THE SEPARATION OF POWERS IN THE CONSTITUTIONS OF THE EU MEMBER STATES

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Abstract

The purpose of this study consists of realizing and offering an overview of the manner in which the principle of separation of powers is consecrated in the constitutions of the EU member states.
We thereby aim to prove that there is no direct relationship between the form of government of a state, the expressis verbis constitutional regulation of the principle of separation of powers in the state and its effective observance, for the existence of the last fact being necessary the simultaneous concurrence of more social, economic and political factors at the level of the society as a whole.
Also, we aim to offer a perspective as realistic and comprehensive as possible regarding what does the principle of separation of powers imply, mostly from a legal point of view, as well as about the implications that its respecting or lack of it, as the case, does have at the level of a society.
Eventually, we hope to provide a relevant academic study regarding the subject of both great topicality and theoretical and practical interest regarding the fundamentals and especially the operating mode of the principle of separation of powers, a study which could serve, if it shall be taken into consideration by the political plan of the state, to the substantiation of some responsible decisions in the ongoing act of exercising the power.

Keywords: *Constitution, EU member states, separation of powers, Parliament, Government, judicial power*

1. Introduction

The object of the study consists of the principle of separation of powers in the constitutions of the EU member states.

Its importance results out of the necessity to observe in a fundamental manner the existence or inexistence of a direct relationship between the express or implicit constitutional consecration of the principle of separation of powers in the state, its form of government, the manner in which the three powers belong to the public authorities that exercise them, as well as the effective observance of the principle.

We aim, by aggregating some systematizations referring to the constitutions of all the EU member states, to prove the apparent lack of such relationship, considering that the effective observance of the principle cannot be caused by the express consecration of the principle, by one or another form of government or by the exercise of the powers by certain authorities together or independently. Ultimately, the effective observance of the principle is related to the degree of responsibility and maturity of those who possess and exercise the three powers, so of the society as a whole, having an indissoluble relationship with the level of general development of the respective society, implicitly with the quality of the educational system of that state, with its historical accumulations.

A study with an identical subject does not exist in the romanian doctrine (the joinder in a single document of all fundamental laws of the EU member states), this being a reason for us to invite, on this occasion, any interested person to deepen the research of the proposed subject. Of course, regarding the specialty literature referring to the principle of separation of powers, it must be regarded as a premise for the elaboration of this study, a short doctrinaire introspection.

2. The principle of separation of powers

2.1. Fixation of theoretical elements

Enunciated by John Locke in the paper *Treatise on Civil Government* (1690), the theory of separation of powers is completed and explained in detail by Charles-Louis de Secondat, baron de la Bréde et de Montesquieu in the famous paper *The Spirit of Laws* (1748). Montesquieu had shown in his paper that in any organised society, the principle of separation of powers is the basic instrument for the safety of the citizens, followed by the existence of the three great functions: the enactment of legal rules - the legislative function; the enforcement of these rules - the executive function; the judgment of litigations - the jurisdictional or the judicial function[1].

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[1] Ioan Muraru, Elena-Simina Tănăsescu et al., *Constitution of Romania. Comments on articles* (Bucharest: C.H. Beck Publishing House, 2008), 13.

The theory of Montesquieu, approximately in a mirror with the one of Locke, represents, therefore, a reaction against the arbitrariness in the governance and the monarchical absolutism, the two philosophers aiming, through this theory, to ensure the observance of individual freedoms, to allow for the free development of the people. Montesquieu thereby came to distinguish precisely between the three powers which became classical nowadays, namely: the legislative power (or the power to create, modify and abrogate laws), the executive power (or the power to apply the laws, to actually manage the state) and the judicial power (or the power to punish the felons/criminals and to judge the litigations between private individuals, in the sense of "saying the law"). However, the last one – the judicial power – was not developed in the further research of Montesquieu, because of a perception rather ignorant which was specific to that age, considering it unimportant to the society, "almost null"[2]. Nevertheless, it is essential the fact that, in the parameters of theoretical analysis, Montesquieu mentioned the jurisdictional power, rather as a function of the state which must be regarded individually, which must operate distinctly, in order to allow the state to be considered democratic.

Besides, John Locke avoids as well to expressly affirm the existence of a judicial power, although he believes in the jurisdictional function which is realised by the state, this depending, in his opinion, on the legislative power. Therefore, Locke distinguishes three powers of the state, but four functions. Beginning from the fact that "the main purpose which urges people to create states and thereby to subdue to a government" is "the defense of property", Locke proves the existence of a jurisdictional function which is exercised by the state. In the same context, he shows that what does the state of nature lack, the state previous to the existence of society, is, first of all, an established and acknowledged law, second of all an acknowledged and impartial judge and, third of all, a power able to found, sustain and enforce a sentence[3].

