

GOVERNMENT INVESTITURE

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Abstract

This study aims to analyze the procedure of the investiture of the Government and to briefly present current configuration of the Romanian Government. In this respect, based on the current legislation and on the analysis of the public activity official information, ministries which currently operate according to government program, as well as the modality the government program is established or the list of the future members of the cabinet is drawn up will be summarized. We believe that this is a highly topical issue, the Government being the public authority which, according to the provisions of the Constitution ensures the performance of domestic and external policy of the country and it is important to know the structure of the Government, especially since our country is quite familiar with the government investiture procedure since recent Governments had a rather short term of office.

The area covered by the subject we propose is quite extensive and includes a combination between constitutional law, parliamentary law, administrative law and general theory of law. The following are among the scopes of this study: the performance of an inventory of the ministries that make up the current Government; brief presentation of the Government investiture procedure and of the meaning of the government political program, due to the fact it is an extremely up-to-date subject and we strongly believe that it is important to understand the constitutional mechanism of making up the Government.

Keywords: *Constitution, public authorities, ministries, Government, government resolution.*

1. Introduction

So far, no similar study has been drawn up in the current doctrine¹, namely a study which aims to perform a review of the Government investiture procedure which includes a presentation of the ministries corresponding to a 4-year political program, on the structure we are proposing. Every state has its own law, in accordance with own socio-political demands, with traditions and values it proclaims². The starting point in the draw up of our study was based on a social legal reality, namely in 2017 Romania had two Governments, both carried out the activity on 5-7-month term of office and now, at the beginning of 2018, we have a third Government. The difference between the two Governments of 2017 consists in the termination of the term of office, respectively Government no. 1- S. Grindeanu was dismissed by censure motion by the Parliament and Government no. 2- M. Tudose ceased the term of office by the resignation of the prime minister.

Therefore, by means of this study, we intend to analyze this situation, premise from which we start and we try to answer questions such as: are there any weaknesses in the legislation, is human factor to blame in this case, etc. Following this analysis, we hope that we can find the explanation of why there have been three governments in one year and two months. Therefore, the common point of the theoretical analysis of the subject is the constitutional procedure of Government investiture, with its components: government political program and structure of the future executive body.

The way the society evolves and the manifestation ways of the legal phenomenon will be the main indications of its efficiency³. The revised Constitution of Romania is a modern constitution, comparable with the European constitutions, our country having a two-chamber executive body. We have to mention that, there is a sole institution with executive powers at the European Union level, namely the European Commission⁴. The relation between European law and national law is by no means a one way road due to the primacy of the European law⁵. The

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¹ Dana Apostol Tofan, *Critici și soluții cu privire la reglementarea Guvernului în perspectiva revizuirii Legii Fundamentale*, RDP no.1/2013; Horia Diaconescu, Dan Claudiu Dănișor, *Poziția Ministerului Public față de puterea executivă în dreptul unor state vest-europene și în România*, Dreptul no.5/2006; Cristian Ionescu, *Despre rolul constituțional al Ministerului Public*, Dreptul no.6/2017; Elena Emilia Ștefan, *Scurte considerații asupra răspunderii membrilor Guvernului*, RDP no.2/2017, Universul Juridic Publishing House, Bucharest, 2017; Elena Emilia Ștefan, *Participarea Ministerului Public la procesele de contencios administrativ*, RDP no.1/2014 etc.

² Elena Anghel, *Constant aspects of law*, published in proceedings CKS-eBook 2011, Pro Universitaria Publishing House, Bucharest, 2011, pp. 594 .

³ N.Popa, I.Mihăilescu, M.Eremia, *Sociologia juridică*, University of Bucharest Publishing House, Bucharest, 1997, p. 7.

⁴ For further details see Augustina Dumitrașcu, Roxana-Mariana Popescu, *Dreptul Uniunii Europene. Sinteze și aplicații*, edition II, Universul Juridic Publishing House, Bucharest, 2015, p. 65 and the following.

