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**Consideration on Monocratic and Dualist Executive
Powers as Components of the State**

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Abstract: The concept of rule of law implies the limit of the state rights, it regulates their activity, the excess and the arbitrary and sets his own rules of conduct. Montesquieu was the one who clearly formulated the principle of separation of powers, inspired by the ancient Aristotle and the English philosopher Locke, having the English regime as a model, which had known separation of powers from the XIII century (legislative, executive and judicial). Montesquieu preconfigured a political system that highlighted a moderate government, by ensuring separation of powers and political freedoms, where political freedoms can be exercised only in a government where power is limited. The doctrine of specialty defines executive power as a distinct function of the state, among the legislative and judicial functions. Thus, in this function are found certain duties which are subject to distinct activities of public authorities. Among these tasks, Jacques Cadart nominated: defining the general policy of the country, drafting of laws necessary for the carrying of this policy, the adoption of necessary regulations and individual law enforcement decisions for the operation of public services, enterprise performance measures material on public order, territorial arrangement of the armed forces and police, and management of international relations.

Keywords: separation of powers; presidential system; constitutional regimes

1. Introduction

The pluralist and liberal systems advance the democracy. From the institutional point of view, the democracy brings into focus the principle of separation and balance of powers of State. The level of separation and cooperation within the powers is the one making the distinction between:

- strict separation of powers, characterized by the independence granted by the executive to the legislative and also by the cooperation forwarded among them by the Head of State: the presidential regime;
- flexible separation of powers, characterized by cooperation between the legislative and executive, the former being equipped with action and pressure: parliamentary regime;
- semi-presidential regime appeared as a result of combination of the first two systems, so both the legislative and the executive have bodies derived from the nation, equipped with direct legitimacy from the holder of sovereignty. This regime does not support the superiority of one power over the other, but most often it goes to the other extreme, promoting the Head of State, which is called to ensure the balance between powers, even though it is part of the executive power, therefore, most of the times, it becomes a presidential regime (Nedelcu, 2009, p. 53 and following).

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2. Regime of Strict Separation of Powers

The absolute or strict separation of the three powers often characterizes the presidential regimes. The Constitution decides the clear separation of powers. For a theoretical analysis of the system, the separation of the legislative and executive powers is particularly relevant. In presidential political systems, the interactions between the two governmental structures are fewer and less complex than the parliamentary political regimes. There is definitely cooperation between the executive and the Parliament, but it is limited and most often it is in favor of the executive (Ioan, 2008, p. 238 and following).

Nowadays, besides the US, whose presidential system was initially institutionalized and founded on constitutional doctrine, the Latin American and African states have also adopted this regime.

Generally, the presidential regimes are characterized by the following:

- the executive power is entrusted by Constitution to the president, who's given simultaneously large responsibilities in the general management of the State;
- the president is elected by universal, equal, direct and secret vote, for a time varying from one constitutional system to the other (4 years in the US, 7 years in Turkey, etc);
- from the representation point of view, the president election procedure is similar to the one related to the election of Parliament. Thus, the president and the Parliament have equal positions on nation's representation;
- the president may not dissolve the Parliament and the latter cannot call off or release the president. The impossibility of calling off the president's mandate does not set aside the possibility of charging the Head of State for specific actions according to certain procedures. Nevertheless, in the US for example, the president is given a legislative veto right;
- the ministers are not made liable for the governmental activity they develop before the Parliament.

The practice of the presidential system proved the capacity of the executive and legislative powers to cooperate, but the risks of conflict are numberless and there is no institutional way of solving such disputes, compared to the parliament regime.

3. Monocratic Executive

In this sense, it is said that the monocratic executive or monist regime represents reminiscence of the imperial antiquity and the monarchic absolutism, adapted to the constitutional rules. Thus, the issuance of the powers separation theory, first in England and then in France, initially led to the transformation of the absolute monarchy into limited monarchy, then to the discovery of the executive's forms subjected to the rules of parliament democracy. It is worth mentioning that, by passing from the absolute monarchy to the one limited by the Constitution, the monarch lost most of his liability omnipotence, being given the exclusive prosecution of his executive function, at rivalry with the legislative one, which he exercises together with the Parliament. This model is valid today in many states, but in certain cases, the roles of the monarch became almost formal.

The contemporary executive monocracy experiences the most severe expression of the State's powers separation in the presidential political regimes where the executive is reduced to the president of state or country who's responsible for the law application and enforcement.

The presidential system is not applied only in the northern half of the American continent. This presidential model extended towards the Latin-American and African states and recently, to Russia, after the Constitution has been adopted. It is noticeable that, in the states influenced by the American presidential system, the Government appeared adjacent to the president of the republic. Still, this institutional innovation has not altered the nature of the political regime due to the competences of the president related to the development and operation of this part of the executive. In most of these states, the American model has been altered, becoming a presidential political system (Iorgovan, 2001, p. 115 and following).

