POWERS OF THE ROMANIAN PRESIDENT IN RELATIONS WITH PARLIAMENT. CONVENING AND DISSOLUTION OF PARLIAMENT

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Abstract: Romanian constitutional legislator has chosen to give a special attention to the provisions regarding the institution of the head of state, including its powers. The constitutional legislator has embraced this solution considering that human communities organized or not in a country, have always recognized a leader, a chief, and its position between country's institutions has claimed, as a priority, such a constitutional consecration. This attention is reflected by the provisions of the Constitution regarding the powers of the Romanian President, in relations with public authorities from our constitutional system, especially with the Parliament. To sustain what we already mentioned, we'll use like argument the powers of the Romanian President regarding convening and dissolution of Parliament. We'll examine these powers taking into consideration our constitutional and legal provisions, the Romanian Constitutional Court's case law and also the constitutional provisions of other states.

Key words: ***head of state, powers, convening, dissolution, Parliament.***

The constitutionally and legally regulated functions of the executive and its structures are regulated by the exercise of their duties which, in turn, are regulated in fundamental laws and other laws. Determining the legal means of achieving these[1] functions, namely the duties, is not possible, in our opinion, by keeping in mind the structures of the executive and its specific functions. Thus, we appreciate that the legally regulated duties of these structures represent their competence, that of the head of the state - president or monarch - as well as the government, as it is difficult, if not impossible, to discuss the duties of the executive as a separate entity, especially since most contemporary constitutional systems regulated a dualist executive, rather than a single one.

On the other hand, the lawmaker chose to regulate the duties of the head of the state[2] in our fundamental law, while, in regard to the government, in case the executive is a dualist one, the task of expressly regulating these duties, belongs, expressis verbis, to the ordinary lawmaker[3]. The regulations of the fundamental law expressed the role and functions of the government, by granting the possibility that by, a logical-systematical interpretation, to identify the most important duties of this authority[4]. This orientation of the lawmaker can be

[1] Iorgovan, A., *Tratat de drept administrativ*, All Beck Publishing House, Bucharest, volume I, 2005, p. 272

[2] See articles 87-88 of the Italian Constitution, article 8-17 of the French Constitution or article 61 first paragraph, article 62, article 64 first paragraph, article 66 first paragraph, article 68 and article 84, paragraphs I-XXVII of the Brazilian Constitution. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[3] As regulated by article 79 first paragraph of the Czech Constitution or article 95 third alignment of the Italian Constitution. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[4] Other constitutions, such as the Irish one, state, in article 28 alignment 12 that, even though the duties of these authorities will be regulated by law, it also states in the same article, some of the most important duties of the government. Similar are the provisions of the Argentinian Constitution which, in Chapter III section II of the First Title, part II, points out the duties of the executive, while article 100 regulates the duties of the head of the Ministerial Chamber, as well as the duties of other secretary ministries; it is also states that these duties will be regulated by special law in a more detailed manner.

seen also in case the political regime is a parliamentary one, that governing form being that of constitutional monarchy; in this case the role of the head of the state - the monarch is merely decorative, formal, unlike the complete role of the head of the state - president in a presidential republic[5].

We feel we can explain the choice of the constitutional lawmaker of granting special attention to the regulations regarding the institution of head of the state, including its duties, keeping in mind the fact that human collectivities, whether organized as a state or not, have acknowledged a leader, a chief, as his position among the institutions of the state calls for a constitutional regulation. However, we notice that factors such as the recent historical and political evolution of the institution of head of the state have determined a reconfiguration of the constitutional regulations thus resulting in a reconsideration of these provisions in favor of those regarding the duties of the government. Although, presently, there is no increase in the role of the executive, in general and the government, in particular, the latter is the only competent authority to elaborate national politics, be in intern or international, to enforce it and to coordinate its achievement, we can consider all these as technical, political and institutional arguments which support it[6]; thus, a possible development of the constitutional regulations regarding the duties of the government is not justified.

Furthermore, even if the diversity and specialization of the areas of external and internal politics of the state would call for a more detailed regulation of the constitutional provisions regarding the role of the government, such an approach would exceed the domain of a simple constitution[7], as it regulates fundamental social relations which are not essential to enforce, maintain and exercise power[8]; when it regards the economic system, the property

Other Constitutions, such as the Swiss one, in articles 180-187, the Polish one in article 146 and 149, the Slovakian one, in article 119 regulate the duties of the government and those of the prime minister (as is article 149 of the Polish Constitution), but it also states the fact that some of these duties will be regulated in detail by law or will be described in a more detailed manner by other laws. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015, except the Constitution of Ireland which was consulted online, May 5th, 2015, at the following website http://www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution/Constitution_of_Ireland_Aug_2012_.pdf.