⁵ Nicolae Popa, *Teoria generală a dreptului*, edition 5, C.H.Beck Publishing House, Bucharest, 2014, p. 108. Also, see Roxana-Mariana Popescu, *Specificul aplicării prioritare a dreptului comunitar european în dreptul intern, în raport cu aplicarea prioritară a dreptului internațional*, Revista Română de Drept Comunitar, no. 3/2005, pp. 11-21 and in what concerns the supremacy of the European Union law, see

European Union law embraces the theory of monism, that is the existence of a single legal order which includes international law and domestic law in an unitary system⁶.

2. Paper content

2.1. Government investiture

The law substantiates political administrative framework, jurisdictional hierarchy, capable of favoring for people a common and homogeneous living environment in which they can capitalize their legitimate interests⁷. The legislative branch has an important or a less important role in the formation of the executive⁸. The legitimacy of a Government depends on two cumulative factors:

- a) the Government is invested by means of a legal procedure, which is strictly complied with;
- b) throughout the performance of the mandate, the Government benefits from formal support, expressed by parliamentary procedures, by a majority of the members of the Parliament⁹.

2.1.1. The stages of the Government investiture procedure

Stage 1 – the appointment of the candidate to the position of prime-minister

The Romanian Constitution recognized the role and historical importance of pluralism and political parties by dedicating them a place of honor within the general principles that enshrine our state as a state subject to the rule of law, democratic and social state¹⁰.

According to the revised Constitution of Romania, art. 85 and art. 103, after the general parliamentary elections, the President of Romania calls the majority party or in its absence, all the parties represented in the Parliament, for *consultation purposes*, in order to appoint the candidate to the position of prime-minister of Romania. In fact, the one who has the initiative to carry out this constitutional procedure of forming the Government is the President of Romania. In recent years in Romania, there was no

majority represented in Parliament, but there were unions, alliances, coalitions etc. The political groups and coalitions of political groups which are consulted by the head of the state before the appointment of the person who will form the government shall have an important role in the investiture of the prime-minister¹¹. Therefore, as the doctrine provided, “pluralism is guaranteed by the Constitution¹²”.

Stage 2- request of the investiture vote

The appointed candidate has available a 10-day interval when he/she has to prepare the two elements which will be submitted to the Parliament and for which the vote of confidence will be requested: respectively the government team and the program¹³. In what concerns the members of the government, they are chosen by their party based on the agreements between the parties which are members of the government coalition¹⁴. Of course, the appointed prime-minister has a certain influence in appointing ministers from his/her party¹⁵.

Stage 3 - granting the investiture vote

According to the doctrine, the legislative branch of the Parliament is not limitless. It is a limited power which is exercised according to the Constitution, but also with some principles that go beyond it in its formal sense¹⁶. The Permanent Bureaus of the two Chambers will ensure the multiplication and distribution to the deputies and senators of the program and the list of the Government, as soon as they have been received from the candidate appointed for the position of prime-minister¹⁷. According to the provisions of art. 86 of the Regulation on the joint activities of the Chamber of Deputies and the Senate, permanent bureaus establish the date of the joint sitting no later than 15 days after the receipt of the Government program and list, while taking measures to convene deputies and senators¹⁸. Deputies and senators who take part in the debates shall not be entitled to modify or supplement the program because it shall be accepted or rejected as such¹⁹.

The members of the Parliament, who meet in joint sitting, vote under absolute majority the investiture of the Government, after the candidate has presented the

Augustin Fuerea, *Manualul Uniunii Europene*, edition VI, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2016, pp. 252-253.

⁶ Laura Cristiana Spătaru Negură, *Dreptul Uniunii Europene-o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016, p.190.

⁷ Nicolae Popa, *Teoria generală a dreptului*, op.cit., 2014, p. 50.

