GOVERNANCE AND LEGITIMACY. PAST IN PRESENT

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Abstract

Governance and legitimacy were two issues that generated long-standing political disputes in Europe. If legitimacy was grounded on the theory of divine rights during the Middle Ages, the idea of representation challenged the whole political system. Kings were interested in preservation of their political power as it was acquired during the earlier centuries meanwhile the parliaments were trying to become not a consultative body, but a legislative body. As a consequence, whenever the spirit of reconciliation of the great political actors lacked, the road to institutional conflict was opened. Sometimes the institutional conflict transformed itself in a civil war as it happened in seventeenth century England. Unfortunately, history proved that many times the constitution didn't managed to solve the problem. Even though today such a matter has been solved in some democracies in other states, the two concepts have often blocked the good functioning of the central administration. As a special case the Organic Statutes of the Romanian Principalities were designed to set rules for at least some decades. Unfortunately, their authors were able to settle the rules regarding the prince as central authority and the National Assembly. The purpose of this article is to establish the conflicting moments between the two concepts under different constitutional regimes and how they have been solved in the modern history of Romania.

Keywords: *governance, central public adiministration, legitimacy, govern, parliament, president, king, constitution.*

1. Introduction

As we can suppose, political institutions, like any other institutions, have their own history and their own succession of stages that has given them their present form.

There is no need to go back a long way in history to find that in Europe as in other regions of the world the monarch, regardless of his official title - king, emperor, tzar etc. - concentrated the entire political power.

In the common imagination, his legitimacy came directly from God, and the idea of his election was accepted only in exceptional cases, without such a choice being considered otherwise than as a manifestation of the divine will.

As we know, a series of events - rather accidental - in England's history, starting with the conception of Magna Charta in 1215, have subverted the divine nature of the monarch as the key institution of premodern society.

Therefore, in the early modern times, the idea of divine monarchy led to a famous civil war in England, and after the few years of political strain the only possible solution, even if that was a contradiction in conceptual terms, was the constitutional monarchy.

On a practical level, although the return of the Stuarts gave stability to the kingdom and society and the increased parliamentary role had dramatically eroded the royal power, the relations between the institutions were not yet well defined.

Of course, the head of the state was still the representative of the divinity on earth, but he had to lead in collaboration with the parliament representing the nation.

Weakness and inappropriateness for the exercise of the political power of the new Hanoverian dynasty has made these relationships, starting with the 18th century, crystallize and fit into what we call today the rule of law, representative government, and where appropriate parliamentary monarchy.

Obviously, the king was considered the head of the state and, presumed to represent the state and the nation, he could not be mistaken, but his ministers could.

As a result, the government gradually ceased - and we are considering a long transition period of at least 100 years - to be an administrative structure under the king's subordination. Formally, typical of the English constitutional system, they would be appointed by the king to date, but his authority would be replaced by a role of representativeness, a formal role.

The government would only apparently belong to the king; in fact, he would be a representative government of the parliament and the ministers would answer to the latter and not to the king, as the medieval monarchies did.

Unfortunately, this institutional framework, which, as we anticipated, contains some obvious contradictions, although it has provided the coherence of English political life to date, was the result of an at least secular experience.

At the time of the French revolution of 1789 or at least in 1814-1815, upon the return of the Bourbonians to France, the delimitation of the attributions between the institutions on the one hand and the delimitation of the symbolic attributions on the other was far from being concluded.

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As a result, the French Charter and other monarchical constitutions of the 19th century, although trying to follow the principles of British constitutional life as faithful as possible, were only a mere reflection of a process in full swing.

Whenever the spirit of reconciliation of the great political actors lacked, the road to institutional conflict was opened.

2. Structurile politice şi blocajul guvernării

At the beginning of the nineteenth century, the political regime of the two principalities could be defined as a centralized one being based on a bureaucracy with aristocratic origins. Apparently, the prince had all political power, but the dramatic degradation of the relations with the Ottoman Empire decreased meaningfully his authority.