[5] See articles 62-64 of the Spanish Constitution or article 14 and 19-27 of the Danish constitution. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[6] See Iorgovan, A., op.cit., volume I, p. 40, Pactet, P., *Institutions politiques. Droit constitutionnel*, Masson Publishing House, Paris, 1993, p.118, as well as the statements of pages 112-117 regarding the "Theory of separation of powers within a state and its difficulties", and „The current organization of political powers".

[7] However, there are constitutions which regulate not just the duties of the president, but also the most important ones of the ministries, such as articles 76, 84 and 87 of the Brazilian Constitution or those of the head of the minister's chamber, such as the provisions of article 100, Chapter IV, section II, Title I, Part II of the Argentinian Constitution. In our opinion, such regulations represent an attempt by these states to copy the "pattern of the president of the United States of America", as a result of choosing to regulate a political regime which is similar to the one of the United States. We feel that, in these cases, the lawmaker had to distinguish between the duties of the President as he wished to provide him with a privileged position in regard to other state authorities and those who merely assist the president, according to article 76 of the Brazilian Constitution (in this case, the state ministers, as Brazil does not regulate the institution of a prime minister, nor that of government - as a collegial body and component of the executive). The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[8] Muraru, I., Tănăsescu, S.E., *Drept constituţional şi instituţii politice*, C.H. Beck Publishing House, volume I, Bucharest, 2005, p.45

relations, the social systems - aspects which can't be left out when the national politics is drawn up - these all form the essence of the state, the social and economic basis of the state[9].

However, readjusting and re configuring the role of the head of the state within the executive, as well as in relation to other state powers, especially the legislative one as a result of organizing power based on the principle of the separation and equilibrium of the powers within a state, has influenced the duties of the head of the state. Thus, although we can't identify some duties of the head of the state which ere continuously entrusted in him, regardless of the regulated constitutional regime, we fell these duties were traditional[10]; the evolution of this institution allowed for the appearance of new duties or the reconfiguration of some of the traditional ones.

On the other hand, the equilibrium of powers within a state entails a mutual control of these powers in order to prevent or control, the "dictatorial" tendencies of either of them, as well as to ensure collaboration between them. This equilibrium of powers within a state was supported by creating an arbitrary power, independent of all political parties, represented by the French president in the configuration of the 1958 French Constitution. This arbitrary power was translated[11] by stating the competence of all political powers and by preventing each of them to violate the duties of the other, as well as by acknowledging the possibility to decide.

In this context, the French constituent "strengthened" the institution of the President, by listing, in article 19 of the Constitution, his duties; while exercising his duties, he has the right to make his own decisions, without the obligation of having the signature of the prime minister or one of the other members of the government. Thus, we can distinguish between own duties of the President, which correspond to previously awarded duties and other duties which are shared with the government or the prime minister, which represent the common law duties[12], others than those regulated by the previously mentioned article 19.

However, the Romanian constitutional lawmaker did not choose to regulate a semi presidential regime similar to the French one neither when the Constitution was passed, in 1991, nor at the time it was revised, in 2003. As a consequence, the most important duties of the President are shared not only with the government or the prime minster, but also with the

[9] Idem, p. 17

[10] French doctrine distinguished between the traditional duties and the new duties of the president of the republic, stating that the first ones already belonged to the president of the two previous republics and will also belong to the president as stated by the current constitution, even thought it presents certain specifics which can be classified according to their nature in five categories: political duties, such as appointing the prime minister, other ministers or addressing messages to the parliament; executive duties, as passing laws, signing ordinances and decrees passed by the Ministerial Council according to article 13 of the Constitution; diplomatic and military duties, such as acknowledging foreign ambassadors and enforcing the constitution; the president is also the head of the armed forces; judicial duties, as the right to grant pardon and to preside the the Superior Council of Magistrates. The new duties of the president are the following: consulting the citizens by referendum in the cases stated by the constitution in article 11; naming three members of the Constitutional Council, the right to dissolute the General Assembly under the conditions stated article 12 of the fundamental law. See Pactet, P., *op. cit.*, pp.385-387. Recent doctrine also distinguishes between the duties which "traditionally" belong to the head of the state and the other duties which are specific for this position" in the current constitutional context. See Muraru, I.; Constantinescu, M., *Studii constituționale, volume II*, Actami Publishing House, Bucharest, 1998, pp. 34-36.