⁸ I Muraru, E.S.Tănăsescu, *Drept constituțional și instituții politice*, edition 15, volume II, C.H.Beck Publishing House, Bucharest, 2017, p.246.

⁹ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele României. Comentarii constituționale*, Universul Juridic Publishing House, Bucharest, 2013, p. 66.

¹⁰ E. Niculescu, *Political pluralism and multiparty*, Challenges of the Knowledge Society, “Nicolae Titulescu” University of Bucharest, May 16th-17th 2014, published in CKS e-book 2014, p. 315.

¹¹ Muraru, E.S.Tănăsescu, op.cit., p. 248.

¹² E. Niculescu, *Constitutional landmarks of political pluralism*, Challenges of the Knowledge Society, “Nicolae Titulescu” University of Bucharest, May 17th-18th 2013, published in CKS e-book 2013, pp. 577-583.

¹³ V. Vedinaș, *Drept administrativ*, edition IV, Universul Juridic Publishing House, Bucharest, 2009, p. 330.

¹⁴ Muraru E.S.Tănăsescu, op.cit., 149.

¹⁵ *Idem*, p. 149.

¹⁶ D. C. Dănișor, I. Dogaru, Ghe. Dănișor, *Teoria generală a dreptului*, edition 2, C.H.Beck Publishing House, Bucharest, 2008, p. 494.

¹⁷ C.S.Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H.Beck Publishing House, Bucharest, 2016, p. 604.

¹⁸ *Ibidem*, p. 604.

¹⁹ C. Ionescu, op.cit., p. 84.

political government program and after every proposed future minister has passed the hearing of the specialized commissions who give an advisory opinion. Granting the vote of confidence shall entail the following consequences:

- The program turns into political government program;
- The list of proposals on the future government team, nominated by the resolution of the Parliament for the granting of the vote of investiture shall become mandatory for the president, who shall be bound to appoint the Government by means of a decree²⁰.

Stage 4 – the appointment by the President of the Government approved in the Parliament and the swearing into office

Two legal situations occur within this stage, namely:

- the head of the state signs the decree for the appointment of the Government, as approved by the Parliament and
- every minister swears into office before the head of the state, as provided by the Constitution.

The date of the oath is the date as of which the Government in its entirety and every member of it exercises its term of office²¹.

2.1.2. Government political program and list

The legislation on the structure of the Government consists of the following: Constitution of Romania and Law no. 90/2001 on the organization and functioning of the Government and of the ministries²².

In what concerns the *structure of the Government*, according to art. 102 para. (3) of the revised Constitution of Romania, the Government consists of: the “*prime-minister, ministers and other members as established by the organic law*”. Law no. 90/2001 (...) provides that: “the Government consists of the prime-minister and ministers. The Government can also include the deputy prime-minister, Minister of State and Ministers-delegate, with special assignments granted by the prime-minister, provided in the Government list presented to the Parliament for the vote of confidence”. *The deputy prime-minister* has available an own working apparatus, which is part of the working apparatus of the Government and coordinates the authorities provided for by art. 3 par. (30 of Law no. 90/2001, (...)²³.

In what concerns *government program*, according art. 103 of the revised Constitution of Romania includes two provisions on this subject matter, namely:

“(2) *The candidate to the office of Prime Minister shall, within ten days as of his/her designation, seek the vote of confidence of Parliament upon the program and complete list of the Government.*

(3) *The program and list of the Government shall be debated upon by the Chamber of Deputies and the Senate, in joint sitting. Parliament shall grant confidence to the Government by a majority vote of the Deputies and Senators*”.

Obviously, when finalizing the program, the opinions of the candidate for the position of prime-minister, as well as those of the future ministers will be taken into account for the areas where they will be assigned tasks, if the Parliament accepts the Government program and list²⁴. The government program will be the mirror of the political program that the respective party proposed and supported in the electoral campaign and for the implementation of which requested the votes of the poll²⁵.