The principle of separation of powers must not be interpreted as an absolute separation of the three powers of the state, but as the interdiction that one of the powers shall cumulate and exercise attributes specific to others, thus becoming a discretionary power in the state. More than that, the separation of powers must imply, however, a collaboration between the powers of the state in the general process of exercising the power of the state. By proceeding in such manner, a balance between the powers of the state is established, as each power is bound to limit its prerogatives to those entrusted to it by the Constitution[4].

Rousseau grasps, though, that the theory of separation of powers exhibits a fundamental vice, namely that, although the sovereignty cannot be divided in its principle, we still find it divided in its object. In other words, if we do not acknowledge the indivisibility of the sovereignty, it would be natural to not acknowledge the divisibility of power. However, Rousseau finds another two inseparable elements: to create laws and to maintain them efficient in activity. Still, this second aspect implies and justifies the supervision of the executive by the legislative. "The Government", the holder of the executive power – said Rousseau – is nothing but the "minister" of the legislative, an "intermediate body" of it and subordinate to it[5]. We must regard the theory of Rousseau through the prism of the age contemporary with him, of the conceptions of that period and, implicitly, of the language of that age.

In time, as the constitutional law and the human civilization evolved, the separation of powers consolidated as an essential operating mode of democratic states, as a mark for identifying the democracies, respectively for depicting what autocracies lack. The principle of separation of powers in the state naturally causes the emergence and application of the law constitutionality control without which the supremacy of the Constitution could not be ensured[6].

Doing a short review of the current situation at the global level, we may lay out certain observations. Therefore, while in the parliamentary political regimes operates the principle of equality between the Parliament and the Executive, thus realising the balance between these (Great Britain, Germany), in the semi-presidential political regimes, the head of the state (who is also, generally, the chief of the Executive, but the Executive is, essentially, bicephalous) is not politically liable to the Parliament, but the Government must earn the trust of the Parliament in order to exercise the function of governance, respectively to have its list and program proposed for governance approved (France, Romania). Specific to the presidential political regimes, as it is the one of the U.S.A., is the belonging of the executive function to the head of the state and his subordinates who do not hold the quality of ministers, as there is no concept or institution of Government, the belonging of the legislative function to the Parliament (bicameral in the U.S.A. example – the House of Representatives and the Senate), and of the judicial one to the Supreme Court (the supreme court in the state, generally expressly regulated by the Constitution) and the other courts established by the law[7].

The theory of separation of powers had a special role, maybe a decisive one, in the promotion of the

[2] Quote by Bianca Selejan-Guțan, *Constitutional law and political institutions. Vol. II* (Bucharest: Hamangiu Publishing House, 3rd edition, 2016), 12.
[3] Quote by Dan-Claudiu Dănișor, *Constitutional law and political institutions. Vol. I* (Bucharest: Științifică Publishing House, 1997), 273.
[4] Cristian Ionescu, *Constitutional law and political institutions* (Bucharest: Hamangiu Publishing House, 2012), 141.
[5] Quote by Ion Deleanu, *Constitutional law and political institutions. Vol. I* (Bucharest: Europa Nova Publishing House, 1996), 87.
[6] Ștefan Deaconu, *Constitutional law* (Bucharest: C.H. Beck Publishing House, 2nd edition, 2013), 69.
[7] I. Muraru, E.S.Tănăsescu, *Constitutional law and political institutions. Vol. II* (Bucharest: C.H. Beck Publishing House, 12th edition, 2006), 227.

representative system, namely in the democratic harness of the relationship between the sovereign holder of the power and the state organisation of the political power; in the searching or even the state organization and functioning of the power in such manner that the guarantees of full exercise of the human rights and of the citizen are ensured. As the Constitutional Court of Romania specified, *"the separation of powers in the state does not imply the lack of a control mechanism between the power of the state, on the contrary it implies the existence of a mutual control, as well as realising a balance of forces between these. The acts of the executive power are censored through the administrative contentious, and this involves, among others, the possibility of the court to suspend the execution of the alleged unlawful act"* (D.C.C. no. 637/2006; to see the most recent decisions of the Constitutional Court, namely no. 63/08.02.2017, no. 64/09.02.2017 and no. 68/27.02.2017)[8].

