

IDENTIFYING AND EXPLAINING THE EXECUTIVE TERMINOLOGY ESTABLISHED BY FOREIGN CONSTITUTIONS IN STATES ACKNOWLEDGING A PRESIDENTIAL REGIME

O. ŞARAMET¹ I.C. GLIGA¹

Abstract: *Identifying the executive, its structure, determining its relationship with the legislative and with the judicial power, identifying the election, designation and appointment procedure for the members of the executive, can be done by determining, based on the constitutional norms of the various states, the political regime establishing the organisation and functioning of its powers. It is also necessary to mention the fact that from the point of view of the form of government, each state has distinctive features with regard to the organising and functioning of powers in the state, to the relationships between them, on the one hand, as well as to the executive, on the other hand.*

Key words: *executive, political regime, terminology, form of government.*

1. Introduction

Explaining as correctly as possible what the executive implies and the terminology used by the constitutional lawmakers in various states is also possible starting from the form of government, but especially from the political regime established by constitutional provisions, also taking into account the essential role often held by the executive, particularly by the government, in the relationship between legislative and executive.

Therefore, the inability to talk about a political regime pattern imposed the need for certain classifications of the various

types of political regimes able to indicate as close to the existing political and constitutional reality as possible, the way in which power is exercised.

As pointed out in the literature as well, although certain political regimes present the main features of a particular type of regime and they are characterized by a relative stability of their institutions, a perfect and final classification of the various political regimes cannot be made. At best, their key elements can be identified, based on which value distinctions can be established between these regimes, such as the organization of the state, namely the organization of

¹ Faculty of Law, *Transilvania* University of Braşov.

governance structures and the relationships between them, as well as their activity [10].

2. The political regime – criterion used for presenting the constitutional provisions of other states regarding the executive

Determining the political regime of a state entails highlighting the ways, the procedures or the methods by means of which, those who have the task of exercising political power, govern [4].

The classification and explanation of political regimes has been made since the most ancient times, practically from the moment they appeared, the opinions expressed being diverse. However, we can notice the existence of a constant, namely that two classical political regimes can be identified – the parliamentary regime and the presidential regime. [[1],[2],[11], [12], [13], [15], [17], [18], [20] and[21]. These regimes can be considered genuine inspiration sources for the creation of other political regimes, such as mixed regimes, which either borrow from the parliamentary regime, or from presidential or marginal regimes, such as the assembly – regime of an undeniable originality identified in Switzerland [19].

Classifying political regimes would be easy, superficial and inadequate to the current realities, similarly as democracy – as a form of governance and type of functionality of the political regime itself – exists or not in a state, thus identifying democratic political regimes and autocratic or totalitarian political regimes. Reflecting the "fundamental contradiction between the ideology of the Western European democratic states and Marxist ideology", this classification appears insufficient also given that the defining elements of fundamental political regimes - parliamentary and presidential - can be

identified in these regimes, an aspect that can be noticed even in our country in the period prior to December 22, 1989 [10].

The classification of political regimes accepted by the majority of the doctrine, to more or less relevant degrees, is made by taking into account criteria such as: power, or more precisely, the organization of power, with emphasis not necessarily on who owns the power, but mainly on who are the persons or bodies, state authorities entrusted with the exercise of power; the theory of separation and balance of powers in the state and the way in which it has been applied in various constitutional systems, "the separation of state powers being more strict or less strict, more defined or less defined", thus reaching a balance, a collaboration of powers or their rigid separation, but also the fusion of the three traditional powers [5].

According to the Western doctrine, political regimes are classified into: pluralist political regimes and dictatorships or totalitarian political regimes. In the group of pluralist regimes we can identify: presidential regimes, parliamentary regimes and mixed regimes [19].

2.1. The presidential regime

It is characterized primarily by a clearer separation of state powers, and in order to create an executive as independent as possible from the legislative, the executive power is vested in a president elected by the voters by direct or indirect vote.

