

**CONSIDERATIONS REGARDING THE RELATIONS BETWEEN THE ROMANIAN
PARLIAMENT AND GOVERNMENT THROUGH THE INFLUENCE AND POLITICAL
DOMINANCE DERIVED FROM STATE PRACTICE**

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Abstract

One of the most complex problems in the Romanian politics after 1989 is that of the relation between the legislative and the executive power within the political system. This institutional arrangement of power must be analyzed beyond the formal limits of the constitutional framework, necessarily involving a substantive analysis of how both powers have exercised authority in Romanian politics. Formally, in Romania, the Parliament has a dominant position in relation with the Government. This article aims to provide an analysis to justify the dominance of Government in the Romanian political system.

Keywords: Government, Parliament, political system, dominance of Government, censure motion.

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In the classical theory of the separation of powers, government authorities are united under the notion of *Executive* which would define the power to implement, to execute the law. The term *Executive* is not entirely satisfactory as the so named political bodies, other than the Parliament or the judicial authorities, are not limited only to executing the laws, but provide the overall direction of the state policy, corresponding to the term of *governance*, while the Parliament rather ensures a function of control and delimitation².

Basically, in the particular case of Romania, there are two types of governance: the President of Romania and the Government, a certain duality existing between these two authorities.

In our post-revolutionary doctrine, different opinions have been expressed referring to the political regime in our country. Thus, one opinion describes the current constitutional regime as a *semi-presidential*³ one, because the President does not have just a purely honorary role, but real powers he may exercise in relation with the Parliament through messages, the possibility of dissolution of the legislative chambers, in relation with the Constitutional Court through the appointment of a number of its judges, in relation with the Government or with it, and also through the right to resort to referendum.

In another view, it was shown that the experience gained during the dictatorship called for an excess of caution against any form of state organization that could lead to the concentration of power, to its personalization, being manifested the concern to diminish as much the powers of the President, the "weight" of his political influence. It was thus articulated a *mixed regime*, in which the balance is tilted in favor of the Parliament⁴.

According to the view of most Constitutionalists, the Romanian political regime was classified as an *attenuated semi-presidential regime* or *parliamentarized* one.

Between the head of state and the governmental team there is a number of ties that make the duality between these two categories of governance fade in some respects, and generate ambiguities in others. These ties are usually materialized in the relations between the President and the Prime Minister, the latter having the right to countersign some presidential decrees, which involves a number of common powers in foreign policy, national defense, in granting pardon or awarding decorations and honorary titles. According to Article 87 paragraph 1 of the Constitution, the President of Romania takes precedence over what might be defined as his reserved area, namely foreign policy, national defense and public order.

In the political and constitutional regime inaugurated by the 1991 Constitution, the Government has significant powers, though limited by parliamentary scrutiny and presidential influence, which make its responsibility in shaping the general direction of the state policy of prime importance. The ratio of forces at the level of the majority coalition and

² Maurice Duverger, *Institution politique et droit*, tome I, PUF, Paris, 1974, p.160.

³ Dumitru Brezoianu, *Drept administrativ. Partea specială*, Titu Maiorescu University Publishing House, București, 2002, p.293 ; Victor Duculescu, *A Topic of Debate among Romanian Politicians and Jurists: the Constitutional Revision* (in Romanian), in "Juridica" Review, no. 7/2000, p.252.

⁴ G. Vrabie, *Organizarea politico-etatică a României*, The European Institute, Iași, 2004, p.169 și urm.

fluid political, economic or social circumstances may influence the balance of powers by establishing a high degree of dependence or favoring some imbalances between different holders of powers and the institutions they represent, focusing on the Parliament-Government relation.

One of the most complex problems in the Romanian politics after 1989 is that of the relation between the legislative and the executive power within the political system. This institutional arrangement of power must be analyzed beyond the formal limits of the constitutional framework, necessarily involving a substantive analysis of how both powers have exercised authority in Romanian politics. We believe a key question, resulting from our study, can be asked: can one consider a dominance of the Government in the Romanian political system?

In my opinion, the importance of an answer to this question lies in the elucidation of two elements:

a. which is the dominant player of the Romanian politics (to the extent that there is such a crucial player for the Romanian political system), which can help configure the relations of power, which in their turn certify the location of the main power center of the system;

b. determining the power ratio shows where the political resources are concentrated and their nature (access to information, economic and so on).

Moreover, deciphering the relations of power between Parliament, on the one hand, and the Government and the President of Romania, on the other hand, would allow positioning the Romanian political system in certain well structured typologies.

