

# The Role of the Government in the Romanian Constitutional System

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**Abstract.** The executive power is aimed at overseeing law enforcement, ensuring the proper functioning of public service and making laws and individual documents or executing material operations by which, under law, it intervenes in social relationships.

In the Romanian political system, executive power is divided: on the one hand, the president shares power with a prime minister, on the other hand, the prime minister must continuously obtain the support of Parliament. The Government is a collegial and solidary body, led by the prime minister, being under the control of the legislative power from appointment to the end of its term. Parliamentary oversight methods are provided in the constitution, and are extremely varied, such as the vote of confidence, questions, inquiries, commissions of inquiry, simple motions, motions of no confidence, engagement of government liability and even of criminal liability for government members.

**Keywords:** Executive power, Government, Members, Romanian, Constitutional System.

## 1. General Aspects

The executive traditionally includes two types of bodies: a unipersonal body – the head of state – and a collegial body – the government –, which may coexist or not. When these two bodies coexist, they have shared functions and different responsibilities [1].

The government, as a collegial body, holds the executive power in parliamentary political regimes, together with the head of state. Within the executive, the balance may tilt in favor of the unipersonal body or in favor of the collegial body, but regardless of the pre-eminence of one or the other of the bodies, they may exercise powers that are proper only to one, or powers that they can only exercise together [2].

Traditional French doctrine has classified executive power into: monocratic executive, collegial government, dualistic government and assembly-regime executive [3].

Regardless of the structure of the executive, the second half of the twentieth century saw a marked increase in the role of the executive within state powers, beyond the simple enforcement of rules of law. Three issues are of great importance in the formation and operation of governments, namely: the degree of freedom in changing the governmental structure that influences the stability and resilience of the administration; the position of a head of government can be *primus inter pares*, or a true leader of the government; and the functioning of the government team, which conditions the coordination of ministries and government action results [4].

The Romanian Constitution, through the entirety of its regulations, enshrines a dual executive, consisting of a head of state, appointed president by universal, direct suffrage, and a Government appointed by the head of state based on the Parliament’s vote of confidence.

## 2. The Role and Structure of Government in the Romanian Political System

The Government's role is derived from its nature of being a second component of executive power, being circumscribed to the Parliament’s vote of confidence and obliged to carry out the governance program accepted by Parliament [5]. In accordance with art, 102 par. (1) of the Constitution, the government fulfills a political role and an administrative one [6].

The political role of the Government is expressed both within executive power and in the collaboration with other public authorities, especially with the legislative power, through the exercise of legislative

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initiative and through working with the two Houses of Parliament [7]. In developing national policy, the Government is obliged to implement the provisions of the governance program approved by Parliament, by providing the competent authorities with the draft laws that give consistency to this program. In exercising this role, the government appears as a central public authority with overall material competence in public administration, with the power to order a certain legal conduct for public administration or to propose, to Parliament and the head of state, measures which, after approval, shall become mandatory for the government or for the subjects they address [8].

The Government is the public authority of the executive power, which operates based on the vote of confidence from Parliament, according to its governance program accepted by Parliament, it ensures the implementation of the country's domestic and foreign policy and exercises overall management over public administration, working with social stakeholders [9]. The Parliament, by voting the governance program, only expresses its confidence in this program, which it may withdraw at any time, through a vote of no confidence, if the reasons for which the investiture was granted subsequently disappeared. In the relationships between Parliament and Government, the means of parliamentary control available to Parliament, especially the motion of no confidence, place it on a higher position than the Government, which arises from its nature as the elected representative body of the nation [10].

The role of exercising general management of public administration is the Government's role of command, based on which the measures approved in carrying out the political role are implemented [11]. This governmental function embodies the constitutional conception that concerns the delineation of executive power from the administration and highlights the correlation of the state's executive function with its implementation through the entire public administration, whether state-owned or belonging to the local administrative authorities [12].

The Government consists of the Prime Minister, ministers and other members, as established by organic law. Government members may be individuals who have exclusive Romanian citizenship and residence in the country, enjoy exercise of electoral rights, have not been convicted, membership in the government being incompatible with the exercise of any other professional representation position, remunerated by commercial organizations [13].