The current Government follows the 2018-2020 political program, which is a public document, being also available online on the executive page²⁶. Again, the constitutional provisions on the investiture of the Government, an authority of the central public administration²⁷ were fulfilled with due to the fact we have the executive in office. In our law system, as the doctrine provided, “the obligation on the fulfillment of the rules of law is ensured, if required, by the coercive force of the state²⁸”.

The current Government of Romania, configuration 2018-2020, consists of a Prime-Minister, four deputy prime-ministers: 1.) deputy prime-minister and the minister for regional development and public administration; 2) deputy prime-minister and the minister of environment; 3.) deputy prime-minister for the implementation of strategic partnerships of Romania; 4.) deputy prime-minister and the following *ministries*: 1) Ministry of Regional Development and Public Administration; 2.) Ministry of Environment; 3.) Ministry of the Interior; 4.) Ministry of External Affairs; 5.) Ministry of National Defense; 6.) Ministry of Public Finance; 7.) Ministry of Justice; 8.) Ministry of Agriculture and Rural Development; 9.) Ministry of National Education; 10.) Ministry of Labor and Social Justice; 11.) Ministry of Economy; 12.) Ministry of Energy; 13.) Ministry of Transport; 14) Ministry of European Funds 15.) Ministry for Business Environment Commerce & Entrepreneurship; 16.) Ministry of Health; 17.) Ministry of Culture and

²⁰ V.Vedinaș, *op.cit.*, p. 330

²¹ R.N.Petrescu, *op.cit.*, p. 79.

²² Law no. 90/2001 on the organization and functioning of the Government and ministries, published in Official Journal no. 164 of April 2nd, 2001, as further amended and supplemented.

²³ R.N.Petrescu, *op.cit.*, p. 80.

²⁴ Cristian Ionescu, *op.cit.*, p. 82.

²⁵ *Ibidem*, p. 82.

²⁶ See: <http://gov.ro/ro/obiective/programul-de-guvernare-2018-2020>, accessed on 11.02.2018.

²⁷ In what concerns the term of “public administration” see, Roxana Mariana Popescu, *Jurisprudența CJUE cu privire la noțiunea de „administrație publică” utilizată în art. 45 alin. (4) TFUE*, published in proceeding CKS ebook 2017, pp. 528-532.

²⁸ Roxana Mariana Popescu, *Introducere în dreptul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2011, p.12.

National Identity; 18.) Ministry of Waters and Forests; 19.) Ministry of Research and Innovation; 20.) Ministry of Communications and Information Society; 21.) Ministry of Youth and Sport; 22.) Ministry of Tourism; 23.) Ministry for Romanians Abroad; 24.) Ministry for Liaison with Parliament; 25.) Minister-delegate for European Affairs.

2.2. Case study – ministries of current Government

In order to meet the scope of this study that we proposed at the very beginning, we will present selectively information on certain ministries.

Ministry for Liaison with Parliament

One of the ministries of the current executive is the Ministry for Liaison with Parliament. It was established by Government Resolution no. 22/2017 for the organization and functioning of the Ministry for Liaison with Parliament²⁹. The Ministry for Liaison with Parliament is a specialized body of the central public administration, with legal status, subordinated to the Government. This *ensures and coordinates the performance of the activities within the constitutional relationships between the Government and the Parliament*. In order to fulfill its duties, the Ministry is entitled to request information from the ministries, from the other authorities of the central or local public administration, as well as from the other public institutions.

According to the Regulation on the organization and functioning of the Ministry for Liaison with Parliament approved by Order no. 160/MRP/18.05.2017³⁰ the ministry is headed by the Minister for Liaison with Parliament, member of the Government, minister who has the capacity of main credit release authority. In the ministry coordination and representation, the minister is assisted by two secretaries of state, two secretaries general and a deputy secretary general. The personnel required for the performance of the activity of the ministry consists of public servants and of contractual personnel.