The Constitutional Court had constantly affirmed that it fulfills an exclusive role of "negative legislator", never a role of "positive legislator", so that it had not sanctioned "maturities" or "legislative gaps", although it was often confronted with such situations (Decision no. 761/17.12.2014). That is the reason why its decisions are, mostly, "simple decisions" or "extreme/categorical decisions" which establish their constitutionality or lack of it. However, in a moderate form, the Constitutional Court of Romania had recoursed to some intermediate decisions, through which the constitutionality or lack of it was established with certain reserves[9].

Despite its indisputable relevance, like any theory, the theory of separation of powers principle has its own critiques. Such a critique is the aging of the theory of separation of powers[10]. This is explained by the fact that the theory was elaborated on the background of some institutional problems exhibited by the power, during an age when political parties were not yet established. As a consequence, the emergence of political parties and their particular role in the configuration of legal and political institutions causes the nowadays separation to occur not between the Parliament and the Government, but between a majority, consisting of a winning – in elections – party or parties which hold the Parliament and the Government at the same time, and an opposition (or oppositions) which waits for the next elections "to take revenge". Such a scheme is, in principle, applicable anywhere, but more evident in the two-party constitutional systems[11].

Other critiques are those represented by the theory of the power uniqueness, respectively the argument of violating the divisibility of sovereignty. Both, however, are easily countered. The first one because it does not take into consideration the fact that the power of state is, in fact, a system of bodies which coexist and control each other, while the latter has critiques with arguments from the theory of fractionated sovereignty.

The principle of separation of powers is distinctly consecrated in different constitutions of the world, but it does exist regardless the shape that it takes. While in some constitutions it is expressly regulated through a legal provision (*e.g.* the Constitution of Moldavia, of Romania), in others it results implicitly from the constitutional provisions and the method of structuring the texts of the fundamental law (*e.g.* the Constitution of France, Belgium and Spain). In Romania, since the constiutional revision of 2003, art. 1 para. (4) of the Constitution provides that *"the state is organized according to the principle of separation and balance of powers – legislative, executive and judicial – in the frame of the constitutional democracy"*[12].

2.2. The consecration of the principle of separation of powers in the constitutions of the EU member states

In the following, we shall examine, in alphabetic order, the constitutions/fundamental laws/acts with constitutional value of all the European Union member states, in terms of existence of some specific *expressis verbis* regulations regarding the principle of separation of powers, respectively of an implicit regulation, in terms of the form of governement, as well as the mode of regulation in terms of organization, respectively the provision of exercise of the three powers in the state by the authorities consecrated by the fundamental law (the classic functions of the three powers.

Republic of Austria[13]

The Constitution of Austria consecrates *expressis verbis* the principle of separation of powers. Therefore, art. 94 para. (1) provides that "the judicial and the executive powers are separated at all levels of procedure".

Austria is a parliamentary republic (with federative structure), where the legislative power is exercised by the National Council (*Nationalrat*) together with the Federal Council (*Bundesrat*), the two of them forming the chambers of the Federal Assembly having the role of the Parliament of Austria (*Bundesversammlung*).

The executive power of the Federation is exercised by the Federal President (*Bundespräsident*) together with the Federal Government

[8] I. Muraru, E.S. Tănăsescu et al., *Constitution of Romania. Comments on articles*, 13.
[9] Ion Deleanu, *Constitutional law and political institutions*, 98.
[10] I. Muraru and E.S. Tănăsescu, *Constitutional law and political institutions*, 8-10.
[11] I. Muraru, E.S. Tănăsescu et al., *Constitution of Romania. Comments on articles*, 15.
[12] Ștefan Deaconu, *Political institutions* (Bucharest: C.H. Beck Publishing House, 2nd edition, 2015), 18.
[13] Ștefan Deaconu et al., *Constitutional Codex. Constitutions of the European Union member states. Vol. I* (Bucharest: Official Monitor Publishing House, 2015), 11-21.

(*Bundesregierung*), and the judicial power is exercised by the Supreme Court, as well as by other courts established by the law. The Constitutional Court of Austria has a broader range of competences than those that are traditionally established in the attributions of a constitutional court.

Kingdom of Belgium[14]

The Constitution of Belgium does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The Kingdom of Belgium is a hereditary constitutional monarchy, characterized by the fact that the legislative power is collectively exercised by the King, the Chamber of Representatives and the Senate, and the executive power is bicephalous, represented by the King and his ministers.

