

European and International Law**The Executive Branch: The Government
(2) - Comparative Study****Mihaela CĂRĂUȘAN¹**

Abstract: The Fundamental Laws of the European Union member states establish the institutional system and also the Government's organisation. In the present article, after we already studied the organisation of the Chief of State institution, we will analyse the other vector of the executive power: the Government. Each state understands to organise public administration system differently, according to their administrative culture and to their constitutional rules. The second part of the study based on the comparative method and on the analysis of the Constitutional rules will emphasize the unity and also the diversity of the government organisation in the European Union systems.

Keywords: executive branch, administrative culture, adaptation, diversity, accountability.

1. Brief Overview

Democracy strengthens the principle of separation and balance of powers and each European Union (EU) member state regulated and implemented differently. Either is a rigid, flexible, semi-presidential, semi-parliamentary, or primo-ministerial regime the government plays an important role in the state organisation.

The executive branch is recognized as the one which implements the law, but lately through the Government Ordinance regulates in the detriment of Parliament. This state function involves the exercise of the function of Chief of State, the coordination of administration action to implement the law, to carry out direct

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actions of law enforcement or organization of law enforcement, the exercise to boost the legislative process, and the general management of the state. (Carausan, 2015) Along with the Chief of State, the Government is the second vector of the executive branch and it cannot be left apart when we study this branch especially when Romania experiments a transition period to participative democracy.

In the public system we can find a variety of authorities and institutions which have organisational peculiarities, but a common goal the organization of the law implementation and the direct application of the law, an activity that expresses the specificity of public administration in the rule of law system.

In this regard, the government should not be seen solely in terms of authority, along with the chief of state, which exercise the executive power in the state. This, by the nature of the work they perform is part of the public administration system. The public authorities which undertake the executive functions are considered government authorities and are either at the state or local level.

2. The Role and Tasks of Government

The more or less parliamentary nature of the EU Member States is a consequence of the considerable similarities of the executive institutions, more precisely of the governmental one. We can observe some states' characteristics which, often, are strictly political and without direct administrative repercussions.

The role of government in the EU Member States Constitutions was understood and regulated differently. Thus, we encounter situations where there is no express regulation on the role that it has, it is deductible based on the corroboration of two or more articles e.g. art. 94 and 95 of the Italian Constitution or art. 63-65 of the Basic Law of Germany. Meanwhile, some Constitutions contain express provisions which establish three categories of tasks: political, legislative and administrative, is the case of Spain - art. 97, or two categories of tasks: political and administrative as it is in Portugal - art. 185. Also, we can find provisions that establish only one task: the political one art. 45 para. 3 Dutch Constitution or art. 82 Hellenic Constitution, or the administrative one as in Austria (art. 69).

As it concerns the political role of the Government in EU countries, we can find two situations:

a) the Government determines exclusively the national policy lines internally and externally and implementation of this policy is subject to the parliamentary review. This is the case of France, Greece and Germany;

b) the Government drives the overall policy of the country, within the limits set by the Parliament, as it is in the case of Finland, Portugal and Spain. Also, the Romanian legislator established in the Constitution this solution. (Constantinescu et al., 2004)

Given the role played by the government at the state level and especially within the executive branch, it is forced to adapt to new international and global challenges. Therefore, governmental and administrative structures which it leads are the first to bear the influence of changes, adaptations and correlations to the requirements of international processes in which the state is involved. (Carausan, 2012)

3. Government Appointment

The chief of government may take different names. Thus, we will identify under the name of: President of the Government (Presidente del Gobierno) in Spain, Minister of State (Statsminister) in Denmark and Luxembourg, Federal Chancellor (Bundeskanzler) in Germany and Austria, Prime Minister in Greece, France, Czech Republic, Sweden and Hungary, President of the Council of Ministers (Presidente del Consiglio) in Italy.

In terms of government investiture in the Member States of the EU we can find different formulas depending on the political regimes and the forms that government takes. Thus, the investiture in the republican constitution can be achieved using either one house of parliament, strictly nominated, situation encountered in Germany and regulated by art. 63 of the Basic Law which establishes the election of the Federal Chancellor by the Bundestag. The nomination and appointment of the vested Chancellor and of the Federal Ministers proposed by him are in the responsibility of the Federal President. The same formula is also used in Austria as it is stated in art. 70 para. 1 of the Constitution - the Federal Chancellor and, on his recommendation, the other members of the Federal Government, are appointed by the Federal President. Only the persons eligible for the National Council can be appointed but they are not allowed to belong to the former one. (Carausan, 2012)

In other countries, former communist one, more and less the same investiture procedure is established, even if the task is one of the President of the Republic and of the Chamber of Deputies, e.g. art. 68 of the Czech Constitution.

The Greek Constitution, amended, by an atypical procedure stated in art. 37 para. 2 entitles the President of the Republic to appoint the Prime Minister who is also the head of the party that has absolute majority in the Chamber of Deputies. If the majority is not obtained, an exploratory mission will be given to the party which has a relative majority.