Formally, in Romania, the Parliament has a dominant position in relation with the Government. In the context of the constitutional framework, there are two components that determine the balance of power between Parliament and Government:

1. According to art. 103 paragraphs 2 and 3 of the republished Constitution, the Government is bound to request and obtain the Parliament's investiture vote, for the Cabinet as a whole and for each minister individually. It can be said that the functioning of the Government is conditioned by the granting of confidence by the legislature;

2. How the legislative process works in the Romanian political system. Except the Government's assuming responsibility procedure (Article 114 of the republished Constitution) and the legislative delegation (Article 115 of the republished Constitution), the Government has no legislative prerogatives, those being the exclusive competence of the Parliament. Therefore, the Government must obtain the Parliament's support for its legislative initiatives to be passed. Moreover, the Government does not even have monopoly on the legislative initiatives, which it shares with the members of the Parliament.

This image of the formal power ratio allows only a partial evaluation of the weight of each institution in the political system. More than these legal relationships, the real policy

provides a much clearer perspective on the Parliament - Government relation and on this is largely focused the subject of our study.

In my view, one can say that during the 1990-2013 period, the main feature of the Romanian political system is the dominance of the Government over the Parliament, but still there have been periods of balance between the ratio of forces. This seems at first sight a hazardous statement, but if we follow the evolution of the ratio of power between the Parliament and the Government over this period, it will be noted that this assertion is not without empirical basis.

Clearly, this relationship should not be considered absolute. Tensions or even defeats of the Cabinet before the Parliament appeared within the political system, but they only occurred sporadically, without setting the Parliament as the main political actor. But, from this point of view, it is more useful to look at the balance of power between the Parliament and the Government in various periods.

a. The December 1989 - May 1990 period

The political system configuration was extremely unclear and a stable image of the power relations between the Cabinet and the legislature (CFSN-National Salvation Front Council initially, and then CPUN-Provisional Council of National Unity) is unlikely. This situation is the result of two main factors:

- both the Cabinet and the legislative power were not the result of the popular will manifestation in an election, that could form the basis of a certain kind of power.

- the lack of a clear legal basis, establishing the Cabinet's position in relation with the holders of the legislative power.

This lack of clarity of the political system is the main characteristic of this period.

But despite the above listed, a careful analysis reveals a preponderance of legislative power within the political framework, at the expense of the Cabinet. The need to create an institutional framework that would allow free elections, political parties etc., determined the emphasizing role of the legislative power in this period. Society and the political spectrum felt the need to regulate politics and the administrative decisions were less important at this stage. The later creation of the Cabinet in relation with the legislature (at the end of December 1989 compared to December 22nd, 1989, the date of CFSN creation) and the lack of a legal operating framework largely inhibited the Cabinet's assertion as the main actor in this period. But this relationship will change radically after the elections of May 20th, 1990.

b. The May 20th, 1990 - September 1991 period

During this period the Parliament was numerically dominated by the FSN- National Salvation Front, the holder of approximately 66% of parliamentary seats in the two chambers. Naturally, the Cabinet was the expression of this situation existing in the legislature; it consisted of the representatives of a single party, the winner of the parliamentary elections. In

my opinion, during 1990-1991, the Romanian political system was characterized by a strong dominance of the Cabinet on the political life. The main proving element is based on the relationship reformers-conservatives within the FSN and by extension, the Government-Parliament relationship. Significant from this point of view is that, although there were tensions between the Petre Roman Government and the parliamentary majority of the FSN dominated by the conservatives who opposed some structural reforms, the Cabinet imposed its opinions and draft legislation in the Parliament. Moreover, the fall of the Cabinet in September 1991 was caused not by parliamentary means, but through undemocratic methods, although there was the possibility of a censure motion in a Parliament dominated by conservatives. The inability of the FSN conservative majority to determine the fall of the Roman Government by constitutional means shows a strong dominance of the Government in relation with the legislature. The fact that Petre Roman was both the party leader and the Prime Minister of the Government favored this dominance of the Cabinet. His dual position mattered more in establishing this hierarchy than the fact that other members of the Government were not the majority party's notables, but, initially, only anonyms of the political stage.

c. The Theodor Stolojan Government period

Despite its short period of governance, the Stolojan Government is the most significant example to illustrate the dominance of the Cabinet in the Romanian political system, as it is the typical case of a Government without clear parliamentary support, but which succeeds to govern for almost a year. The existing situation was favored mainly by the mandate without great objectives that the Government received at the beginning of its term, the preparation of future elections and the stopping of the economic decline, and especially by the still unclear power relations within the main party of the system, the FSN. Moreover, the Prime Minister succeeded imposing some ministers in the Government, despite the initial negative vote of the Parliament, having a strong unprecedented position in a democracy where the Parliament is the dominant actor in the political life.