The executive in a presidential system is characterized by: monocracy or monocephalic governance, the executive power being entrusted to a single person - the president of the republic - who fully exercises it, or by means of certain ministers or state secretaries; the president of the republic is, at the same time, the head of state and the head of government; there is no government, the ministers or

state secretaries not forming such a collegial and solidary body, each of them having individual roles and responsibilities; the ministers or state secretaries are directly accountable for their activity only before the president of the republic, the latter appointing or dismissing them from office; both the executive and the legislative powers are independent, none of them being able to intervene in the activity of the other and not being able to exert any pressure on the other; there is the certainty of the "function stability" until the expiration of their legal mandate, for the bodies exercising the executive power, as well as for those who exercise the legislative power.

Perhaps one of the most important shortcomings of this political regime is the absence of the means specific to a parliamentary system of mutual control of powers, in particular of the legislative compared to the executive.

Thus, the inability of dismissal of the president of the republic by the legislative or the dissolution of the latter by the president of the republic, forces the two authorities to manage their own conflicts, being forced to coexist. The situation is more apparent when the president of the republic and the parliamentary majority are exponents or even belong to different parties.

This regime is successfully practiced until nowadays by the United States of America, being also adopted by other countries in South America (e.g. Brazil, Mexico, Argentina) and in Africa (e.g. Liberia), the European states preferring not to implement this system.

As regards the states having taken this regime, none of them has managed to faithfully copy the American model, failing either to install an atypical presidential regime, or to transform themselves from a democracy into a dictatorship.

We have taken into consideration the European Union member states, including those who have recently joined, but also those who wish to join, making efforts in this regard, such as Turkey.

2.2. The parliamentary regime

It is a political system in which the separation of powers - assuming the functional autonomy of the three body categories, but especially of the legislative, as well as the existence of specific means of mutual pressure - is characterized by flexibility and dynamism [3].

The features of such a system can be considered: the dualism or bicephal executive, represented by the head of state, on the one hand, and by the government, on the other hand; the existence of a distinction between the functions of the head of state and those of the head of government; the political irresponsibility of the head of state before the parliament, which he cannot revoke; the government is a collegial body accountable for the overall activity of the executive before the parliament, without the consent of which it cannot be appointed.

We can state that the essence of this regime is the need, but also the obligation of the government to always have the confidence of the parliamentary majority in order to be a functional system [19].

Consequently, it is indirectly accountable for the activity of the head of state as well, the acts issued by the latter having to be necessarily countersigned by the head of government.

On the other hand, due to the fact that it is a system based on the cooperation of the powers, a mutual check between them must exist, the "check and balance" system, specific to any regime acknowledging the balance of powers in the state, being more visible than in the case of the presidential system, and

because specific means by which the legislative and the executive mutually control themselves exist, they restrain their possible dominant trends. Thus, the government, by means of the head of state, can decide to dissolve the legislative power, and the parliament can withdraw its confidence vote given to the government.

Both the presidential and the parliamentary system mainly aim to achieve balance between the powers, the former achieving this by opposing to the legislative of an equally powerful executive, and the latter by working together with the other powers [3].

The parliamentary regime has had a slow historical evolution, which enabled it to take several forms. Thus, we can talk about a dualistic parliamentary system, characterized by the fact that the government is accountable for its activity both before the legislative power, as well as before the head of state; about a monistic parliamentary system, characterized by the fact that the government is accountable only before an assembly elected by universal vote. Given the party system existing in the states having a parliamentary regime, two additional aspects of the latter can be observed, namely: the bipartite parliamentary system or the "Anglo-Saxon" system, and the multipartite parliamentary regime.

2.3. The semi-presidential regime

The doctrine is not unanimous in acknowledging this type of political regime, about which its founder believed that "this only means that the President is not the only holder of the executive power, emphasizing that there is a prime minister as head of a government accountable before the members of the parliament, therefore forced to resign if he is not entrusted with confidence, or if he

becomes suspicious" [7].

Whether we accept the existence of this regime under the form and name established by who defined it for the first time, or we appreciate that it is a streamlined parliamentary system, or a system combined with features "borrowed" from the presidential regime, it is clear that it is neither presidential, nor parliamentary, the president of the republic being more powerful than a president in a parliamentary regime, mainly because his democratic legitimacy is stronger, being invested following a universal suffrage, directly by the voting citizens [8], [19].