The Government is regarded as a collegial authority, the Prime Minister being a *primus inter pares* in the exercise of governmental prerogatives. The Prime Minister is thus a stand-alone authority with its own powers, entering into direct relations with the head of state, Parliament or the Constitutional Court, and is not only able to influence state policy, but also decisions taken by the Government. The Government's character as a collegial body results from its composition, from its work methods and from how it adopts the legal acts under its competence.

As a public authority of the executive power, operating based on the vote of confidence from Parliament, the Government:

- Ensures the implementation of the country's domestic and foreign policy and exercise overall management over public administration;
- Ensures the balanced functioning of the national and social system and its connection to the world economic system, while promoting national interests;
- Cooperates with social stakeholders.

The Government is politically responsible only before Parliament for its entire activity. Each Government member is jointly liable with the others for the government's activities.

According to art. 103 of the Constitution, on the investiture of the government, the President of Romania shall nominate a candidate for the position of prime minister, after consulting the political party that holds absolute majority in Parliament, or, if no such majority exists, the parties represented in parliament. The Government's list and program shall be debated by the Chamber of Deputies and the Senate in joint session, the Parliament giving its confidence to the Government through the vote of the majority of deputies and senators. The Government, as a whole, and each individual member begin to exercise their powers upon taking the oath before the President of Romania.

In order to achieve the governance program, the Government exercises the following functions:

- A strategy function to ensure the implementation of the governance program
- A regulatory function to provide the legal framework for achieving strategic objectives
- A state property management function to ensure the management of public and private property, as well as the management of services operating on behalf of the state
- A representation function, internally and externally
- A state authority function, which monitors compliance with and enforcement of law in terms of defense, public order and national security, as well as in the economic and social fields and with regard to the functioning of the institutions and bodies working under the authority of the Government [14]

The exercise of government functions is subject to parliamentary scrutiny, and the Government's distancing from the governance program accepted by Parliament may bring about, at any time, the end of its term, through the adoption of a motion of no confidence.

Oversight methods are provided both in the Romanian Constitution, which states in Art. 111 that "The Government and the other agencies of public administration, as part of parliamentary oversight over their activities, are required to submit information and documents requested by the Chamber of Deputies, the Senate, or parliamentary commissions, through their presidents", as well as in other normative acts, such as the regulations of the two Chambers of Parliament [15].

Parliamentary control is exercised within the general framework of the Parliament's constitutional competence, and is designed to prevent excesses and abuses, but also to shape and boost the activity of these institutions.

### **3. Conclusions**

The Government is an authority of central public administration, comprising the executive power with the President of Romania, which is aimed at carrying out the country's domestic and foreign policy and overall management over public administration.

Upon investiture, the Government assumes direct responsibility for how the country's internal and external policies are implemented, and exercises overall management over public administration. If the Government is supported by parliamentary majority, it will be able to achieve, successfully and in full harmony, the governance program under which it received the vote of confidence. It is possible, however, for an erosion to intervene in the relationship between Parliament and Government, due to measures taken by the Government and not agreed by Parliament, which may endanger the achievement of the governance program. For its entire activity, the Government is politically responsible only before Parliament. Political responsibility is solidary, meaning that each member of the Government is politically and jointly liable, with the other members, for the activity and acts of the Government. The constitutional norms regulate, at the same time, the criminal liability of Government members.

The Government's political responsibility entails its dismissal, following the withdrawal of confidence by Parliament, by adopting a motion of no confidence. Another form of political responsibility for the Government as a whole, or for only one of its members, is the obligation for government members to answer, within the terms and conditions of the two sets of parliamentary regulations, questions and interpellations raised by Deputies or Senators. Likewise, the Government and other public administration bodies are obliged to submit the information and documents requested by members of both Houses of Parliament, through their respective presidents or through parliamentary commissions.