On the top of the judicial system is the Supreme Court, which ensures a unitary practice, followed by the High Council of Justice, respectively by the administrative jurisdictions. The Constitution, in its current form, also consecrates a Constitutional Court which realizes the control of constitutionality. In order to characterize the relationship between the public authorities, the doctrine specifies that the Belgian institutions are dominated by the principle of separation of powers.

Republic of Bulgaria[15]

The Constitution of Bulgaria consecrates *expressis verbis* the principle of separation of powers. Therefore, art. 8 provides that "the power of the state is divided between the legislative power, the executive and the judicial one".

Bulgaria is a parliamentary republic, having a bicephalous executive – President and Government. The legislative is exercised by the Parliament, and the judicial activity by the Supreme Court of Cassation, together with the Supreme Administrative Court, courts of appeal, departamental tribunals, military tribunals and district tribunals.

Czech Republic[16]

The Constitution of the Czech Republic does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The Czech Republic is a parliamentary republic in which the legislative function is exercised by the Senate and the Chamber of Deputies, while the executive function is exercised by the President of the Republic together with the Government.

In the Czech Republic, the judicial power consists of judges and prosecutors, these having the role of making justice, respectively of representing the state in the activity of protecting the public interest. The Constitutional Court of the Czech Republic is, according to the Constitution, the judicial body responsible for the defense of the constitutionality.

Republic of Cyprus[17]

The Constitution of Cyprus does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

It is a presidential republic where the President is also the head of the Government (the Council of Ministers). At the moment, the country is almost completely governed after the model conferred by the English law.

The executive power is ensured by the President and the Vicepresident, together with the Council of Ministers consisting of seven Greek ministers and three Turkish ministers, and the legislative power of the Republic is held by the House of Representatives in all matters, excepting those matters reserved for the Greek chamber, respectively for the Turkish one, related to their communities. The Supreme Court has the role of the last recourse court and is competent in civil, criminal and administrative matter. Also, it exercises the attributions of a constitutional court.

Republic of Croatia[18]

The Constitution of Croatia does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Croatia is a parliamentary republic, where the legislative power is exercised by the unicameral Parliament, and the executive power is exercised by the Governement consisting of the Prime-minister and the ministers. The attributions of the head of the state mainly regard the defense and the international relations of the state.

The judicial power is exercised by the courts, hierarchically organized and under the coordination of the Supreme Court, respectively by the National Judicial Council (having an administrative role for the proper functioning of the Justice), an independent organ which ensures the autonomy and the independence of the judicial power. The Constitutional Court of Croatia is an institutional entity distinctly regulated by the Constitution, with attributions specific to this form of special jurisdiction, consisting of 13

[14] *Idem*, 143-148.
[15] *Idem*, 207-216.
[16] *Idem*, 257-263.
[17] *Idem*, 293-300.
[18] *Idem*, 389-395.

judges. A particularity of the Croatian constitutional court competences is its attribution to verify the constitutionality of the rulings pronounced by the common law courts, namely the right to control the judicial power in terms of constitutionality of its acts.

Kingdom of Denmark[19]

The Constitution of Denmark consecrates *expressis verbis* the principle of separation of the judicial power from the executive one. Therefore, art. 62 provides that "the administration of the justice act is always made independently in relation to the executive power".

It is a constitutional monarchy in which the legislative power is divided between the Parliament (*Folketing*) and the King, who has the supreme authority to rule, which he exercises through his ministers. They are appointed and dismissed by the King, including the Prime-minister. The executive power is exercised by the King (symbolically), the King having in reality only a decorative role of representing the Danish state. As a consequence, the King exercies the executive function only formally, because the attributions of the executive power are effectively exercised only by the Government and the public administration. According to the Constitution of Denmark, the judicial power is exercised by the courts established by the law, namely by professional judges.

Hellenic Republic[20]

The Constitution of Greece does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The Hellenic Republic is organised by the model of the parliamentary republics. Although it is not expressly mentioned in art. 26 of the Constitution (which consecrates the powers in the state), Greece is organized and governed in accordance with the principle of separation and collaboration of powers in the state, as the legislative power is exercised by the Parliament together with the President of the Republic (who has certain limited attributions regarding the promulgation of laws and the right to resend for analysis to the Parliament some laws to which he has objections), the executive power belongs to the President of the Republic (who is obviously part of the executive power, considering the majority of his constitutional attributions) and to the Government. The judicial power is exercised by the courts organised by the law.