M. Duverger was the first to define the semi-presidential regime, "understood as the institutions of a democracy including the two following elements: a president elected by universal suffrage and provided with notable personal powers and a first minister and government accountable before the parliament" [8].

The semi-presidential regime is a French creation, however, as previously mentioned, the current French political regime classification, a regime established especially after the 1962 revision of the Constitution of 1958, is very different. Thus, for example, A. Hauriou mentioned that this regime is half parliamentary, half presidential, highlighting two imbalances within it - one related to the executive branch, the other to the public authorities [9].

On the contrary, J.P. Jacqu  considers that the current French regime is presidential, better said, presidentialist [14].

I. Deleanu believes that the current French system is a "hybrid" after having previously been presidential.

Besides, the latter author argues that the presidential regime, typically French, as well as the conventional regime in which the legislative primacy is obvious, such as in Austria, and the intermittent presidential

regime, such as in Portugal and Finland, are mixed regimes [3].

The features of such a regime that tried "to substitute a series of disadvantages of the presidential system, but also imperfections of the parliamentary regime", are difficult to identify especially since each state establishing it has also made it distinctive [6].

France is the most obvious example, but among the states who establish this system there are also: Finland, Portugal, Austria and Romania.

Notwithstanding, among these features we can identify: the executive dualism, consisting of the head of state and government led by a prime minister accountable before the parliament; the appointment of the head of state - the president - directly by the electorate, by means of universal suffrage, being, from this point of view, at equal level with the parliament; the rights and prerogatives of the president are more powerful than those of a president in a parliamentary regime, but not identical to those of the head of state in a presidential regime, in which the rigorous separation of powers is clearly reflected; the political irresponsibility of the president, the government being accountable for its activity and for the executive in general, before the parliament; the absence of a discretionary power of the president in the appointment of government, by appointing a prime minister or a candidate able to enjoy the confidence of the parliamentary majority; although the president's dismissal by the parliament or by the electorate can occur, this can happen only in particularly serious situations and only following complicated procedures.

Thus, the president of a semi-presidential republic has the right to conduct the meetings of the government, he may even have the right to vote in such meetings; only some of the acts issued by the

president must be countersigned by the prime minister to be valid; the president is not entitled to legislative initiative; in certain situations and subject to the observance of certain conditions clearly specified by the Constitution, the president can dissolve the parliament; the president is entitled to call for a referendum; the president can be dismissed only in certain conditions and subject to the observance of certain procedures.

The current political regimes established by the constitution are based either on the stricter separation of powers - the presidential regime, either on their collaboration - the parliamentary regime, but also the semi-presidential regime, or on the fusion of powers. In the latter category, we can identify: the dictatorship regime, the directorial regime and the assembly regime [3].

In the framework of the dictatorial regime, we must note the predominance of the executive compared to the legislative, although the power is individualized and held by means of coercion.

In the directorial regime, the executive is mainly monocratic, being represented by a collegial body elected by the legislative, but before which it is not accountable, the legislative not being able to revoke it, but only to annul and amend the acts.

Such a system is established by the Swiss Constitution, the doctrine appreciating that, legally, it is certain that the Government of this state – the Federal Council is nothing but a body whose members are elected by the Federal Assembly – the Federal Parliament being bound to observe the Parliament's policy without being able to resign and without being conferred by the Constitution with effective specific pressure means [9].

It has also been stated that the Swiss executive is not only influenced by the legislative power, but that it influences it [3].

The institutional separation of power prerogatives, an expression of both compromise and close collaboration of the Swiss parties, expresses the originality of this regime. A system in which the executive is represented by a collegial body, the Federal Council, a president being appointed out of its 7 members, according to art. 175 par. (2) of the Swiss Constitution, by the Federal Parliament, as a formality, for a one year term. Art. 176 par. (1) indicates that the President of this Federal Council is the President of the Helvetic Confederation. The Constitution, by means of art. 174, establishes the nature of this authority, mentioning that it is the highest executive and governance authority of the Federation. As regards the relationships between this Council and the legislative, the former is not politically accountable before the latter, but must comply with the Parliament's guidelines which, under art. 182 par. (2), he must enforce, being also conferred with the right to legislative initiative (181). On the other hand, the Council is collectively accountable for its acts and actions, thus for its activity, but cannot collectively resign. Being the exponent of an executive dependent on the legislative, the Council will not be able to proceed to the dissolution of the Federal Parliament.