The appointment can be done by both Houses of Parliament, as in Italy which in art. 92 para. 2 and art. 94 para. 1 of the Constitution states that the President of the Republic appoints the Council of Ministers and, on his proposal, the ministers after they receive the Parliament vote of confidence. Moreover, art. 94 para. 4 states that an opposing vote by one or both Houses against a Government proposal does not entail the obligation to resign.

In monarchical regimes the appointment procedure is performed, regularly, by the King or Queen. We mention in this regard, several European countries: Belgium which through art. 96, confirms the right of the King to form the government or to appoint and dismiss ministers; also Denmark, by § 14 of the Constitution, states that the King has the right to appoint and dismiss members of the Government, but prime minister choice is limited to the parties' configuration in the Parliament, which often is found in the form of coalitions. In the British statutes system the leader of the party who won the election in the House of Commons becomes Prime Minister and the Queen's appointment act is purely ceremonial and marks the transfer of power to the new government. (Carausan, 2012)

The Swedish Constitution (The Instrument of Government) devotes a formula specific to the parliamentary regime, the appointment of the Prime Minister is done by the Speaker of Parliament, after it consults the Deputy Speakers and each party group in the Riksdag (Parliament) - art. 4 Chapter 6 "The Government".

Spain in art. 99 para. 1 establishes a dual formula, confirming the monarchy and the parliamentarism. The King proposes a candidate for the presidency of the government (after having first consulted the representatives appointed by the political groups with Parliamentary representation), through the Speaker of the Congress of Deputies, and with the vote of its absolute majority.

France, with the strongest executive in terms of conferred powers, established under the rule of the Constitution of the Fifth Republic that the head of government, the Prime Minister is appointed by the President of the Republic in a discretionary manner - art. 8. This approach is strictly conditional on the existence or absence of a parliamentary majority favourable to the President in the National Assembly. Even so, the constitutional provisions created the possibility to search the majority and ask the investiture vote without a favourable majority.

Moreover, regarding the incompatibility of the government member, some EU member states expressly specified the incompatibility with the one of the Member of Parliament, for example France - art. 23, Austria - art. 70 para. 2, and Portugal - art. 157. Even more, Belgium establishes in art. 51 that if a Member of Parliament is appointed by the federal Government immediately ceases to sit in House and will take back his functions by virtue of a new election. Others countries set on different incompatibility as in Spain, art. 98 – “Members of the government cannot exercise other than those derived from their parliamentary mandate, nor any other public function not derived from their office, nor engage in any professional or commercial activity whatsoever.”

4. The Structure and Organization of Government

In the new EU Member States, from the last wave of enlargement, the decision-making mechanisms from the central level are considered still unprepared to assimilate and coordinate coherent responses to the new requirements of the European space. To take the full advantage of this new opportunity, EU membership, they must introduce and develop the central government responsibilities and powers more clearly. This new approach calls to reconsider the administrative structures, which need to be prepared to work in the administrative system of the Union, to be ready to react to new demands and new opportunities of European administrative space. (Carausan, 2012)

Some of the new Member States, including Romania, have agreed to resize institutional structure and give more attention: to strengthen the position of the Prime Minister (Poland, Hungary), to reorganise the Chancellery / the Office of the Prime Minister and the restructure of Foreign Affairs Ministries or European Affairs. As a result, new institutions and new powers were granted to the prime minister and foreign minister - in the case of Romania, at the beginning to the Minister for European Integration and nowadays to the Minister of European

Funds. However, given the institutional building of key stakeholders in the decision making process at both national and European Union level, and the process of adaptation to which they are subjected, we can say that the reorganization, restructuring state authorities on new European grounds is not complete.

The different legal provisions and governmental structures established in EU Member States are those which contributes to the state organizational stability, but also to the adaptability of the administrative system. Therefore, based just on the constitutional rules we cannot fully establish a pattern for a European governmental structure.

Most of the contemporary democratic constitutions provide only some principles about the organisation of the government activity and the approval of its decisions. The Basic Law of Germany retains the right of legislative initiative of the federal government in art. 76 and the authorisation to issue statutory instruments with the consent of the Bundesrat - art. 80, or general administrative rules - art. 84 para. 2. Also the Hungarian Constitution in art. 15 para. 3 specifies that within its sphere of activity government adopts decrees. More generous in this area is the French Constitution, art. 13 para. 1 states that the President of the Republic shall sign ordinances and decrees deliberated upon in the Council of Ministers and art. 21 para 1 establish that Prime Minister exercises the regulatory power provided in the art. 13. It follows that the power given to the Prime Minister is subsequent to the one granted to the President, furthermore the Prime Minister acts are countersigned by the ministers who execute them (art. 22). In the majority of the monarchical states, as we have already seen, in the first part of the article, the king is not responsible. Even if the Government documents are signed by the monarch they have to have the countersignature of the responsible Ministers. The exception to this is the Britain monarchy which is increasingly less involved in the executive branch. (Carausan, 2012)

As a way of adopting Government's decisions we notes that consensus prevails in European countries, but also the possibility to vote such as in Portugal, Holland, Italy, Ireland, Germany. United Kingdom, however, established a mixed system under which the decisions are taken by consensus which is achieved after what Prime Minister always ask informally, all the participants in the meeting.