Republic of Estonia[21]

The Constitution of Estonia consecrates *expressis verbis* the principle of separation of powers. Therefore, art. 4 provides that "the activities of the Parliament, of the President, of the Government and of the courts are organized according to the principle of separation and balance of the powers".

Estonia is a parliamentary republic in which the Parliament represents the legislative power, and the Government represents the executive power. The justice is exclusively made by the courts, while the Supreme Court is the exclusive constitutional jurisdiction.

Republic of Finland[22]

The Constitution of Finland does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The three classic powers of the Finnish parliamentary republic are expressly delimited by the Constitution. The legislative power is thereby exercised by the unicameral Parliament, and the executive power is exercised by the President of the Republic together with the Government. The judicial power is exercised by independent courts, the Supreme Court and the Supreme Administrative Court being the highest courts. Regarding the constitutionality control, it is exercised only *a priori* by the Commission for Constitutional Law.

Republic of France[23]

France is a semi-presidential republic, its Constitution effectively consecrating the separation of the executive and legislative powers – with the typical french block of constitutionality, which reunites norms of the Declaration of the Rights of Man and of the Citizen (1789), respectively the Preambles of the Constitutions of 1946 and 1958 proposed by the president Charles de Gaulle (general, hero of France during the World War II), currently in force. Therefore, in an illustrative manner of ample symbolism, art. 16 of the Preamble provides that "any society in which the guarantee of rights is not ensured, and the separation of powers is not realized, has no Constitution"[24].

The specific of the regulations of the French Constitution is the lack of the classic hierarchy of the public authorities (the legislative, the executive, the judicial power), but another order is regulated, namely the President of the Republic, the Government and the Parliament. The dominant position of the executive is obvious, purpose openly declared by the authors of the Constitution. The text of the fundamental law

[19] *Idem*, 439-443.
[20] *Idem*, 465-475.
[21] *Idem*, 543-549.
[22] *Idem*, 587-593.
[23] *Idem*, 631-635.
[24] Ștefan Deaconu, *Constiutional law*, 46.

consecrates only the judicial authority as terminology, this being in accordance with the French conception about the separation of powers, and the French Constitutional Council was a source of inspiration for the Romanian constitutional regulations of 1991.

Federal Republic of Germany[25]

The Constitution of Germany does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Two mentions characterize the German constitutional order: the structure and the functions of the public authorities correspond to the federal structure of the state and the application of the classic principle of separation and balance of powers is obvious. The legislative power is represented by the Parliament consisting of two assemblies, namely the *Bundestag* (the representative body of the people) and the *Bundesrat* (the public authority through which the lands collaborate for the enactment of the laws and for the administration of the Federation, as well as for the European Union businesses), at the level of the whole state.

The Federal Government, together with the *Bundestag*, rules the state, consisting of the Federal Chancellor, who is liable for the establishment of the great political orientations, and the federal ministers. The Federal President does not hold decision-making functions, having an integrator role in political matters and a representation role in the international relations. The judicial power is exercised by the judges, independent and subordinated only to the law, and the supreme jurisdiction in the state is exercised by the Federal Constitutional Court.

Ireland[26]

The Constitution of Ireland does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Ireland is a parlamentary republic in which the legislative power is exercised by a unicameral Parliament, in collaboration with the President of the state. The executive power is exercised *„by or on the basis of the authority of the Government"*, attributions specific to this power belonging, however, to the President of the Republic, assisted by the Council of State. The Government is represented by the Prime-minister and ministers.

The judicial system of Ireland consists of first instance tribunals, court of appeal and court of final appeal. The court of final appeal is the Supreme Court and is competent in the recourse phase regarding the decisions of the High Court. In Ireland, the constitutionality control of the laws is realised by two courts: the Supreme Court and the High Court.

Republic of Italy[27]

The Constitution of Italy establishes the parliamentary republic system and does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

In the democractic parliamentary republic of Italy, the legislative power is exercised by the bicameral Parliament (*Parlamento*) consisting of the Chamber of Deputies (*La Camera dei Deputati*) and the Senate of the Republic (*Il Senato della Repubblica*), the executive power is exercised by the collegial body represented by the Council of Ministers (*Il Consiglio dei Ministri*), ruled by the President of Council of Ministers (*Il Presidente del Consiglio dei Ministri*), and the judicial power is exercised by the Court of Cassation and the other courts established by the law. The Constitutional Court consists of 15 judges.