Ministry for Romanians Abroad

The Ministry for Romanians Abroad was established by Government Resolution no. 17/2017 on the organization and functioning of the Ministry for Romanians Abroad (...) ³¹ and has available a dedicated web page³².

The Ministry for Romanians Abroad issues and applies the policy of the Romanian state in the field of the relationships with Romanians abroad under the meaning assigned to this term by Law no.299/2007 on the support provided to Romanians abroad³³ and acts to strengthen the relations with them and to preserve, develop and express their ethnic, cultural, linguistic and religious identity, under the fulfillment of the legislation of the state of which citizens or residents are, as well as in accordance with the relevant international regulations.

The phrase “*Romanians abroad*”, according to the provisions of art. 1 letter a) of Law no. 299/2007 on the support granted to Romanians abroad refers to: “*Romanian persons, as well as to those belonging to the Romanian cultural area outside Romania.*”

Institute “Eudoxiu Hurmuzachi” for Romanians abroad is a public national institution, with own legal status, subordinated to the Ministry for Romanians Abroad. The activity of the Institute is performed based on an annual plan of activities, which is subject to the approval of the minister until January 30th. Institute “Eudoxiu Hurmuzachi” for Romanians abroad is financed from own income and from state budget grants. The General Manager and the Deputy General Manager of Institute “Eudoxiu Hurmuzachi” for Romanians abroad are issued and appointed by the order of the Minister for Romanians abroad, under the terms of the law.

3. Conclusions

As A.Iorgovan showed, the government investiture is the complex of legal acts and deeds, as well as the appropriate procedures, provided by the Constitution in order to have a legal and legitimate government team³⁴. From this point of view, the legislation on the forming of the Government has been observed in our country. We agree with the doctrine which provides that “no state has a legislation valid for all times”³⁵. Despite this, the fact that we had three governments in one year does not mean a weakness of the legislation, but the loss of majority political support, based on the principle regarding the investiture procedure symmetry. If in public law the term of office terminates by specific means, as opposed to private law where we speak about insolvency³⁶, which cannot be applied in case of the termination of the Government

²⁹ Government Resolution no. 22/2017 for the organization and functioning of the Ministry for Liaison with Parliament, published in Official Journal no.49 of January 17th, 2017.

³⁰ See: <http://mrp.gov.ro/web/organizare/regulament-de-organizare-si-functinare/>, accessed on 08.02.2018.

³¹ Government Resolution no. 17/2017 on the organization and functioning of the Ministry for Romanians Abroad and for the amendment and supplementation of Government Resolution no. 857/2013 on the organization and functioning of Institute Eudoxiu Hurmuzachi for Romanian abroad published in Official Journal no. 46 of January 17th, 2017.

³² See: <http://www.mprp.gov.ro/web/>, accessed on 12.02.2018.

³³ Law no. 299/2007 on the support granted to Romanians abroad, republished in Official Journal no. 261 of April 22nd, 2009.

³⁴ A.Iorgovan, *Tratat de drept administrativ*, vol I, All Beck Publishing House, Bucharest, 2005, p. 370.

³⁵ Laura-Cristiana Spătaru-Negură, *Old and New Legal Typologies*, published in proceedings CKS-eBook 2014, Pro Universitaria Publishing House, Bucharest, 2014, p. 354.

³⁶ For further details on international insolvency see G.Fierbințeanu, V.Nemeș, *A new approach in cross border cases- Regulation (EU) no 2015/848 of the European Parliament and of the Council of 20 may 2015 on insolvency proceedings (recast)?*, published in CKS-ebook 2017, pp. 227-233. See: http://cks.univnt.ro/cks_2017_archive/cks_2017_articles.html, accessed on 12.02.2018.

term of office, although this would be an interesting subject to analyze on the future.

Therefore, the current Government is quite large in its composition, but the large number of ministers is

not necessarily a successful formula in fulfilling a 4-year term of office if there is no political support.

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