[11] Pactet, P., *op. cit.*, pag.385

[12] Ibidem

parliament or other public authorities[13], thus allowing direct or indirect control over the way these duties are fulfilled by the parliament.

Doctrine[14] also identifies other duties of the president of Romania which express the legal competence as stated by article 85 first alignment of the republished Constitution, according to which he names the government based on the confidence vote granted by the parliament, a situation in which the president's action and the fulfilling of one of his duties depends on the exercising of one of the parliament's duties, the one regarding the choice, formation, the notification, the naming or revoking of state authorities[15], namely granting the vote of confidence for the government according to the conditions stated by article 103 of the republished Constitution.

Doctrine has oriented its views starting from the distinctive regulation of the lawmaker towards analyzing the duties of both components of the executive, the President and the Government. Furthermore, it chose to restructure both of them depending on several criteria, an aspect which is visible, especially in regard to the duties of the President, as the duties of the Government are merely listed, if not ignored completely.

Starting from one of the criteria identified by doctrine, that of the subjects towards whom the duties are exercised[16], the duties of the president are as follows: duties exercised in relation to the parliament; duties exercised in relation to the government; duties exercised in relation to other authorities of public administration, in accomplishing some national public service; duties exercised in relation to the judge power; duties exercised in relation to the Constitutional Court; duties exercised in relation to the people.

As for the duties exercised by the head of the state in Romania in relation with the parliament, the constitutional provisions allow us to identify the following duties: convening or dissolution of the parliament; addressing messages to the parliament as well as passing laws.

According to article 63 third alignment of our republished constitution, the newly chosen Parliament is convening upon the request of the president of Romania within 20 days from the election[17]; the two chambers, the Senate and the Deputy's Chamber can be convened in extraordinary meetings upon the request of the President.

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[13] See Muraru, I.; Constantinescu, M., *Studii constituționale, volume II, op. cit.*, pp. 36 -37.

[14] Idem, p. 37

[15] Muraru, I.; Tănăsescu, S.E., *Drept constitutional şi instituţii politice*, C.H. Beck Publishing House, volume II, Bucharest, 2013, p.163

[16] Iorgovan, A., *op. cit.*, pp. 298-299. The same author groups the duties of the Romanian president according to other criteria: that of the frequency of exercising these duties, that of procedure, namely the existence of conditions and restrictions in exercising these duties; that of the judicial-technical forms by which they are accomplished. Also see. Apostol Tofan, D., *Drept administrativ*, volume I, C.H. Beck Publishing House, Bucharest, 2004, pp.108-109; Vida, I., *Puterea executivă şi administraţia publică*, "The Official Bulletin" Publishing House, Bucharest, 1994, pp.49-50.

[17] Provisions similar to those of our constitution are found in the Italian Constitution, which regulates in article 87 third alignment, that the president has the right to decide on the election of the two chambers as well as to establish the date of their first meeting. Also, article 109 second alignment of the Polish Constitution regulates the president's right to convene the Representative's Chamber - Sejm – and the newly chosen Senate, within 30 days from the date of election, for their first meeting. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

Thus, for its first session after the election, the lawmaker regulated the obligation of the Romanian President to convene the new parliament, thus regulating a prerogative from the time when the monarch would attempt to preserve some procedural means which would provide him with influence over the newly formed legislative[18], a prerogative which was inspired by the constitutions of other states with a parliamentary or semi presidential regime. Starting from the premises that neither the Senate nor the Deputy's Chamber appointed their internal working bodies at their first meeting, it was stated by the lawmaker that the latter – an authority „placed at the highest position of executive power"[19], has permanent activity, thus it would be the one who can convene the parliament for its first session. However, considering the examples provided by the provisions of other constitutions[20], as well as the provisions of our 1866 and 1923 constitution[21], we appreciate that this duty of the President can be replaced with the obligation regulated by the constitutional provisions, namely that the newly chosen Parliament can convene at a certain date or after a certain amount of time after the final election results are published. Another argument in favor of the new parliament convening at a certain time or after a certain amount of time since the election is the fact that, if the president does not convene the parliament within 20 days from the election, the parliament will convene by power of law.