Republic of Latvia[28]

The Constitution of Latvia does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Latvia is a parliamentary republic characterized by the fact that, while the members of the Parliament are directly elected by the people, the President is elected by the Parliament. The Government is appointed by the President on the basis of the vote of confidence granted by the Parliament. The Prime-minister is appointed by the President, and the ministers by the Prime-minister.

Latvia uses a judicial system with three levels: district courts (municipal), regional courts and the Supreme Court. The Constitutional Court cannot take notice, thus acting only at the request of the persons (subjects of seisin) provided by the law.

Republic of Lithuania[29]

The Constitution of Lithuania does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The particularity of the parliamentary republic of Lithuania is represented by the fact that both the Parliament and the President of the Republic are institutions elected by the people through vote, while the Prime-minister is appointed and dismissed by the

[25] *Idem*, 677-680.
[26] *Idem*, 751-758.
[27] *Idem*, 803-809.
[28] Ştefan Deaconu et al., *Constitutional Codex. Constitutions of the European Union member states. Vol. II* (Bucharest: Official Monitor Publishing House, 2015), 9-15.
[29] *Idem*, 37-44.

President of the Republic, with the agreement of the Parliament, and the ministers are apppointed and dismissed by the President of the Republic on the basis of the proposal of the Prime-minister. The courts are the classic ones, namely the Supreme Court, the Court of Appeal, the regional courts and the local courts. The Constitutional Court consists of nine judges, each of them being appointed for a single mandate of nine years. Every three years, a third of the members of the Constitutional Court are renewed.

The Grand Duchy of Luxembourg[30]

The Constitution of Luxembourg does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Luxembourg is a hereditary monarchy in which the executive power is exercised by the Grand Duke together with the Government consisting of the Prime-minister and more ministers. The legislative power belongs to the Chamber of Deputies. A second body, *„Conseil d'État"* (Council of State), consisting of 21 citizens appopinted by the Duke, has a consultative role for the Chamber of Deputies in the elaboration of laws.

In terms of judicial power, there are the courts (as first grade of jurisdiction) and tribunals (courts of judicial control), at the top being the Superior Court of Justice. The main attribution of the Constitutional Court is the prerogative to decide with regard to the compliance of the laws with the Constitution.

Republic of Malta[31]

The Constitution of Malta does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Malta is a parliamentary republic ruled in accordance with the principle of separation and collaboration of powers in the state. The legislative power is thereby exercised by the President of the Republic together with the unicameral Parliament, the executive power is exercised by the President of the republic with the support of the Government, and the judicial power is exercised by the courts which are independent in relation to the other two powers in the state. The judicial system is represented by the superior courts, ruled by judges, and inferior courts, chaired by magistrates. The superior courts include the Supreme Court and the Constitutional Court.

The United Kingdom of Great Britain and Northern Ireland[32]

The Constitution of the United Kingdom does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The United Kingdom of Great Britain and Northern Ireland is a hereditary constitutional monarchy, which operates on the basis of the principle of separation and collaboration of powers in the state and of the rule of laws adopted by the Parliament. Formally, the British monarch still rules not only the United Kingdom, but the whole Commonwealth, an association of states united under the British Crown. In fact, the executive power, which belonged to the absolute monarchs in the past, is exercised today by the Government still named „of Her Majesty's", ruled by a Prime-minister who is the head of the winning political party in the general election. The loss of the confidence of the Parliament (consisting of the House of Lords and the House of Commons) often has the consequence of losing the position of Prime-minister. It is that important for the legislative and executive powers to collaborate so that the British political regime operates at its best.

The collaboration and balance of the powers in the state binds the Prime-minister and the members of the Government to be members of the Parliament as well, otherwise they cannot hold executive functions of governance, thus excluding their vocation to hold the quality of ministers. Considering that the Great Britain does not have a written and formally supreme Constitution, there is no formally consecrated control of constitutionality or Constitutional Court.

United Kingdom of the Netherlands[33]

The Constitution of the United Kingdom of the Netherlands does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

It is a hereditary monarchy in which the legislative power belongs to the bicameral Parliament (General State) and the executive power to the Government (King and ministers). They enact laws in common, but the attributions of executive power are separated from the legislative ones, so that the Government enforces the laws enacted by the bicameral Dutch Parliament. The control of constitutionality is not explicitly identified in the constiutional provisions, this being specific to the Dutch legal system which allows, by not regulating in any form, the law – as legal act of the Parliament – to establish the regulations in this matter. The

[30] *Idem*, 89-95.
[31] *Idem*, 119-125.
[32] *Idem*, 205-214.
[33] *Idem*, 263-265.