4. Dualist Executive

The dualist executive is first of all a structure of the parliamentary regimes where the executive function is granted to a person or a collegial body, with responsibilities that can be carried out quite independent; the person acts as head of state and the collegial body is called ministerial cabinet. By its nature, the dualist executive varies from one state to another and within the same state depending on the real nature of the report that exists between the head of state and the collegial body (Vedinaş, 2002, p. 101 and following).

Besides the harmonious cooperation and balance between the legislative and executive powers, the parliamentary system is characterized by:

- the election of the president of the republic by the Parliament. This characteristic is obvious only in republican forms of government;
- the political liability of the Government members and of the Government as a whole before the Parliament. The Parliament members are the ones electing the Government by a direct majority suffrage;
- the investiture of the head of state (monarch or president of the republic) with limited responsibilities on effective leadership. The head of state does not assume any political responsibility but can be sanctioned according to a special procedure, just for certain actions: capital treason, or violation of the Constitution and of the laws;
- constitutional prerogatives grant the executive certain conditions, expressly and limited stipulated by the fundamental law, to dissolve the Parliament. Nevertheless, the dissolution of Parliament is not a sanction applicable to Parliament, but a way of solving the conflict. In general, the politics actors, head of state, Parliament (chairmen of the two Chambers, leaders of the parliamentary groups), party chairs – have political and legal instruments to prevent social crisis and missions, conflict situations generated by inappetence or even refusal of one party to cooperate or try to find a constitutional solution to solve a particular problem. Ultimately, new general elections can be applied to form a new Parliament and a new governmental team.

In legal practices, there are different types of parliament regimes, more or less resembling to the original one. Referring to this diversity, Professor Charles Cadoux justly considers that the constitutional mechanisms, national traditions and the game of political parties explain the differences, often significant, within the Parliament operation (Negulescu. 1934).

By methodological simplification, one can identify three institutional possibilities to distort the classical model of parliament system:

- preponderance won by the Government through a long-lasting constitutional evolution compared to the Parliament. The characteristics of this “distortion” or the constitutional resort of the operation of such a regime consists in the government prerogative to organize beforehand parliamentary elections in case of disagreement with the parliament or impossibility to solve a problem of major interest. The new parliament, as well as the new government formed according to the results of the anticipated elections shall try to get out of the impossible situation that has blocked the previous political actors;
- preponderance of parliament over the executive.

In the French constitutional system, the parliament had a preponderant role compared to the executive power of the 3rd and 4th republic (1875-1958). This system is known, as mentioned above, as the “regime of assemblies”. The reaction towards this model was very prompt, at least in the doctrine. Thus, it was delineated the theory of the „rationalized parliament”, which tend to minimize and rationalize the responsibilities of the legislative forum and to re-balance the reports between the parliament and the executive;

- strengthen the prerogatives of the head of state. This deformation of the theoretical parliamentary model is generated by the intention of the head of state to overcome its

conditions of constitutional body lacking effective power and practically politically irresponsible. Consequently, he is ascribed legal and political instruments through which the Head of State can impose its will before the parliament. He continues to be politically irresponsible but ceases to be a constitutional decoration piece.

Professor Charles Cadoux identifies three ways of accomplishing a preponderance of the head of state:

- establish a double responsibility of the government towards the parliament and towards the head of state who is however subordinated to the legislative power;
- maintain the responsibility of the government towards the parliament together with the Head of State's investiture with real powers by universal and direct suffrage. The Head of State has special power, enjoys the national privilege and is the moderator between all the other political actors. As doctrine, many actors have called this system "presidential regime" and "rationalized presidentialism". It is considered that it was the present French constitutional system that implemented it;
- the head of state assumes the duty of a premier (monocephalic executive), but is subjected to a political control performed by the parliament. This system characterizes certain African constitutional regimes which tend towards a presidential political system.

The theory of separation of powers in state has revolutionized political thought and practice of world states at the end of the eighteenth century and generated a process of constitutional renewal in Europe and North America, because it offers an alternative to absolutist government and a bulwark against government tyranny.

During the two centuries of applying the theory of separation of powers it took different forms in each regime. Basically, two states meet the practical aspects of separation and distribution functions (powers) legislative, executive and judicial branches have an identical form.

Even within the same state, in an evolving history more or less long, they found changes in the ratio of power for the benefit of either of them, although constitutional provisions governing the distribution of power attributes remain unchanged.

Contemporary expression of monocratic executive knows is the rigid form of separation of powers in presidential regimes. In these regimes, the executive is reduced to the president of the country, which is responsible for implementation or enforcement of the law, and on the other hand dualist executive nuances from state to state and in the same state, depending on the specific nature of the relationship between president and collegial body. Parliamentary regimes are, essentially, dualistic, they have a head of state, appointed by parliament, and a government that is headed to a prime minister who acts as chief executive. The position of president, appointed by parliament, is twisted by the role of political parties in his appointment as the head of the Government is subject to rules of parliamentary majority.

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