



ORIGINAL PAPER

Brief analyzes on the manner in which the state power is distributed among the constitutional institutions of Romania

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Abstract:

One of the pillars of the rule of law is the fundamental principle of separation of powers in the state – a concept that involves a clear, concrete and precise distribution of attributions between the Legislative, Executive and Judiciary power, so as to ensure both the institutional balance and also the proper functioning of the state.

Precisely the balancing of powers in the state, through means of mutual control - which ensures the necessary conditions for the proper functioning of the institutions but also of the relations between them-, represents a more convenient solution than the absolute delimitation of powers, separation that inevitably produces an institutional blockage capable of disrupting the efficient functioning of institutions.

Starting from these considerations, it emerges the idea of collaboration and balance between the state powers, which can be interpreted as a counterweight to the tendency of their rigid separation. According to this constitutional principle, the establishment of distinct public authorities, each with a well-defined role in the rule of law is a necessary measure, which involves the idea of balance and cooperation between state powers, cooperation that must be governed by mutual respect and constitutional loyalty.

This is in fact the desideratum, because in reality, every public institution seeks by any means, the protection of its own interests, and precisely this lack of cooperation between state institutions determines an obvious violation of this principle that affects the internal order of the rule of law.

Therefore, it is not possible to bring into discussion a correct distribution of state power between its constitutional bodies without implicitly discussing about legal conflicts of a constitutional nature. Moreover, the domain of legal conflicts of constitutional nature is in fact a matter of pure clarification of the system of competences established by the Constitution, and the effect of these disputes can only consist in damaging the distribution of responsibilities with the direct consequence of affecting the proper functioning of institutions within a state based on the separation of powers.

Therefore, it can become a common fact that the legal conflicts of a constitutional nature represent the guarantee of the distribution of state power among its constitutional bodies.

Keywords: *legal conflicts; public authorities; Constitutional Court; fundamental law; loyalty; separation of powers.*

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The principle of separation of powers in the state is one of the essential principles of the rule of law, which is found in the content of any Constitution and which is closely linked to the idea of a representative regime in which the danger of tyranny and the restriction and abusive violation of individual rights and freedoms is eliminated. (Muraru, Tănăsescu, 2001: 98).

This principle is recognized as inherent in democratic political regimes, regardless of their parliamentary nature, and it involves the entrustment and exercise of the various functions of the state to distinct and independent bodies. (Drăganu, 1993: 253).

Thus, in order to prevent the abuse of power, the attributions within the state are divided between several centers of power, but without tilting the balance towards one of the powers. There must be a balance between the powers which enables all citizens to live in dignity and in the same time ensures their fundamental rights and freedoms.

Romania is a democratic state in which, according to the Constitution, the power is divided on the basis of the principle of separation and balance of powers in the state. Thus, the Executive power is exercised by the Government and the President, the Legislative power belongs to the Parliament, and the Judicial power to several courts of justice.

The Parliament is the supreme representative forum of Romania, representing the only legislative authority of the country. The main function of the Parliament is to debate and adopt laws, decisions and motions, after obtaining in advance the vote of approval by a majority of its members.

The Executive power, the second component of public power, also called the administrative power/authority of the state, presupposes a system of state organs (the executive) which is entrusted with the specific and fundamental activity of enforcing and organizing the concrete execution of laws. The Executive power as the primary power, resulting from the direct application of the principle of separation of powers in the state, is a constitutive element of the state.

In a functional sense, the Executive power is defined as a distinct function of the state, along with the Legislative function and the Judicial function, in which content there are specific attributions that represent the object of activity of several distinct public authorities. (Vida, 1994:29).

In the most general sense of the term, the Executive or the Executive power designates the function of the state that ensures the execution of the law. (Popa, 1998:231). This state function involves in present extremely diverse activities. These include the exercise of the function of head of state, the coordination of the action of the public administration for the implementation of the law, the development of direct actions for the application of the law or the organization of the application of the law, the exercise of certain attributions regarding the evolution of the legislative process, as well as the general leadership of the state. (Topolov, 2009: 2)

In Romania, the Executive is dualistic, composed from the President of the Republic and the Government, each authority having established specific attributions, which are exercised relatively independently.

The Government is the executive body of Romania which, in accordance with its governing program, ensures the implementation of Romania's internal and foreign policy and exercises the general management of the central public administration.