Constitution forbids, however, the courts of common law, namely the judicial power, in art. 120, the autonomy to arrogate by jurisprudential way the competence of exercising the control of constitutionality over laws and treaties.

Polish Republic[34]

The Constitution of Poland consecrates *expressis verbis* the principle of separation of the judicial power from the other two powers. Therefore, art. 173 provides that "the courts and tribunals constitute a separated and independent power in relation to the other powers in the state".

The Parliament (National Assembly) is bicameral, consisting of the Diet (*Sejm*) and Senate, and exercises the whole legislative power. The President of the Polish Republic and the Council of Ministers exercises the executive power.

In Poland, the justice is made by the Supreme Court, the courts of common law, the courts of administrative contentious and the military courts, while the judicial procedure contains at least two grades of jurisdiction. The Constitutional Tribunal is a court specialized in constitutional contentious, consisting of 15 judges individually appointed by the Diet for a mandate of nine years, from the persons acknowledged for their legal competences.

Portuguese Republic[35]

The Constitution of Portugal does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

The political powers in the semi-presidential republic of Portugal are exercised by the President, the Assembly of the Republic, the Government and the courts. They are separated, but interdependent. The President, among others, chairs the Council of State (the political body which advises the President of the Republic in the state problems) and summons the extraordinary meetings of the Assembly of the Republic. The Parliament (the Assembly of the Republic) is unicameral.

Besides the Constitutional Court, which is part of the national system of courts, there also exist the Supreme Court of Justice and the courts of first grade of jurisdiction and of second grade, the Supreme Administrative Court and the Court of Audit, as well as administrative and fiscal courts.

Slovak Republic[36]

The Constitution of Slovakia consecrates *expressis verbis* the principle of separation of the judicial power from the legislative and executive powers. Therefore, art. 141 para. (2) provides that "at all levels, the justice is separately exercised in relation to the other bodies of the state".

Slovakia is a parliamentary republic in which the legislative power is represented by the National Council of the Slovak Republic, a unicameral Parliament. The executive power is exercised by the President together with the Government ruled by the Prime-minister. The judicial power is represented by the Supreme Court of the Slovak Republic, the Constitutional Court, the courts and the Judicial Council of the Slovak Republic.

Republic of Slovenia[37]

The Constitution of Slovenia consecrates *expressis verbis* the principle of separation of powers. Therefore, art. 3 provides that "in Slovenia, the power belongs to the people. The citizens directly exercise this power" (the principle according to which the people are the unique holders of the national soverignty, and the public authorities exercise the sovereignty in the name of the people). „The people exercise this power through universal, free and periodic elections, and the essential authorities operate with the observance of the principle of separation of powers in the legislative, executive and judicial one.".

The legislative power is exercised by the National Assembly, and the executive power is exercised by the President of the Republic together with the Government. The judicial system of Slovenia is represented by ordinary courts. The Supreme Court is the highest court of the state, deciding on the ordinary and extraordinary appeals. The Constitution of Slovenia also regulates the establishment and the functioning of a constitutional court having only the role of exercising the control of constitutionality and consisting of nine judges.

Kingdom of Spain[38]

The Constitution of Spain does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

At the top of the executive power of the parliamentary monarchy of Spain is the Government represented by ministers and ruled by the Prime-minister, while the Chamber of Deputies and the Senate form the two chambers of the Parliament. The King is the head of the state, the symbol of the unity and permanence of Spain, his role being more of a symbolic one. The General Council of the Judicial Power is the body which ensures the governance and the representation of this power (art. 122 of the

[34] *Idem*, 297-307.
[35] *Idem*, 365-375.
[36] *Idem*, 477-485.
[37] *Idem*, 541-548.
[38] *Idem*, 591-600.

Constitution of Spain). It consists of the President of the Supreme Court, who chairs the Council, and 20 members appointed by the King for a five-year period. The Constitutional Court consists of 12 judges and mainly exercises the typical attributions of law constitutionality control.

Kingdom of Sweden[39]

The Constitution of Sweden does not expressly consecrate the principle of separation of powers, thus implicitly resulting from the constitutional provisions and the method of structuring the constitutional text.