In fact, an authentic abyss appeared between the appearance of the institution and reality.

In early 1830s, the entry into force of both Organic Statutes could be an historic moment when the political institutions of the two Principalities modernized.

The authors of the text and the representatives of Russian Empire – as Protecting Power – as well pursued the weakening of the central authority, even the ruler had to be, at least theoretically, elected for life.

Strengthening or maintaining a strong central authority primarily affected the interests of landing oligarchs, who saw their power of influence limited, and secondly, Russia's interests, because a centralized structure could be the premise of political consolidation and as a consequence the path to independence was open.

Therefore, the relationship between executive and legislative power had from the start a major structural weakness.

The Organic Statutes imposed, for the first time, the principle of separation of powers, conferring the status of legislative power to the National Assembly. By doing so, the central power bears a strong, firmly established blow.

The prince was granted only the right to propose draft laws to the National Assembly, which may adopt, modify or reject them.

However, the prince had the right to reject any normative act adopted by the Assembly.

Apparently, the acceptance of the principle of separation of powers is a distinctive sign of modernity, but it is no less true that the reorganization of the state as a whole, even in a conservative formula, calls for a sustained and rapid legislative activity or, precisely this natural necessity contradicts the text of Organic Statutes which no longer allowed the central authority to intervene, even with the prior consent of the Assembly.

Practically, the limitation of the powers conferred on the ruler prevents the generalized principles of a mercantilist nature which the Regulation proclaims in the field of customs policy or industrial development.

In addition to this, the provisions had not clarified the relationship between the two powers.

On the contrary, they permitted a potential institutional conflict.

Since the prince was the head of state and the ministers were responsible only before him, being appointed or revoked only by him, any initiative of the ruler or the Assembly could lead to an institutional blockage without exiting.

The ruler did not have a decorative role as a limited constitutional monarch but had both a head of state and a head of government. Its policies could not be effectively censored by the Assembly and its dismissal could only be achieved through the concordant intervention of the suzerain and the guarantor.

Although the People's Assembly had been designed as an aristocratic legislature, lacking the power to replace ministers, it was strong enough to obstruct the ruler's activity.

Given the political context, the Ruler could either rule by suspending the Assembly - as Bibescu would do between March 1844 and December 1846 - or use his powers in organizing the elections - a procedure used by the same Ruler - in order to register the opponents in several electoral colleges so their share would be much reduced.

It is quite plausible that, in the absence of the revolutionary movement of 1848, the opposition between the executive and the legislature would degenerate into clashes that would put an end to the rule of law.

The lack of functionality of mechanisms for exerting the political power is not the only flaw in the Organic Regulation.

Driven by the same desire to carry out a reform of the statute institutions, the Regulation authors included provisions of a fiscal nature in a text of constitutional act value, in the context of the fact that the subsequent amendment of the Regulation was almost impossible. Therefore, the rigidity of the Regulation, under the conditions of predictable economic and social developments, would become the main factor undermining its own authority.

Unfortunately, the subsequent regulations failed to provide functionality to institutions so they could contribute effectively to public policy making.

As far as the legislative mechanism is concerned, the institutional conflict would reactivate during Cuza's period, as the Assembly had the right to debate, voting on bills submitted by the prince, and to make amendments (Article 20), while the prince permanently refused (Article 14) the promulgation of a law amended by the Assembly. Once the prince was elected, his ministers could only be removed under difficult circumstances.

Therefore, any project proposed by the prince, through his minister, could be rejected by the Assembly, and at the same time, the amendment of a

bill could be rejected by the prince, who had the capacity to thus block the will of the Assembly.