The third power in a rule of law, in the context of the fundamental principle of the separation of powers, is the Judiciary. If the Legislative and Executive powers are

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assigned by the Constitution to one or two state bodies, the Judiciary is assigned to all judicial bodies, from the lowest to the highest. (Goriuc, 2014:1).

Anyone who carefully analyzes the relationship between state powers in a form of government in which there is a separation of them, will find that the Judiciary, by the nature of its functions, is the one that always endangers the least the political constitutional rights; because it is in a position from which it cannot harm them.

While the Executive assigns the honors, the Legislative in addition to managing the budget, it also elaborates the laws governing the rights and obligations of every citizen, the Judiciary has no influence over funds, it cannot influence the strength or welfare of the society and it cannot take any active position. It can be said that the Judiciary has neither Force nor Will but only Judgment (Discernment); and it ultimately must depend on the support of the Executive Branch for its decisions to be put into practice. (Stoica, 2009: 2)

In Romania, justice is done in the name of the law, being unique, impartial and equal for all. It is done through the High Court of Cassation and Justice and the other courts (courts, tribunals and courts of appeal). The guarantor of the independence of the Judiciary is the Superior Council of Magistracy. With regard to the appeals against the decisions of the courts, they can be exercised by the interested parties and the Public Ministry. In the judicial activity, the Public Ministry represents the general interests of society and defends the rule of law, as well as the rights of citizens.

It has been shown over time that although no hierarchy can be established between the three forms of power due to the fact that no authority is subordinate to another, and none of them can assume the prerogatives of another authority, however, an absolute separation of powers in the state would generate a constitutional deadlock, aspect which led to the idea that public authorities are not isolated, but interdependent, existing actually a mutual control.

Moreover, precisely these difficulties found in the functioning of a pure model, that of the rigid separation of powers, have directed the attention and shifted the center of gravity of the classical theory to the idea of balance and collaboration between the powers of the state, collaboration that must be governed by mutual respect and constitutional loyalty.

In this sense, the constitutional relations between the public authorities are characterized by mutual implications of some in the sphere of activity of the others, implications that mean balance through collaboration and control. In a democratic state, the three powers of the state function as a system of checks and balances, a mechanism of mutual verification between powers and ensuring a functional balance between them.

The Relations between the Parliamentary and the Executive, in the constitutional regulations, can be examined by the involvement of the Legislative in the activity of the head of state and of the Government. Thus, the Parliament receives the oath of the President (The Constitution of Romania, art. 82); it may extend his term of office in case of war or catastrophe (The Constitution of Romania, art. 83); it may decide to charge the head of state for high treason (The Constitution of Romania, art. 84); it listens to the messages of the head of state (The Constitution of Romania, art. 89); it ratifies international treaties under the conditions of art. 91; it approves the declaration by the head of state of the partial or general mobilization of the armed forces (The Constitution of Romania, art. 92); it approves the establishment of a state of siege or a state of emergency (The Constitution of Romania, art. 93); it may suspend from office the President of Romania in case of committing serious acts by which he violated the

provisions of the Constitution (The Constitution of Romania, art. 95); it establishes the indemnity and the other rights of the President of Romania (The Constitution of Romania, art. 100).

Regarding the relations with the Government, it can be mentioned in particular that the Parliament: grants the vote of confidence on the program and of the entire list of the Government (investiture, The Constitution of Romania, art. 102); it withdraws the trust granted (The Constitution of Romania, art. 109 and art. 112); it may request information and documents (The Constitution of Romania, art. 110); through deputies and senators there can be asked questions and can be addressed interpellations (The Constitution of Romania, art. 111); it assesses the political responsibility of the Government, it may request the criminal prosecution of members of the Government for acts committed in the exercise of their office; it establishes by law the cases of liability and the punishments applicable to the members of the Government (The Constitution of Romania, art. 108); it empowers the Government to issue ordinances in the areas that are not covered by organic laws (legislative delegation, The Constitution of Romania, art. 114).

The compatibility of the parliamentary quality with that of a member of the Government is also an aspect of mutual involvement.

It is a fact that the Executive is also involved in the activity of the Legislative. Thus, the President of Romania: promulgates the laws, being able to request, only once, the re-examination of the law (The Constitution of Romania, art. 67); the President may dissolve the Parliament under the conditions of art. 89. As for the Government: it has the legislative initiative (The Constitution of Romania, art. 73); the President may request the adoption, with the emergency procedure, of legislative projects or proposals (The Constitution of Romania, art. 74); the President may be held accountable to Parliament for a program, general policy statements, or law projects (The Constitution of Romania, art. 113) these being considered approved if the Government is not dismissed; the President may be empowered to issue ordinances in areas that are not covered by organic laws (The Constitution of Romania, art. 114).