Sweden is a constitutional parliamentary monarchy, characterized by the fact that the Head of the Swedish state is the King, and the executive power of the King is realized by the Government which is liable to the the unicameral Parliament, known as *Riksdag*. The King has a symbolic role, having some attributions of appointing high dignitaries, the Government, other important positions in the state, although the legal mechanism of exercising these attributions by the King moves, in reality, these decisions to the main public institutions and authorities, those that formulate the proposals for the head of the state.

The judicial activity is ensured by the Supreme Court (the highest court), the courts of appeal and district courts/tribunals, and in the administrative contentious matter there are regulated the Supreme Administrative Court, courts of appeal and administrative tribunals. The control of constitutionality is realized by the administrative jurisdictions or the courts of common law (especially by the Supreme Court of Sweden) and is focused on the causes which are effectively being judged. Although it may seem an attribution easy to be exercised by the courts of common law, in reality, this mechanism of judicial control on the constitutionality of the laws is rarely used in practice. A diffuse and preliminary control of constitutionality is firstly realized by the Parliament (*Riksdag*) during the stage of elaboration and adoption of laws, when the constitutional analyses are strictly realized. This system of preliminary diffuse control is traditionally used in all the other states which do not have special constitutional courts, the parliamentary assemblies paying increased attention to the compatibility of the laws from the project with the constitutional norms. It must be mentioned that the fundamental law of Sweden, together with the one of Austria and of other european states as well (the most recent fundamental laws or with the most recent significant changes), have an ample volume of legal norms, regulating in detail numerous areas of activity which are generally considered to be part of the competence of the Parliament in terms of adoption.

Hungary[40]

The Constitution of Hungary consecrates *expressis verbis* the principle of separation of powers. Therefore, art. C para. (1) of the Foundations provides that "the functioning of the Hungarian state is based on the principle of separation of powers in the state".

Hungary is a parliamentary republic in which the legislative power belongs to the National Assembly (*Országgyűlés*), which consists of a single chamber, and the executive power is exercised by the President, Prime-minister and Government.

The judicial power is exercised by the courts, namely *Curia* (the Supreme Court of Hungary), regional courts of appeal, district courts, administrative courts and labor law courts. Regarding the Constitutional Court, it consists of 15 members, elected with the vote of two thirds of the members of the National Assembly for a twelve-year mandate, from the legal experts with high professional preparation.

Romania

The Constitution of Romania consecrates *expressis verbis* the principle of separation of powers. Therefore, art. 1 para. (4) provides that "the state is organized according to the principle of separation and balance of powers – legislative, executive and judicial – in the frame of the constitutional democracy".

The legislative power is exercised by the bicameral Parliament. The executive power is exercised by the President together with the Government – chaired by the Prime-minister appointed by the President on the basis of the vote of confidence granted by the Parliament. The judicial power is exercised by the courts, tribunals, courts of appeal and the High Court of Cassation and Justice. The constitutional jurisdiction belongs to the Constitutional Court which consists of nine judges appointed for a nine-year mandate.

3. Conclusions

The main result obtained by realizing this study consists of proving the fact that the relationship which we had as a premise does not exist, namely the one between the express or implicit constitutional consecration of the principle of separation of powers in the state, its form of government, the manner in which the three powers belong to the public authorities that exercise them, as well as the effective observance of the principle.

The constitutions of ten European Union member states, out of all 28, expressly consecrate the principle of separation of powers in the state, namely: Austria, Bulgaria, Denmark, Estonia, France, Hungary, Poland, Romania, Slovakia and Slovenia. These are ten states with different levels of social, economic and political

[39] *Idem*, 653-660.
[40] *Idem*, 775-782.

development, with different democratic and constitutional traditions, as well as with different forms of government. The other 18 states have constitutional norms which indirectly, implicitly or diffusely consecrate, in fact, the separation of powers, indicating the attributions of each classic public authority, on the basis of the functions which compose the principle of separation of powers: the legislative function given in the competence of the parliamentary assemblies, the executive function assigned to the Government and to the head of the state, respectively the judicial function granted to the courts consisting of judges.

Therefore, if we could talk about a common factor having the potential to consolidate the observance level of the principle of separation of powers in the state, that factor remains the general education of the society, the historical accumulations, all of these contributing to the formation of a generation of responsible citizens, among whom will be recruted the specialists of the essential state authorities which were previously analyzed, respectively the political class especially during the stage preliminary to the electoral process, citizens who shall make correct and grounded decisions, capable to understand the meaning and the basic content of the principle of separation of powers in the state, as a defining element of a democracy, as well as the importance of the supremacy of the Constitution over the whole state regulatory system.

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