[18] See Drăganu, T., *Drept constitutional şi instituţii politice. Tratat elementar*, volume II, Lumina Lex Publishing House, Bucharest, 2000, p. 240. This duty of the head of the state is found nowadays in the constitutions of states which are organized as constitutional monarchies. For example, article 35 first alignment of the Danish Constitution, passed on June 5th, 1953, states that the newly chosen parliament will convene at 12 o'clock in the afternoon on the 12th day after the election, except for when the King has already convened a meeting. Similar are the provisions of the Norwegian Constitution, passed on May 17th, 1814, as the King, according to article 68, can, in exceptional cases such as invasion or epidemics, point out a city other than the capital in which the parliament – Storting – can convene on the first working day of the month of October of each year. In case the Storting is not convened, the King can convene it, according to article 69, whenever he feels it is necessary. Furthermore, in Luxembourg, according to article 72 third alignment of the Constitution, passed October 17th, 1868, the Great Duke of Louxembroug opens and closes each session of the parliamentary chamber in person or through a designated person. Article 62 point b of the Spanish Constitution, passed December 29th, 1978 states that the King convenes and dissolutes the Parliament and establishes the date of election. We can notice that while some constitutions stated a specific date when the newly chosen parliaments can convene, they still acknowledged the right of the monarch to convene the parliament in extraordinary sessions. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[19] Drăganu, T., *op.cit.*, p. 240

[20] In the same manner, we mention examples from other constitutions. Thus, article 133 letter c) of Portuguese constitution acknowledges the president's possibility to convene the Republic's assembly only for extraordinary sessions as stated in article 63 chapter III Section II Title I of Part II of the Argentinian Constitution; the president is also granted the right to extend an ordinary session. The constitutional lawmaker chose to regulate a date when the newly chosen Parliament can convene for its first session, without giving this duty to the head of the state. As a consequence, according to article 173 alignment 1, first thesis, in Portugal, the Republic's assembly is convened by power of law, on the third day after the final results of the election are in. The Argentinian Constitution was consulted online at http://www.servat.unibe.ch/icl/ar__indx.html, and the Portuguese one at the following website http://www.tribunalconstitucional.pt/tc/conteudo/files/constituicaoingles.pdf, both May 5th, 2015.

[21] See the provisions or article 95 alignments (1), (4), (5), (6), (7) and (8) of our 1866 Constitution and article 90 alignments (1), (4), (5), (6), (7) and (8) of the 1923 Constitution. The constitutional regulations acknowledge the King's right to convene the Assemblies in extraordinary session, to dissolute both chambers or just one of them, to present a message at the beginning of the session and to close the session of the assembly. He is also granted the right to convene the parliament - the National Representation, but just before the time the two Assemblies must convene by power of law, namely October 15th of each year.

Our Constitution, much like most constitutions[22] acknowledges the president's right to convene the parliament in extraordinary sessions under certain established conditions, with or without previously consulting other authorities such as the government, the parliament's internal working bodies or the parties which are represented in the parliament.

Thus, although the provisions of article 66 third alignment of our constitution state that not only the president, but also the permanent office of each chamber or at least a third of the members of each chamber can convene an extraordinary session of the parliament, the rules of both chambers clearly state the conditions which are required in order for such a demand to be considered. Thus, both article 82 alignments 2 and 4 of the Senate's regulations and article 84 alignment 3 of the Deputy's Chamber Regulation mention that every request to convene an extraordinary session, regardless of who demands it, must be made in writing and it must comprise the reason, the topic of discussion as well as the duration of the session. The lack of any of these elements will no longer allow for an extraordinary session.

However, if the convening is requested by the president of Romania, even for an extraordinary session, it still represents a prerogative of the presidents of the chambers as stated by the constitutional provisions of article 66 third alignment, as well as from the provisions of the two previously mentioned regulations – article 81 third alignment and article 84 third alignment. These texts of the Regulations state the fact that in case the request for convening an extraordinary session does not comprise all the necessary elements as stated before, the president of the Chamber can dismiss the request.

