

THE RAPPORTS BETWEEN PARLIAMENT AND GOVERNMENT – GENERAL ASPECTS

Oana ȘARAMET¹

Abstract: *The Parliament is considered to be the sole legislative body in most European Constitutions. At the same time the same constitutions settle the so-called "legislative delegation" which means that the Parliament may pass a special law enabling the Government to issue statutory orders in fields outside the scope of organic laws. The essay emphasizes thus the special rapports between the two constitutional bodies, the Government and the Parliament, in the field of legislation.*

Key words: *Parliament, Government, rapports between Parliament and Government, legislative delegation.*

Art.1 paragraph 4 from the Romanian Constitution revised by Law No.429/2003, settles that "the state is organized based on the principle of separation and equilibrium of powers – be them legislative, executive and judicial – in case of constitutional democracy". Thus, the constitutional legislator settled a constant of modern democracies which is written *expressis verbis* or is deducted from the interpretation of constitutional settlements in any of modern states: the theory of separation/equilibrium of powers in state.

This principle was grounded by Montesquieu in the 18th century and its major purpose is the idea that a power can and must stop another power. That is why the three major functions that the power exerts in a state (the legislative, the executive and the judicial ones) must be exerted by different and distinct authorities, but for nowadays the democratic system does not permit a restrictive interpretation of this principle in the sense of a rigid separation of the three

powers, a permanent cooperation between these authorities is required.

By means of this cooperation, manifested in diverse forms and activities, the public authorities, that exercise the above-mentioned functions, must temperate mutually the dominating tendencies that may determine the replacement of a constitutional democracy with a dictatorship. Even if, due to the social, political and economical factors, the public authority that exerts the executive power tends to trouble this equilibrium by ignoring the legislative authority, the Constitution shall impose the mechanisms or the methods that may restore the equilibrium of powers.

The legislative power is represented by the Parliament. The executive power is represented by the Chief of State, the Government and the public administration, while the judicial power is represented by the Judicial Authority.

The Parliament is the supreme representative body of the Romanian

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people and the sole legislative authority of the Country. Thus, the Parliament shall pass laws and carry resolutions and motions with respect to the constitutional settlements.

The executive – by the authorities that represent it – executes the laws and ensures their implementation, at the same time the executive exercises the general management of public administration.

The Judicial Authority interferes in solving conflicts appeared in the process of exerting the state power. The solution given by the Judicial Authority must follow the constitutional settlements. The fact that justice applies the laws to individual, specific cases does not identify it with the executive since there are big differences between the executive and jurisdictional powers. These differences consist in both the object and the procedure of realizing one's functions. More than that, in the frame of the executive function, one may apply general norms that confirm the law, and in some special cases, the law gives a truly discretionary power to the administrative authorities, by mean of which they do not restrain their activity only to apply the law, but they have also the liberty of choosing, within some boundaries, between two or more solutions.

Our essay shall only emphasize the close relationship between the legislative and the executive bodies. The strong connection between the two powers could be notice from the beginning of this study. Thus, the Executive shall have no meaning but for the Parliament that passes the laws, while the activity of the legislative power shall have no meaning if the executive doesn't implement the laws.

The relationship between the Parliament and the executive is not reflected only by their activity, but also by their organization and functioning. In most of the European states, especially in the states of parliamentary regime as Italy, Germany, and Hungary and in the states of semi-

presidential regime as France and Romania, the Parliament is a very important factor in appointing the Government. The government is appointed on the basis of the vote of confidence of Parliament. In states of parliamentary regime, even the President is appointed on the basis of the vote of Parliament.

The relationship between the Parliament and the Executive is even more intense when referring to their activity, both interfering in other's activity since they have a major role in governing. Here are some examples settled in Constitution that emphasize the strong connection between the Parliament and the Government: thus, the program and list of the Government is debated upon by the Parliament. Parliament shall grant confidence to the Government by majority vote of Deputies and Senators. The Government is politically responsible for its entire activity only before Parliament. The Government shall, within the Parliamentary control over their activity, be bound to present any information and documents requested by the Parliament. The Government and each of its members shall be bound to answer to questions or interpellations raised by Deputies or Senators. The Parliament may withdraw confidence granted to the Government, by carrying a motion of censure by majority vote of the Deputies and Senators. The legislative initiative lies not only with the deputies and senators but with the Government also. The Government may assume responsibility before the Parliament upon a programme, a general policy statement or a bill. The Parliament may also pass a special law enabling the Government to issue statutory orders in fields outside the scope of organic law.

