

**POWERS OF THE PRESIDENT OF ROMANIA
IN RELATIONSHIP WITH GOVERNMENT
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Abstract: *According to constitutional provisions in force, Romania has a dualist executive whose central authorities are the President of Romania and the Government. Consecrating a semi-presidential regime, the constitutional legislator has built such an executive so the relations between the president and the government have to be characterized by cooperation, collaboration, including those between the President and Prime Minister. Thus, our Constitution recognizes to the President the powers regarding the procedure of investiture of a new government, the appointment and dismissal of some government members, the President also having the possibility to consult with the government and to participate in its meetings.*

Keywords: powers, President, collaboration, Government, designation, dismissal, Prime Minister.

Introduction

Putting a dualist executive in which neither of the authorities is not stronger than the other, forces them – the head of state and the government – to manifest within collaboration reports. In this regard, it has been pronounced by the Constitutional Court¹ that has stressed out that institutional reports between the Prime Minister and the Govern, on the one hand and the President of Romania, on the other hand has to function within the constitutional frame of loyalty and collaboration, the collaboration between these authorities being a necessary condition and essential for the proper functioning of the public authorities of the state.

The opening and closure of the investiture of the new Government

Regarding the President, the Constitution, Article 85 and 103, recognizes the right to open the procedure of investment of a new Government, and the one to finalize this procedure. Thus, the President², after consulting the party that holds the absolute majority in the Parliament or, if there is no such majority, the parties represented in the Parliament, will

¹ This view was expressed by the Constitutional Court of Romania by Decision no 356/2007 published in Official Gazette of Romania, Part I, no.322 from May 14th 2007.

² Unlike the provisions of our Constitution, the Constitutions of states whose political system is a semi-presidential one, as France, or presidential, in another words a bad copy of the American presidentialism, give the President the right to name the Prime Minister and not jut a candidate for this function. In this regard there are provisions of Article 8 para (1) from the Constitution of France, namely section 99, point 7 from the Constitution of Argentina. In the latter case we would like to point out that although the President of the Republic is, according to section 99, point 1 the head of the Government, with all these he names a head for the Ministerial Cabinet. A similar solution also establishes the constituent Russian legislator through Article 83 a). Constitution of France was consulted: https://www.constituteproject.org/constitution/France_2008.pdf?lang=en, accessed: 25.10.2015. Constitution of Argentina was consulted: https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en, accessed: 25.10.2015. Constitution of Russia was consulted: https://www.constituteproject.org/constitution/Russia_2014.pdf?lang=en, accessed: 25.10.2015.

designate a candidate for the function of Prime Minister³. Only just after granting by the Parliament of the vote of confidence in the joint sitting of the two Chambers of the Parliament, in accordance with the provisions of Article 103 para (3) from the Constitution, the President can name a Government. So if initially the President cannot name only the candidate as Prime Minister, later on he will name by presidential decree, not countersigned by any Prime Minister, an entire governmental team. Moreover, naming the Government by the President of Romania is not made in the notification of nor the Prime Minister in function, nor to the one who has just received the vote of confidence from the Parliament, but at referral of the Presidents of the two Chambers of the Parliament and on the decision of the Parliament approving the government program and a complete list of the members of the Government.

But the Government can begin exerting the mandate only after the date of the oath stated in Article 82 from the Constitution, each member individually, including the Prime Minister, all before the President of Romania, issuance and publication in the Official Gazette of Romania, of the presidential decree having the automatic effect of the beginning of the mandate of the Government, with formal character.

The appointment and dismissal of some government members

The President of Romania is the one who has the task to revoke and appoint members of the Government in the case of the occurrence of a vacancy or in the case of government reshuffle⁴. But the President cannot exert this attribution in a discrete manner being forced to take into consideration the proposal of the Prime Minister.