The Romanian President has the right to „start" the Parliament or to convene it in extraordinary session; he also has the right to end legislation before its 4 year term; thus, the Constitution[23] acknowledges the president's right to dissolute the parliament. If the legally required conditions are met, according to article 89 of our Constitution, the Romanian

[22] For example, the provisions of article 85 second alignment of the Slovenian Constitution, grant the president and at least a quarter of the members of the General Assembly, as well as the president of the Assembly, the right to convene the National assembly of the Slovenian Parliament in extraordinary session. The French constitutional lawmaker granted the prime minister and not the president with the right to convene the parliament in extraordinary session according to article 29 first alignment of the Constitution; however, if the parliament is not convened by power of law, the opening and closing of the extraordinary sessions is made by the president of the republic by decree. The French doctrine appreciates that this is a duty of the president without which the discretionary power of the president would not able to manifest itself. However, current practice dictated that this point of view must be changed. Thus presidents such as De Gaulle or Mitterand refused to sign such decrees, an action which entitled doctrine to state that the final decision on convening a extraordinary session of the parliament belongs, in fact, to the French president. The 1995 change of the Constitution and the introduction of a unique session of the parliament was described by doctrine as one of the ways by which the convening of the Parliament in extraordinary session was let go and also the possibility of the president of the republic to manifest his discretionary power and that of avoiding possible political conflicts between the president and the prime minister and the president and the parliament. See Portelli, H., *Droit constitutionnel*, Dalloz Publishing House, Paris, 1999, p.204 and 251. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015.

[23] Most constitutions acknowledge this right to the head of the state – president or monarch. For example, article 88 first alignment of the Italian Constitution states the possibility of the president of the republic to dissolute one chamber or both of them after having previously consulted the leader of both chambers. However, the Czech constitutional lawmaker provided the president with the right to dissolute just one chamber of the parliament, the Deputy's Chamber, according to article 62 letter c). Furthermore, Latvia's Constitution granted the president with the right to suggest the dissolution of the parliament in article 48. An election will be organized based on his suggestion and if more than a half of the votes are in favor of the dissolution, the parliament will be dissoluted. If, as a result of the election, the parliament is not dissolute, the responsibility will belong to the president which will be released of his duties, as the parliament will chose another president. The Constitutions were consulted online at http://www.servat.unibe.ch/icl/index.html, on May 5th, 2015

president can dissolute the entire parliament and not just one of its chambers. These conditions are: not granting the vote of confidence for the formation of the government within 60 days from the first request; dismissing at least to demands for forming the government, the previous consultation of the presidents of the two chambers and the leaders of parliamentary groups, to be the first and only dissolution within a year, to not occur during the final 6 months of the president's term and to not occur during one of these circumstances: general mobilization, war, the country is under siege or in a state of emergency.

As it expresses a political crisis, the „weapon" of dissolution of the parliament is a direct and personal action of the president against the parliament; it entails the president signing a decree which must be enforced by the prime minister[24]. While taking this measure, the president must consult with the two presidents of the chambers and the leaders of parliamentary groups, but he is not held to consider their point of view, as the final decision is made entirely by the president. By taking such a measure, the president can avoid causing some institutional or social blockage, a situation which occurs
when the government is forced to collaborate with the parliament and the parliamentary majority no longer supports a minority government, provided that the president „is one the side" of the government. But the dissolution of the parliament is also seen as „a weapon against attack of governmental coalitions"[25] when the president would not have been supported in his actions by the parliamentary majority, as the majority is held by the government.

These meanings as identified by French doctrine give the French prescient a role of active referee in the relation between the executive and the legislative; according to article 12 of the constitution, the president can also dissolute one of the parliamentary chambers, the General Assembly. However, we do not believe that such a role „suits" the profile of the Romanian president which is more similar to that of the president of a parliamentary republic, rather than that of a semi presidential republic like the French republic. Given all these, we appreciate that exercising this duty by the Romanian president would by justified when there is an institutional blockage, rather than when it is the cause and effect of political games. However, if the president decides to dissolute the parliament, he must respect the constitutionally regulated conditions, which are described by doctrine[26] as general conditions: not granting the vote of confidence for the formation of the Government within 60 days of the first request; dismissing at least two requests during this time; previously consulting the presidents of the two chambers and the leaders of parliamentary groups and special conditions, as listed above.

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[24] See Pactet, P., *op. cit.*, pp.390-392.

[25] Idem, p.392

[26] Iorgovan, A., *op. cit.*, p.305

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