Most of the European constitutions settle that the Parliament is the legislative authority of the state. Thus, in Art.34 paragraph 1 of French Constitution it is settled that the "law is passed by the Parliament". The Italian Constitution

settles also in Art.70 that the legislative function is exercised by both Chambers of the Parliament, while The Hungarian Constitution specifies in Art.19 that "in its limits the Parliament shall pass the laws". The Romanian Constitution revised by Law No.429/2003 is more restrictive and tries to impose the legislative monopoly in the favour of the Parliament. Art.61 paragraph 1 from the Romanian Constitution settles that "the Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the Country".

The legislative monopoly imposes that the administrative normative acts to find their ground in a provision established by law which determines not only the competence of the body who is able to pass them but to define in general the content of the bills. In the opinion of Tudor Draganu, the existence of the monopoly leads to specific consequences. Thus, only the legal provision is primary, all other provisions have a secondary, derivative character. Primary provisions, even in minor problems, can be passed only by the national authority, the administrative provisions are only derived and secondary.

If the Parliament owns the legislative monopoly, the passing of law in all the social fields shall be difficult if not impossible to be realized. If only the Parliament has the authority to pass the bills, then the Government shall not be able to carry out all its attributions, its activity being thus blocked if in a certain field the Parliament does not pass the specific law.

In its quality of the sole legislative authority, the Parliament has legislative initiative and passes the bills and resolutions. The Parliament may also pass a special law enabling the Government to issue statutory orders in fields outside the scope of organic laws. The enabling law shall compulsorily establish the field and the date up to which statutory orders can be issued. Statutory orders shall be

submitted to Parliament for approval, according to the legislative procedure.

Any inconvenience of the legislative monopoly may be removed by defining the law. Thus, the law may be defined as being thus juridical act of the Parliament, elaborated in conformity with the Constitution, and due to an pre-established procedure, that settles the most general and important social relations.

Thus, the Parliament is the sole authority that may elaborate and pass bills. But in the process of passing the bills, other authorities, especially the administrative ones may have this certain attribution. The relations between Parliament and the Government can be settled also in this particular area, since the legislative initiative lies with the Government, Deputies, Senators and citizens in certain conditions. The promulgation of laws - a very imperative and necessary procedure in elaborating the law - lies with President of Romania, the second body of the dual executive specific to the semi-presidential regime. The executive exercises its legislative function by means of legislative delegation. The Romanian Constitution revised by Law No.429/2003 settles the institution of legislative delegation in Art.115. Due to this article, the legislative delegation can be legal in the case of statutory orders, or constitutional in the case of emergency statutory orders.

Even if the Parliament enables the Government to issue statutory orders, which means that the Government can issue only what it is approved, the monopoly legislative is thus denied since by means of the enabling law the Government does what the Parliament is supposed to do. Under these circumstances, the legislative delegation represents a modality of cooperation between the Parliament and the Government that the Constitution settled, and not a modality of executing the legislative monopoly of the Parliament.

Another argument in favour of the idea that the passing of bills is not the exclusive attribution of the Parliament is brought by the fact that the Parliament has rather a deliberative function, then a legislative one. In the doctrine it is said that the deliberative function can not be identified with the legislative function, since the former has a wider sphere, and the latter is only a component of the former. Deliberation is the modality by means of which the parliament exercises its most activities, and especially the legislative one.

The Romanian Constitution revised by Law No.429/2003 makes a distinction between the classes of laws by means of two criteria, the material criterion – the sphere of the social relations settled by law – and the formal criterion – the procedure of passing the law. Thus, as settled in Art.73, the Parliament passes constitutional, organic and ordinary laws. Constitutional laws shall be pertaining to the revision of the Constitution, the procedure of passing these laws being identical with the procedure of adopting the Constitution. The fields regulated by the organic laws are mentioned at paragraph 3 of the same article, while the passing of organic laws is made with the vote of the absolute majority. The passing of the ordinary laws is made with the vote of the simple majority since these laws settles social relations of minor importance.

As a conclusion, passing the bills is one of the attributions that Government

strongly wishes to practise, therefore it tries hardly to get this attribution from under the monopole of the Parliament, surely only in some specific domains and with respect towards the constitution. In this context the opportunity of the following question – *Is the process of passing the bills an exclusive attribution of the Parliament?* – still remains. And in our opinion, this question is more opportune than ever, since the Constitutional Court of Romania, by means of its own jurisprudence, encouraged a negative answer to this question.

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