Our recent practice⁵ imposed formulating an answer about whether the Romanian President had the possibility to reject a proposal from the Prime Minister for appointing a person as a minister, and in the case where this possibility is recognized according to the legal constitutional provisions – as many times as he can, the President rejects the proposals of the Prime Minister. The need to formulate points of view on these issues was determined due to the onset of constitutional legal conflicts between the Romanian President and the Government, the solution⁶ for them, according to Article 146 e) from the Constitution, republished, to the Constitutional Court. It was emphasized, that as well as the candidates for

³ The chosen solution by the Romanian constituent is similar to the one of the Spanish materialized in Article 99 1), but also with the Portuguese one deducted by corroborating Article 136 para f) with Article 190 para (1). Constitution of Spain was consulted: https://www.constituteproject.org/constitution/Spain_2011.pdf?lang=en, accessed: 25.10.2015. Constitution of Portugal was consulted: https://www.constituteproject.org/constitution/Portugal_2005.pdf?lang=en, accessed: 25.10.2015.

⁴ Law no 90/2001, with amendments and supplements, develops, through Article 7 and 8, the constitutional provisions specifying the fact that in both cases – revocation or vacancy of function – the Romanian President can act only at the proposal of the Prime Minister, and the act through which the decision materializes will be the presidential decree, not countersigned by the Prime Minister. The law identifies it as being distinct and a third situation in which the same conditions, the Romanian President acts, in the moment when a member of the Government that has been convicted by a final judgment or if his estate was declared, in whole or part of it, as being illicitly acquired through a final judgment is dismissed.

⁵ There are two cases. The first one is about the moment when Mihai Răzvan Ungureanu submitted his resignation as a Minister of Foreign Affairs, in accordance with the Article 106 from the Constitution and Article 5 from the Law 90/2001, with amendment and supplements, and the Romanian President refused it, for a short period of time, naming in function a person proposed by the Prime Minister, Adrian Mihai Cioroianu. The second case is the resignation from the function of Minister of Justice by Tudor Alexandru Chiuariu and the declaring of a vacant function, the Romanian President refused to name the person proposed by the Prime Minister, moreover he proposed to make a new calling, subsequently being appointed as Interim Minister of a person who already held a portfolio in the Government until the final settlement of the conflict between the Romanian President and the Prime Minister.

⁶ The Constitutional Court pronounced the two requests of settlement of legal constitutional between the Romanian President and the Romanian Government, both being made by the Prime Minister Călin Popescu Tăriceanu through the Decision no 356 from April 5th 2007, published in the Official Gazette of Romania, Part I, no 322 from May 10th 2007, and the Decision no 98 from February 7th 2008, published in the Official Gazette of Romania, Part I, no 14 from February 22nd 2008.

the function of Prime Minister enlisted to the Government, proposed by the candidate for the function of Prime Minister, be heard by the permanent committees of the Chambers of the Parliament, jurisdiction under objects of activities of the function of the candidate for Minister and, based on the findings, which should be in favor or not, the candidate for the function of Prime Minister proposing another candidate for the function of Minister, so the Romanian President is entitled to check if the candidate corresponds for the function and can motivate another proposal coming from the Prime Minister. By recognizing this right of the Romanian President, the Constitutional Court has not appreciated that he exercises the right to veto against the Prime Minister's proposal, primarily because of the decision of rejection of naming another person in function cannot be taken arbitrarily, the President needs to motivate his decision. This motivation cannot be censured by the Prime Minister because Article 85 para (2) from the Constitution, republished, gives him the right to propose a Minister, not a decision-making competence.

Moreover, pointing out the fact that the reports between the Romanian President and the Government cannot be purely formal, the Constitutional Court held that, on the one hand the Romanian President can refuse, only once, in a motivated way the proposal of the Prime Minister of naming a person in the vacant function of Minister, and on the other hand the Prime Minister, once his proposal is refused, it cannot reiterate, he is forced to propose another person in the function of Minister.

Moreover, the Constitutional Court has recognized, as regards this attribution, a right of appreciation of the Romanian President over the proposition for the function of Minister communicated by the Prime Minister who cannot assume more power from the former, nor the Prime Minister will not be able to act the same. Otherwise, it would reach to an institutional blockage that might take the form of a legal conflict between the authorities involved.