Whereas in the directorial regime, the stability of the executive, determined by the inability to revoke it or to resign prior to mandate expiration, may indicate its superior position compared to the legislative, in the assembly regime, the legislative system tends to subordinate the executive, a reason for which we cannot put an equality sign between this political regime and the parliamentary regime, although the assembly regime is the closest to the parliamentary system. It has been appreciated in the doctrine that such a regime could be based on "a discredited executive", which makes it an ephemeral

regime subject to transformation, along with the "revival" of the executive, either into an executive specific to a directorial regime, or into a parliamentary regime. The collegial structure of the executive, its designation and revocation by the legislative, the lack of accountability from the executive before the legislative, the latter being able to annul or amend the executive's decisions, are some of the features of an assembly regime [3].

Such a system existed in France during the 10 months of the Convention replacing the legislative (20/09/1792 - 26/07/1793), and at the present moment, due to the play of the multiple parties, the Italian parliamentary system actually works as an assembly government [16].

3. Identifying and explaining the terminology related to the executive, used by constitutions establishing a presidential regime

The U.S. Constitution, representing "somewhat of a prototype" for a presidential regime, establishing as a principle, because the normal functionality of the system cannot exclude the existence of certain relationships between the legislative and the executive, a clearer separation of state powers, expressly provides in art. 2 that the executive power shall be exercised by the President of the United States of America [4].

The same article states the procedure by which both the President and the Vice President will be elected, the conditions and the moment they will start exercising their mandate, as well as the relationships with the authorities to whom the exercise of the legislative and judicial powers is entrusted.

Paragraph 2, section 1 of the same article states that the President may request, in writing, the opinion of the head of each executive department on any issue related

to the assignments of those departments. The Congress may grant by virtue of the law to the heads of these departments, according to section 2 of this paragraph, the right to make appointments for public offices. Although it states the existence of these heads of departments, the U.S. Constitution does not mention the existence of any Government, as collegial body, able to exercise the executive power along with the President. A monocratic executive is thus regulated, represented by the U.S. President, in whose direct subordination is each of the heads of departments, excluding the sharing of the power held by the President with them, as well as their collective accountability before him and even less before the U.S. Congress, although the appointment of these heads of department is made with the agreement of the Senate - one of the two Houses of the U.S. Congress.

In terms of content of the executive power, the U.S. Constitution mentioned in paragraph 3 of art. 2 that it is incumbent upon who exercises it to monitor the proper application of the laws, to appoint all the officials of the United States, thus conferring him a superior position compared to those charged with the enforcement of the law. It is also necessary to mention the fact that the power of the U.S. President compared with other constitutional authorities is also conditioned by extraconstitutional aspects, such as his personality or the training of the members of the "presidential administration", as well as their influence on the "American leader". When we refer to the "Presidential Administration" in the U.S., we mean the members of "The White House Office", of the Agencies in the "Executive Office of the President", of the U.S. Office – using this terminology only as a formality, actually referring to the heads of department (secretaries of state) as well as all the other independent

agencies, commissions etc. [22]

The American constitutional system has also been adopted by other countries, especially by those in South America, who adopted it to their own realities, preserving features specific to a presidential regime, but also influences of a semi-presidential system, if not parliamentary even.

In this regard, we can mention the regime established by the Constitution of Argentina, regulating the executive authorities in Section II of Title I - Federal Government – in Part II – the Nation's Authorities, its title even being "the Executive power". The influence of the United States Constitution is remarkable not only because state authorities are identified in its regulations by the powers they exercise, but also because, according to art. 87 of the Argentine Constitution, the executive power shall be vested in a citizen bearing the title of President of the Argentine Nation. Also, art. 88 of the same normative act states that in the expressly specified situation in which the President of the Republic is unable to perform his duties, the executive power will be entrusted to the Vice-President of the Nation. Chapter III of the aforementioned Section is dedicated to the duties of the executive branch, without, however, making a distinction between the functions and powers of the President of Argentina [23].

