursuit of general interest of the society.

References:

- Aristotel, *Statul atenian*, *Anuarul Institutului de Studii clasice: 1928-1932*. Part I, pp. 54-64), (Antet Publishing House, Bucharest, *sinne anno*);
- Aristotel, *Politica*, translation by de El. Bezdechi, (Antet Publishing House, Bucharest, *sinne anno*);
- Alexandru Ioan, *Democrația constituțională, utopie și/sau realitate*, (Universul Juridic Publishing House, Bucharest, 2012);
- Alexandru Ioan, Cărașan Mihaela, Bucur Sorin, *Drept administrativ*, (Lumina Lex Publishing House, Bucharest, 2005);
- Boia Lucian, *Mitul democrației*, (Humanitas Publishing House, Bucharest, 2015);
- Fisichella Domenico, *Știința politică. Probleme, concepte, teorii*, (Polirom Publishing House, Iași, 2007);
- Niccolo Machiavelli, *Principele*, translation by Nina Façon (Antet Publishing House, Bucharest, *sine anno*);
- Nay Olivier, *Istoria ideilor politice*, translation by Vasile Savin (Polirom Publishing House, Iași, 2008);
- Parlăgi Anton P., *Dicționar de administrație publică*, (Economică Publishing House, Bucharest, 2000);
- Rousseau Jean Jaques, *Contractul social, sau Principiile dreptului politic*, (Mondero Publishing House, Bucharest, 2007);
- Vâlsan Călin, coord., *Politologie*, (ASE University Press, Bucharest, 1994);
- Vedinaș Verginia, Godeanu Teodor Narcis, Constantinescu Emanuel, *Dicționar de drept public. Drept constituțional și administrativ*, (C.H.Beck Publishing House, Bucharest, 2010);
- The Constitution of Romania revised, Published in *Monitorul Oficial al României*, Part I, no. 758/ 29 October 2003.