As for the relations between the Legislative and the Judiciary, they must be assessed taking into consideration the principle of independence of judges and their submission only to the law (The Constitution of Romania, art. 123). Therefore, the intervention in the sphere of justice of other powers is contrary to this constitutional principle.

In order to fulfill its role in relation to the other powers of the state, to society in general and to the parties of a dispute, the Judiciary must be independent. This independence of judges is not a prerogative nor a privilege granted for their own interest, but for the interest of the rule of law and of all those who seek and desire justice. The judicial independence is the mean through which the impartiality of judges is ensured. However, although the importance of judicial independence is so frequently expressed, it should be noted that no one - including the Judiciary - can be completely independent of any influence.

In fact, there are several reasons why the Judiciary must be accountable to the other powers of the state. First of all, it is the Legislative that creates the legal framework that magistrates apply. Therefore, the Legislative has the right to receive explanations, through well-formulated reasoning of sentences, on how the Judiciary interprets and implements the laws that the Legislative has adopted.

Secondly, in order to fulfill its obligations to society, the Judiciary benefits from

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financial resources through the decisions of the Legislative. However, no matter how the budgetary and administrative administration is organized, the resources of the judiciary are allocated by the Parliament and come, ultimately, from the taxpayers.

On the other hand, in all their relations with the judiciary, the other powers of the state must respect the principles of independence and impartiality of the Judiciary, but this does not exclude certain constitutional relations that naturally result from the system of state organization of power. It should be mentioned that the organization and the functioning of the courts is done in accordance with the law (The Constitution of Romania, art. 125, 126, 128, and especially art. 172 paragraph 3 letter h). As such, it is the Parliament that establishes by law the competences and procedures for the courts.

Romania is currently in a severe institutional crisis. The deep problem of democracy in Romania is that the three pillars that support it: the Executive, the Legislative and the Judiciary are in crisis, the major cause being the violation of a fundamental principle in the democratic state, namely the separation of powers in the state which generates a series of major disorders for the rule of law. (Chiru, 2011: 204).

It can be said that this crisis is also due to the fact that the Legislative is always subordinated to the Executive, which lately has assumed many emergency ordinances (taking responsibility for a series of very important laws in Romania that should be debated in Parliament), the Executive is somehow "taking over" the main attribution of the Parliament.

Specifically, it is about those situations in which the conduct of the Executive, although it formally respects the provisions of the Constitution meaning that, according to the fundamental law *The Government may be held accountable to the Chamber of Deputies and the Senate in a common sessions on a program, a general policy statement or a law project, or the Government may be empowered by Parliament to issue ordinances in areas that not covered by organic laws*, yet, if it abuses of these attributions, the Government infringes the Parliament's power to legislate, because in essence, the institution of the Government's responsibility for a law project is an indirect legislative way of adopting a law, not by debating the law in the ordinary legislative procedure, but by debating issues of a pure political nature, related to the remaining or dismissal of the Government.

The occurrence of such situations is due to the fact that the fundamental law does not expressly establish any condition regarding the nature of the law project, its structure, regarding the number of laws projects on which the Government can assume responsibility on the same day, or in another given period of time, or as to when the Government decides to assume its responsibility. Therefore, by the way in which the Government acts, respectively, by its acts of commitment of responsibility on some laws projects, regardless of when, of how many times and on what regulations it intends to assume its responsibility, it can be considered that the principle of separation of powers in the state is fully respected. But what creates the institutional blockages that affect the proper functioning of the rule of law are the frequency of these situations through which the Government takes over one of the attributions of the Parliament and also the extremely tensed political context.

For Romania, the solution for overcoming the constitutional crisis from the point of view of the relationship between the Legislative and the Executive power is to consolidate the democracy, with the consequence of division of responsibilities in the state.

As a conclusion of the above mentioned, it can be stated that we are in the

presence of a cooperation of state structures in achieving the will of the people. This cooperation involves: clearly delimited competences by the Constitution, organizational and functional autonomy, mutual control without interference, constitutional guarantees of the fulfillment of the mandate and of the observance of the citizens' rights.

Conclusions

As already stated, no state power can act in complete isolation and separately from the other two. In this regard, there can never be a complete "separation of powers." However, in order to achieve a proper balance of the three powers of the state, each power must exercise certain limitations in its relations with the other powers.

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