The short period of the Stolojan Government mandate and its nature did not allow a precise clarification of the Parliament-Government relation, but there were however significant elements proving the dominance of the Cabinet during the 1991-1992 period.

d. The 1992 – 1996 period

In retrospect, the Nicolae Văcăroiu Government was one of the most "docile" post revolutionary cabinets. Its situation was further complicated by the fact that the PDSR – Social Democratic Party of Romania, the main parliamentary party and the party which dominated the Government, did not have the majority of parliamentary seats in the Chambers. Despite this drawback (except the period during which there was a coalition of parties that supported the Government, that the press suggestively called "the red quadrangle"), the Văcăroiu Government was able to carry out its four-year mandate, despite the fact it did not have the formal support of the majority of Deputies and Senators of the Parliament of Romania.

Besides these systemic elements, another two strong arguments can be added in support of the hypothesis that the Văcăroiu Government had a greater importance within the political system than the legislature:

1. The Parliament's prerogatives were circumvented in the case of Government reshuffles, leading to the strange situation when, at the end of the term of office, the Văcăroiu Government had very few ministers of those who had been validated at its investiture.

2. The negative vote of the numerous censure motions of the opposition, despite the poor Government performance.

e. The 1996 – 2000 period

During this period one may notice a timid attempt to balance the power relations, but despite higher rates of the Parliament in the system, the Cabinet maintained its dominance. Thus, we can see that:

1. The cabinets after 1996 used an extremely large number of emergency ordinances, which made the legislative process more complicated and difficult. Thus, of the total of 217 bills approved by the Legislative Council in 1997, 206 had as initiator the Ciorbea Government, and, what it is even more interesting, in addition to these there were other 198 drafts of Government or Government emergency ordinances and 395 drafts of Government decisions. All these data clearly shows the balance of power between the Cabinet and the Parliament in the area of lawmaking, which should normally be the main task of the Parliament.

2. The cabinets were able to impose their views on important legislative projects at the expense of some representatives - even members of the majority coalition – within the Parliament (see the draft of the Multicultural Petöffi-Schiller University or the State Budget Law for 1999, which stated the cancellation of the fiscal facilities granted to Romanian and foreign investors, previously adopted by the Parliament);

3. Not even the Victor Ciorbea Government could be removed by adopting a censure motion, even if it had lost the support of the Democratic Party and no longer enjoyed the confidence of a parliamentary majority required for governance.

f. The 2000 – 2008 period

At this stage, we were witnessing the empowering of the position the Parliament held. A proof of this fact was the revision of article 114 of the Romanian Constitution, which formally restricted the Cabinet's right to intervene in the legislative field. However, the 5 cabinets that succeeded – there were 3 Adrian Năstase cabinets and 2 Călin Popescu Tăriceanu cabinets - even if they consisted of representatives of a coalition of parties, maintained a relative dominance over the Parliament, mainly through further excessive exercise of the power to legislate by means of ordinances.

Both Adrian Nastase and Călin Popescu Țăriceanu, being at the same time Prime Minister and the leader of the majority political party in the governmental coalition, exerted considerable influence on the MPs belonging to government parties, but also on those in the opposition, aspect leading to numerous legislative initiatives becoming laws, the Cabinet's assuming responsibility for some bills, the successful overcoming of the filed censure motions. For example, the Țăriceanu Government which in 2007, after the Democratic Party's departure, no longer had the majority support in the Parliament was able to govern until the end of its term, by maintaining a balanced relationship with the Parliament.

By contrast, during the term of this Cabinet, we witness a constitutional legal conflict between the Senate of Romania and the Cabinet⁵, and also the first conflicts between the Prime Minister and the President of Romania, Traian Băsescu, generated mainly by the Head of State's numerous interferences into the Government's activity.

g. The 2008 – 2009 period

In the first 10 months of the Emil Boc Government mandate, it was evident the Cabinet's dominance over the Parliament. The Boc Government (1), initially consisting of a coalition of representatives of the PSD-PC (Social Democratic Party-Conservative Party) Political Alliance and of PD-L (Democratic- Liberal Party) and having as Prime Minister the PD-L leader, continued the practice of abusive adoption of emergency ordinances (113 emergency ordinances adopted by October 12th, 2009).

Given the political support of the parliamentary majority, the Emil Boc Government (1) passed without nervousness two censure motions submitted by the opposition and successfully assumed, on two occasions, its responsibility for several bills, two of these laws being the Civil Code and the Penal Code. In addition, the *Government Emergency Ordinance no. 61/2009 amending and supplementing Law no. 24/2000 on rules of legislative technique for drafting laws*⁶ states that the bill for which the Cabinet assumes responsibility does not need other formal motivation than an explanatory statement and a report, thus excluding the impact studies, mandatory up to now (section3). And if we think that, under the same law (section 4), the Cabinet may supplement or, if necessary, revoke legal acts adopted by the Parliament even before their entry into force, in duly justified cases, we have an additional argument supporting the Government's dominance over the Parliament.