The land reform project has accurately demonstrated this path. First, it was amended according to the interests of the great landowners who dominated the assemblies that it became contrary to the principles of the Paris Convention, determining Cuza not to ratify it, and then it was resumed by the Kogălniceanu government, with the latter receiving an impeachment vote from the Assembly dissatisfied with the text of the project. Since the prince was elected for life (Article 10) and the mandate of the members of the Assembly was for seven years, the blockage could not be theoretically clarified, unless new elections were held upon that term, elections that would actually grant the prince a majority. In such a nevertheless predictable context, while electoral law obviously benefited the great landowners, the reform stipulated under the Paris Convention could not be achieved and Cuza, in order to break this institutional conflict, had no option that followed the letter of the Convention.

Therefore, the coup d'état, as suggested by Napoleon III, and accepted by the other powers, was ultimately the only way to settle the institutional conflict.

In 1866, when Carol de Hohenzollern was elected ruler, it seemed that the adoption of a new constitution could outline an institutional framework that would strengthen the liberal regime reborn after Cuza's abdication.

In fact, the most disputed reforms had already been achieved, and access to public life of larger segments of the population was no longer regarded by land oligarchy as a threat to its own socio-economic status.

The executive power was entrusted to the prince, who named or revoked the ministers, but any change in the governmental structure could not be discretionary, assuming implicitly an agreement of the legislative body.

Furthermore, the prince could refuse to sanction a law.

Although the pressure of modernization during Cuza's era had diminished, the 1866 Constitution would raise the same problems and could not resolve the conflict between the ruler and the Parliament.

A potential conflict between the institutions continued to exist, being much more visible at the time of voting for the approval of budgets. The broadening of the voting right, accepted by the conservatives, had, first of all, induced a change in the structure of the electoral body. As a result, the formation of a majority would become something impossible.

Finally, after five years of successive governments, unstable and ineffective, between government and representative, Carol I would choose the first option.

This choice implied the formal preservation of the 1866 Constitution - and not its abrogation as requested by the conservative sectors through the Iaşi Petition – which resulted in the actual modification of the institutional mechanism, by artificially promoting what was later called the 'governmental rotation', a system balanced by the monarch, whereby the two historical parties successively took over the leadership, ensuring relatively stable governments.

The system was opposed to the Western one, considering that the British or Belgian monarch appointed as Prime Minister the leader of the party that had won the elections, whereas in the Romanian system, Carol I first appointed the Prime Minister and then the latter would organize the elections because, most of the time he would be in front of a hostile legislative body.

Obtaining victory in elections would not only become a goal, but also a duty to legitimize the choice of the monarch and the results, which more or less corresponded to the voters' will, would become legitimate by the recognition of the system on behalf of the monarch.

Later, in the twentieth century, although the system had been perpetuated, both conservatives and liberals recognized its shortcomings. In the Romania of small colleges, the national-liberal Duca stated,

The governments chose the Chambers, not the other way around, and when a government came to power, it had all the odds to succeed as resounding as possible. The partial elections or the elections for a two-term legislature were harder, because the parties in power would create dissatisfaction, would bring in deceipt or get the opposition started[1].

In a flatter way of speaking, Constantin Argetoianu considered the system of justice

A dictatorial regime characterized by the omnipotence of the prime ministers and party leaders (...), whom we have signaled as many times as our democracy has fired up to the idea of our evolution towards a possible enthronement of a confessed dictatorship instead of an unspoken one[2] .

Therefore, if we try to determine when the political power acted autonomously to modernize social and economic structures, we would probably choose 1863-1865, 1880-1887 and probably 1896-1897.

Basically, for the most part of the nineteenth century, deficient constitutional mechanisms have prevented the achievement of governance, and the system of «governmental rotation», despite artificially-created stability sometimes, has proven to be a major hindrance to the development of a public conscience.

During the period following the events of 1989, when Romania's political life returned to a democratic framework, the hypothesis of institutional conflicts diminished.

[1] Duca, *Memorii*, vol. I, 15.

[2] Argetoianu, *Însemnări zilnice,* vol. I, 400.