Conflicts that may arise between Parliament and Government generally concern concrete issues of internal and external policy, or various issues relating to work performed in a ministry. These conflicts are carried out by means provided by the Constitution: questions and inquiries, initiation, debate and adoption of a simple motion, the right to information, the procedure for debating and adopting of a motion of no confidence.

Parliamentary scrutiny may, therefore, also have a punitive side, which refers to the actual sanctioning of the Government by Parliament. This can be done, in the case of the Romanian Parliament, through the motions of no confidence or simple motions and may include, in ascending order of importance: constraining

the Government to certain of measures internal and external policy (by approval of a simple motion), or dismissal of the entire office (by voting a motion of no confidence).

#### 4. References

- [1] I. Vida, *Executive Power and Public Administration*, "Official Gazette" Publishing House, Bucharest, 1994, p. 29.
- [2] G. Vrabie, *The State and Political Organization of Romania*, revised and unabridged edition, Cugetarea Publishing House, Iasi 1999, p. 283).
- [3] The monocratic executive is characteristic both to democratic regimes and to authoritarian regimes, being characterized by a single state authority holding executive office. The collegial government involves the exercise of the executive function by a college or a collective body, in accordance with constitutional provisions. A dualistic government requires entails entrusting the head of state and a collegial body with the executive function, both having prerogatives they exercise in relatively autonomous manner. An assembly-regime executive is characterized by assigning the executive function to a college elected by parliament, which faithfully puts into effect all decisions made by Parliament (M. Enache, *Some Considerations on Executive Power*, in Dreptul (Law), no. 9/1994, p. 4).
- [4] L. Coman Kund, *European Administrative Systems*, Second Edition, "Tribuna" Publishing House, Sibiu, 2003, p. 57.
- [5] I. Vida, *Executive Power and Public Administration*, *op. cit.*, p. 84.
- [6] In comparative law, in terms of the extent of the role of government, one can distinguished: constitutions that establish a trichotomous role – political, legal and administrative –, constitutions that establish a dichotomous role – political and administrative –, and constitutions that establish an exclusively political or an exclusively administrative role (A. Iorgovan, *Treatise of Administrative Law, Volume II, 4<sup>th</sup> Edition*, CH Beck Publishing House, Bucharest, 2005, p. 339).
- [7] I. Vida, *Executive Power and Public Administration*, *op. cit.*, p. 86.
- [8] M. Constantinescu, in M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, Fl. Vasilescu, I. Vida, *The Romanian Constitution – Commented and Annotated*, "Official Gazette" Publishing House, Bucharest, 1992, P. 224-225.
- [9] The governance program is and remains of the vested government, the vote of Parliament having the significance of the legal act that legitimizes that program as the governance program of the Government in office (A. Iorgovan in M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tanasescu, *The Revised Romanian Constitution - Comments and Explanations*, "Official Gazette" Publishing House, Bucharest, p. 159).
- [10] G. Vrabie, *The State and Political Organization of Romania*, *op. cit.*, p 216 et seq.
- [11] D. Apostol-Tofan in I. Muraru, E.S. Tanasescu (eds.), *The Romanian Constitution. Comments on Articles*, CH Beck Publishing House, Bucharest, 2008, p. 108.
- [12] I. Vida, *Executive Power and Public Administration*, *op. cit.*, p. 86-87.
- [13] The provisions of art. 102 par. (3) of the Constitution, which establish the structure of the Government, regulate a Government without an internal hierarchy (A. Iorgovan, *Treatise of Administrative Law, op. cit., vol. II*, p. 365), establishing equal legal relations between all of its members, including in relation to those determined by organic law (M. Preda, B. Vasilescu, *Administrative Law. Special Part*, Lumina Lex Publishing House, Bucharest, 2004, p. 71 ).
- [14] S. Murgu, N.M. Stoicu, *Constitutional Law and Political Institutions*, Cordial Lex Publishing House, Cluj, 2008, pp. 202-203.
- [15] Parliamentary control over the Government and public administration concerns all legal documents and acts performed by these bodies, from the investiture and until dismissal (I. Vida, *Executive Power and Public Administration*, *op. cit.*, p. 113).