On the other hand, by the same decisions, the Constitutional Court has established that the act of resignation and the declaration of the vacant function of Minister is an attribution that should be made, with or without conditions, by the Romanian President, being an activity incapable of conditionality on the validity of the resignation and its effects.

It was also found that neither the Constitution, nor the Law no 90/2001, with amendments and supplements, does not indicate any terms in which the Romanian President should exerts his attributions mentioned, namely, accepting the resignation of a Minister, declaring vacant the function of a Minister and naming another person in that function, to determine any eventual terms awarded to the Parliament as only legislative authority of the country, according to Article 61 from the Constitution and not from the Constitutional Court that does not have the competence to appreciate, by interpretation, on any eventual term in these matters and no motivation to censor documents on the settlement date.

Compared to them, but taking into account the fact that the two cases – now legal disputes of a constitutional nature between the two authorities – have prolonged, creating malfunctions in the everyday life, normal ministries being affected, but also the Government, considered to be appropriate, as a proposal of the law, through a future amendment of the law regarding the organization and function of the Romanian Government and the Ministries, to plan in a term of 5 to maximum 10 day in which the Romanian President should exercises the attributions mentioned above.

Also the Romanian President, and also at the proposal of the Prime Minister, appoints, as interim, a member of the Government in the case where, in situations provided by Article 106 from the Constitution, another member of the Government can no longer hold office, including the situation in which he is in the impossibility to perform his attributions for a period of time.

The duty of the President is to dismiss and appoint members of the Government, at the proposal of the Prime Minister, in which case the proposal of reshuffle changes its structure or political composition of the Government as it was established as follow up of the grating of

the vote of confidence by the Parliament, is conditioned by the prior approval of the Parliament, approval required by the Prime Minister.

However, regardless of the situation where the President is forced to dismiss and appoint another member of the Government for the vacant function, no such member shall be the Prime Minister and this is because, after reviewing the Constitution in 2003, it has been provided, *expressis verbis* in Article 107 para (2), the prohibition of the dismissal of the Prime Minister⁷. Another argument in this regard takes into consideration the fact that the Romanian President does not recognize the right to name in function the Prime Minister only once with his entire governmental team and only on the vote of confidence expressed by both Chambers of the Parliament reunited in a common session. Consequently, according to the symmetry principle, the withdrawal of the vote of confidence and implicitly to dismiss from the function of Prime Minister, including his governmental team, is an attribute of the Parliament and not of the Romanian President.

If, according to the Article 107 para (3), the Prime Minister resigns, loses his voting rights, is in a state of incompatibility, or dies or is in situations provided by law, as the ones in the Law no 115/1999 on ministerial responsibility, republished with amendments and supplements, or is in the impossibility of performing his duties, the President, without being conditioned prior or after obtaining the approval or permission for another authority, or grant of another authority, shall designate another member of the Government to fulfill the attributions of the Prime Minister, until the new Government is formed. But, if the Prime Minister resumes his activity in the Government, the interim Prime Minister will stop fulfilling his attributions without having to fulfill any other formalities⁸. We consider to be suitable, a law that can avoid any misunderstanding or misinterpretations as both fulfilling the attributions of the interim Prime Minister as a member of the Government designated in this regard, and also the beginning of the activity as a Prime Minister established by a presidential decree⁹.

The right of the Romanian President to consult with the Government

The collaboration reports of the two authorities of the executive also translate into the possibility that the President is consulting the Government regarding urgent issues and of

⁷ The constituent legislator was forced to express prohibition in the Constitution precisely because constitutional principles and previous revisions of the Constitution in 2003, between 1996-2000, the Romanian President at that time removed from his function by a presidential decree, without any other formalities, the Prime Minister at that time Radu Vasile.