On the one hand, the parliamentary and presidential elections that took place at the same time led to the same party gaining power either, whether we consider the National Salvation Front (subsequently the Democratic Front of National Salvation) in 1990, 1992 and 2000 respectively, or we think about the coalition of the opposition parties in 1996 and 2004 respectively.

Accordingly, in such a context the potential tensions were rather internal and solved within the governing party or coalition, even though sometimes this affected the proper course of the governance itself.

On the other hand, the new constitution, approved by referendum in 1991, gave a rather representative role to the president, allowing the government and the parliament to exercise almost unhindered the power prerogatives.

Therefore, according to art. 80 of the Constitution (text which establishes the role of the president) the President of Romania represents the Romanian state and is the guarantor of national independence, unity and territorial integrity of the country.

In the same direction, the President of Romania observes the compliance of the Constitution and the proper functioning of public authorities. To this purpose, the President acts as a mediator between the powers of the state, as well as between the state and society.

We hereby observe that the head of the state phrase is not used and the president, although he is the supreme representative of the public administration, does not have a substantial role.

However, concluding that the president has only a decorative role is wrong, because some prerogatives that the previous monarchs had, have been conferred to the president even if in a rather diminished manner.

Consequently, as it was logical, the president appoints the candidate for the position of prime minister and, according to Article 87, can take part in the Government sessions where issues of national interest concerning foreign policy, country defense, public order are debated and, at the request of the Prime Minister, in other situations.

Obviously, the President of Romania presides over the meetings of the Government in which he participates.

Similar to a monarchical constitution, such as that of 1866 or 1923, any law is sent, for promulgation, to the President of Romania.

The promulgation of the law is made within 20 days of receipt.

However, before the promulgation, the President may ask the Parliament, once, to review the law.

When the President asked for the law to be re-examined or, if its constitutionality was requested for review, the promulgation of the law shall be made no later than 10 days after the receipt of the law adopted after the re-examination or upon receipt of the Constitutional Court's decision confirming its constitutionality.

Basically, this time too the constitution settled a possible conflict between the executive and the legislature in favor of the latter.

A far as the potential conflict between the government and the parliament is concerned, it can only be arranged by a vote of no confidence as regulated by Art.112.

Therefore, the Chamber of Deputies and the Senate, in a joint sitting, can withdraw the confidence given to the Government by adopting a motion of censure, with the vote of the majority of deputies and senators.

The vote of no confidence may be initiated by at least one quarter of the total number of deputies and senators and is communicated to the Government at the date of submission.

The vote of no confidence is debated three days after it was presented in a joint sitting of the two Chambers.

If the vote of no confidence has been rejected, the deputies and senators who have signed it may no longer initiate a new motion of censure, during the same session, unless the Government assumes responsibility according to Article 113.

As a result, the provisions of the current Constitution present some misunderstandings and a certain contradiction at the level of representativeness.

On the one hand, the president is elected by the direct vote of all citizens, which is a defining rule for presidential republics (e.g. France).

On the other hand, his attributions are much more limited than those of a president from such a system.

However, it seems obvious - like in the 1990s - that most citizens want to have the right to choose directly the president of the republic and that, after the last presidential and parliamentary elections, they see in the president a balance between the power of the government and parliament.

Nonetheless, the balance of powers also means institutional conflicts, and institutional conflicts must not be overlooked, especially as long as they are permanently found in the great Western democracies.

Consequently, as was the case several times in recent history when the parliamentary majority was not of the same political color as the president (e.g. establishing and identifying the Romanian representative at the European Council), the decisions in these situations will be taken by the Constitutional Court.

Of course, the ongoing relocation of institutional conflicts in front of a court that, by definition, is not a common courtroom is not an excellent way to resolve such a dispute.

However, if we consider the practices in this matter, at least between 1866 and 1938, we will notice that the implementation of the constitutional norms will be achieved in the medium and long term for them too, even if some court decisions are and will undoubtedly be controversial.

After all, the way in which such a conflict is settled also demonstrates the degree of understanding of the rules of the democratic game.

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