The aforementioned influences are visible by virtue of the regulation in Chapter IV of the Section dedicated to the executive power, to the chief of the Cabinet of Ministers – the prime minister – to the institution of the Cabinet of Ministers, as well as to the ministers who exercise the executive power along with the President of the Republic. However, it is emphasized, including by the powers conferred to those authorities, that the President is, in fact, the decision maker at executive level.

The prime minister or the chief of the Cabinet of Ministers, the two terms are synonymous, and consequently the Cabinet he leads, are the tools by means of which the President fulfills his duties as the chief executive, being in a subordination relationship with the latter.

In this respect, art. 100 par. (1) point 4) in the Constitution of Argentina states that the Prime Minister is authorized to exercise the functions and powers delegated to him by the President and upon the Cabinet's agreement, to decide on matters indicated by the executive or on which, without the agreement of another authority, he considers it to be one of his duties, due to its importance, provided his competence be observed. Also, the art. 99 point 1) states that the President of the Nation is the head of the Government.

Although the Constitution tries to validate the idea that the prime minister and the ministers are similar, at least with regard to their status, to the secretaries of state, if not even to the presidential advisors in the American system, we cannot fail to notice that, unlike the latter, the prime minister is politically accountable before the National Congress [art. 100 par. (1)], and that each minister is accountable for every act he issues, as well as severally liable for those acts on which he agrees along with his colleagues (art. 102).

With regard to the relationship between executive and public administration, it can be estimated as being on the same level, due to the fact that the President of the Nation (art. 99 point 1) is accountable for the overall administration of the country, and the prime minister is authorized to exercise the overall country administration [art. 100 par. (1) point 1].

The Constitution of the Russian Confederation establishes a presidential regime although in some aspects it is inspired by the French Constitution of

1958. [14]

Establishing even the socio-political realities, subsequent to the collapse of the U.S.S.R., it is stated that the exercise of state power is based on the separation of its legislative, executive and judicial powers. It is also provided that the executive bodies, along with the legislative and judicial bodies, are stand-alone.

The Russian constitutional legislator did not stop to stating this classic principle of organization of powers, a reason for which he indicated the state authorities who exert state power, executive power being entrusted to the President of the Russian Federation and to its Government. The relationship between the two executive authorities is similar to that of the corresponding authorities in Argentina. Thus, even if the Russian Constitution stipulates the role of the Government of the Russian Federation, namely the exercising of executive power, and the article mentions that the appointment of the President of the Government is made by the President of the state, with the agreement of one of the Chambers of the Federal Assembly - the Duma - an additional provision entrusts the latter with one of the specific executive functions - to determine the guidelines of the domestic and foreign policy of the state. In relation to this, we also need to point out that in the exercise of his powers, the President of the Republic shall issue decrees and executive orders which are above the legal force of the acts issued by the Government in the exercise of its own powers.

On the other hand, Russia's federal state structure will also influence the executive. Thus, the Constitution states that the system of these bodies, their organization, activity and training are the competence of the Russian Federation. However, it is allowed that, provided the bases of the constitutional order of the Federation and the general organization

principles of the executive bodies of state power are observed, the legal entities forming the federation - from states to autonomous districts - have the right to build up their own system, including executive bodies. However, within the limits of competence established by the Constitution, these executive bodies along with those of the federation form the system of executive bodies.

4. Conclusions

From the constitutional provisions identified, developed and explained hereinabove, I basically gathered the main aspects of a presidential regime, emphasizing the specificity of a strong executive, which we will not find in the states establishing the other forms of political regime, therefore neither in the regime established by the Romanian Constitution, currently in force.

On the other hand, we can certainly state that we will not find a regime and consequently an executive such as the American one in no other states where we can find regimes and executives similar to the American ones, which can be considered variations thereof, or some others can only apparently resemble the American regime, such as the Russian one. In this latter case, we believe that we should decide if we are dealing with a democratic regime or not, and only then will we be able to raise the issue of its classification as presidential or not.

We should also mention that we will not be able to find an exact copy of the American regime, and thus, of the American executive, given that the specificities of each state, of each nation will certainly make their mark on both the regime and the executive, individualizing them.

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