⁸ The constitutional text is developed in Article 9 from the Law no 90/2001, with amendments and supplements, that state that in the period when the temporary occupation of the function is assured by the Prime Minister or for the function of the member of the Government is more than 45 days. So as specified in the constitutional text, as for the legal I see that the interim period may not last longer than 45 days, period in which the Prime Minister must begin the legal procedure to name another member of the Government. If in this situation is the Prime Minister, it is necessary to trigger the constitutional procedure to form a new Government. Regarding the term that this period of 45 days should begin, taking into consideration that no constitutional or legal text does not specify anything in this regard, we believe that, firstly such mention should be found in the content of the Law regarding the organization and function of the Romanian Government and the ministries and secondly this period should start from the date of knowledge by Prime Minister or by the Romanian President, as appropriate, a situation which led to interim and not the date which was designated as the beginning of the period of the interim member of the Government or in place of another authority, or in the place of the Prime Minister.

⁹ By the Decree of the Romanian President no 1316 from December 10th 2008 to designate the candidate in the function of Prime Minister, published in the Official Gazette, First part, no 833 from December 11th 2008, was designated in the function of Prime Minister, Mister Theodor Stolojan. However, following the submission given to the mandate by the President of Romania, by the Decree of Romanian President no 1318 from December 15th 2008, published in the Official Gazette of Romania, Part I, no 847 from December 16th 2008, was revoked the decree to designate the candidate in the function of Prime Minister, thus Mister Theodor Stolojan lost the quality of being a candidate to the function of Prime Minister. Subsequently, by the Decree of the Romanian President no 1319 from December 15th 2008, published in the Official Gazette of Romania, Part I, no 847 from December 16th 2008, was designated the new candidate to the function of Prime Minister. Evoking these examples is a favorable argument of the presented solution, under the symmetry principle.

extremely importance, but also to take part in the meetings of the Government, in which case ensures their chairing, in compliance with two conditions that do not have to be met cumulatively. One of these is concerned with the subject of meeting that cannot be linked to the areas listed by the constitutional text – Article 87 para (1) – external politics, defending the country, assuring the public order – areas in which the fundamental law recognizes the duty and other attributions of the head of state. The second condition can be fulfilled only if the President and the Prime Minister’s collaboration is a “natural” one and not imposed by the role and attribution imposed by the Constitution, because the Prime Minister has the possibility to ask the President to participate in governmental meetings, this time without any condition on the nature of the problems that will be discussed. Neither of the two functions last mentioned do not represent an obligation that is attributed to the President, the decision to consult the Government nor to participate in its meetings belong entirely to him. Also, just as the President has the liberty to appreciate the limits established in Article 86 from the Constitution, in which issues should consult with the Government, as a result of this consultation, can or cannot take into consideration the views expressed by the Government.

Conclusions

Of the mentioned above, we can see that the constitutional legislator has given greater attention to the powers of the head of Romanian state in its relations with the government, leaving the ordinary legislator to develop these constitutional norms from the point of view of government. The option of the constitutional legislator to regulate carefully the powers of the head of state is understandable given that human society has known in all its forms of organization, the existence of a leader, a chief. Also, this attention is justified by the constitutional role which is consecrated to the head of state, by the legislator. According to art. 80 of the Romanian Constitution, the President has a multiple role: he represents the Romanian state, and is the safeguard of national independence, unity and territorial integrity of the country and he shall act as a mediator between the powers in the state, as well as between the state and society, so we can affirm that its role has mostly a political dimension. On the contrary, the two-dimensional role of government - politically and administratively, such as it is enshrined in art. 102 para. (1) of Constitution, consisting in ensuring the implementation of the domestic and foreign policy of the country, and exercising the general management of public administration, it has an administrative connotation stronger than in the case of the powers of the President.

From another perspective, we can see that by exercising these powers in its relations with the Government, the Head of State does not receive a superordinated position to the Government, to the Prime Minister. The relations between those two authorities will remain the collaboration ones that will oblige them, especially the two heads of the executive - Head of State and Prime Minister, to moderate any tendency, attempt to take over all executive power for them, or even to become the only one holder of this power.

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