The numerous frictions and the suspicion between the coalition partners led to the erosion of the collaboration within the Boc Cabinet (1), with the consequent diminishing of the political support of the parliamentary majority. For example, the resignation, dated July 14th, 2009, of Minister Monica Iacob Ridzi, following the proposal of the parliamentary commission of inquiry to begin prosecution and the establishment of a special commission of inquiry of Minister Elena Udrea or of Minister Nicolae Nemirschi embodied one of the forms of parliamentary control over the Cabinet, and its outcome, in the first case, the resignation of

⁵ See the effects of the simple motion adopted by the Romanian Senate against Justice Minister, Monica Macovei, which generated a constitutional legal conflict between the Senate and the Government in February 2007.

⁶ Published in the Official Gazette no. 390 of June 9th, 2009.

Minister Iacob Ridzi, signified the Parliament's refusal to unconditionally further endorse the Government's activity.

h. The 2009 – 2013 period

The Emil Boc Cabinet (2), reduced in number by the withdrawal from the government coalition of its partner PSD on October 1st, 2009 and lacking majority support in Parliament, was dismissed on October 13th by voting for the censure motion entitled "11 against Romania", initiated by PNL and UDMR-Democratic Alliance of Hungarians in Romania. One records thus a first in our state practice, the Boc Government (2) becoming the first Cabinet whose mandate ended by adoption of a censure motion.

Subsequently, also as a first in political practice, there is the refusal of the vote of confidence for the government team proposed by the designate Prime Minister, Lucian Croitoru, following the dismissal of Boc Government (2).

The episode of the vote of the censure motion and the withdrawal of the confidence for the Boc Government (2) and also the Parliament's refusal of the vote of confidence for the Croitoru Cabinet signified a relative strengthening of the Parliament's authority in relation with the Government and a balancing of the forces ratio between the two public authorities. However, the appointment of Emil Boc by President Traian Băsescu as Prime Minister of the Emil Boc Cabinet (3), passed on the 23rd of December 2009, despite the fact that Emil Boc had been the Prime Minister of a Cabinet dismissed by censure motion, confirmed the dominance of the Executive (the President and the Government) over the Parliament.

Not even the subsequent dismissal by censure motion of the Cabinet led by Mihai Răzvan Ungureanu, who succeeded the Boc Government (3) and governed Romania between February 9th- April 27th 2012, signifies a fundamental and irreversible change of power, authority and influence in favor of the Parliament, the Cabinet's dominance tendency being reinforced by the Victor Ponta Cabinet (1), which governed between May 7th - December 21st 2012 and Victor Ponta Cabinet (2), which has been governing since December 2012 up to the present. This trend is justified by the fact that Prime Minister Victor Ponta is the president of the PSD, the strongest party in the USL-Social Liberal Union alliance, which has an overwhelming majority in Parliament.

Conclusions

Looking back and trying to find some tools to enable an as much as possible correct assessment of this complex relationship, we can conclude by saying that the Romanian political system experienced an accentuated dominance of the Cabinet over the legislative power. From this point of view, a very important finding concerning the entire reference period is **the argument of our conclusion**: although only two cabinets (Boc and Ungureanu) ended their mandates following the adoption of censure motions and only one cabinet was denied the vote of confidence, these two episodes, seen in the context of the 23 years of democratic rule and of the 21 cabinets that have succeeded, are singular, the exception can not, for now, rule out the custom: **the Government dominates the Parliament!**

The Cabinet's dominance is not however incompatible with political democracy; the British system proves it very clearly. The new democracies can function even in the presence of this domination to the extent that it does not become anti-systemic and does not attempt to cancel the existing constitutional arrangement in a *polyarchy*⁷. On the other hand, the Cabinet's dominance refers only to the relationship of power and influence between it and the legislature; it does not refer to the other components of the political system: the political parties, the judiciary, the pressure groups etc.

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5. Robert Dahl, in *Democracy and Its Critics*, New Haven and London, Yale University Press, 1989.

⁷ "Polyarchy is the political order that is in the most general manner distinguished by two main features: the civic body is extended to a relatively high proportion of adults and its rights include the opportunity to oppose and vote against the highest officials of the government" (Definition given by Robert Dahl, in *Democracy and Its Critics*, New Haven and London, Yale University Press, 1989, p. 220). Therefore, polyarchy is characterized by the presence of multiple centers of power.