In almost all EU member states, the government rhythm is given by the preponderance of the Council meeting. Constitution, however, does not specify the

time frame in which the meetings should occur; leave therefore the possibility to request up the meeting, whenever is considered necessary, according to secondary legislation.

The possibility provided by the Romanian Constitution to the President to attend the Government meetings did not influence the rhythm of government as it is in France, where the President participates and preside the Council of Ministers, regardless of their issue - art. 9 of the French Constitution.

5. Government Accountability

Other authorities' intervention in the government activities is understood as the accountability mechanisms, the report before other authority that is not part of the same branch of the state. In this sense, we mention the accountability of the Government in front of the Parliament and before the judicial authority, distinguishing a political and legal responsibility, which does not necessarily identify with the two authorities: the legislative and the judicial.

The relations between government and parliament are mostly centered on the English law idea of impeachment¹. The British precedents were almost entirely retrieved by the European modern democratic constitutions. On this line, we mention: the Belgian Constitution art. 101 - Ministers are responsible before the House of Representatives; Czech Constitution art. 68 para. 1 - the government is accountable to the Chamber of Deputies; Irish Constitution art. 28.4.10 - the government shall be responsible to Dáil Éireann, the House of Representatives; Danish Constitution § 16 – Ministers may be impeached by the King or Folketing (Parliament).

The issue of no-confidence motions, in turn, was regulated differently in the EU Member States Constitutions, both in terms of the number of those who propose and in terms of the required majority for adopting them. The Italian Constitution states a minimum of one-tenth of the members of the House (art. 94 para. 5), the Austrian Constitution attract the presence of at least half of the members of the National Council and the proposal of at least one fifth of them, and the German Basic Law states that Bundestag cannot adopt a no-confidence motion but it can chooses a successor with absolute majority. (Carausan, 2012)

¹ It is considered (Constantinescu et al., 2004:194) that the first impeachment form the history was against a minister of King Eduard III.

6. Instead of Conclusions

The Government as a vector of the executive branch was regulated differently in the fundamental laws of the EU member states. The comparative study of the state organisation of the Western countries plays an important role in the public administration reform of the former communist countries. Each European country has a different administrative culture and different Constitutional provisions, but even so the process of adaptation to the new national and international requirements is ongoing. As we stated in the first part of the article the relevance of studying the executive branch is double folded it presents comparatively the constitutional provisions and reveals the unity in diversity of the executive branch within the European Union systems.

7. References

- Carausan, M.V. (2015). The Executive Branch: The Chief of State. Comparative Study (1). *Acta Universitatis Danubius. Adminsitratio*, vol. 11, no. 1/2015, pp. 66-76.
- Carausan, M.V. (2012). *Structuri, mecanisme si institutii administrative in Uniunea Europeana [Structures, Mechanisms and Administrative Institutions in European Union]*. Bucharest: Tritonic, pp. 77-83.
- Constantinescu, M., Iorgovan, A., Muraru, I., Tănăsescu, E.S. (2004). *Constituția României revizuită – comentarii și explicații/The Romanian Constitution, amended – comments and explanations*. Bucharest: All Beck, pp. 158-159.
- *** Austrian Federal Constitutional Laws accessed on <https://www.vfgh.gv.at/cms/vfgh-site/english/downloads/englishverfassung.pdf>.
- *** The Constitution of the Kingdom of Belgium accessed on http://www.servat.unibe.ch/icl/be00000_.html.
- *** The Constitution of the French Republic accessed on http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf.
- *** Basic Law of the Federal Republic of Germany accessed on http://www.gesetze-im-internet.de/englisch_gg/.
- *** The Constitution of the Italian Republic accessed on https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.
- *** The Constitution of the Czech Republic accessed on <http://www.psp.cz/cgi-bin/eng/docs/laws/1993/1.html>.
- *** The Constitutional Act of Denmark accessed on http://www.thedanishparliament.dk/Publications/~media/PDF/publikationer/English/The_constitutional_act_of_denmark_2013.pdf.ashx.

*** The Constitution of the Hellenic Republic accessed on <http://www.legislationline.org/documents/section/constitutions>.

*** The Constitution of Republic of Hungary accessed on https://www.constituteproject.org/constitution/Hungary_2011.pdf.

*** The Constitution of Republic of Ireland accessed on https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf.

*** The Constitution of the Kingdom of Spain accessed on http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf

*** The Constitution of the Kingdom of Netherlands accessed on <http://www.legislationline.org/documents/section/constitutions>.

*** The Constitution of Portuguese Republic accessed on <http://www.legislationline.org/documents/section/constitutions>.

*** The Constitution of Romania accessed on <http://www.cdep.ro/pls/dic/site.page?id=339>.

*** The Constitution of the Kingdom of Sweden accessed on <http://www.riksdagen.se/en/Documents-and-laws/Laws/The-Constitution/>.