Bulletin of the *Transilvania* University of Braşov
Series VII: Social Sciences • Law • Vol. 8 (57) No. 2 - 2015

THE EXECUTIVE – TERMINOLOGY USED BY THE ROMANIAN CONSTITUTIONAL AND LEGAL REGULATIONS DURING THE 19TH CENTURY UNTIL AUGUST 1944

O. ŞARAMET[1] C.I. GLIGA[1]

Abstract: *To recognise through constitutional provisions the enforcement of the principle of separation and balance of powers, whether expresis verbis, or by interpreting those provisions which refer to this principle, is not enough to understand the notion of executive. Moreover, throughout time, the legislator has not been constant in using only one specific terminology. This is the reason why, in this paper, we tried to pinpoint the terminology concerning the executive used by the Romanian legislator in the relevant regulations of the 19th century, as well as in the constitutional ones in the 20th century, but only in those up to the 1948 Constitution of Romania.*

Key words: *terminology, executive, constitution, legislation, interwar period.*

1. Introduction

In the specialty doctrine, the points of view are not unitary concerning the constitutional development of Romania, the qualification of a document or another as being the first Constitution.

Therefore, for example, C. Ionescu considers that "seven constitutional cycles have been carried out during the constitutional development of the Romanian state [5, p.475-487].

Another author states that there are five periods in this evolution of the Romanian constitutional life [2, p.359-407].

We appreciate, however, assuming one of the points of view expressed in the doctrine, that the constitutional development of Romania starts with the "Developing Statute of the Paris Convention", followed by: the 1866 Constitution of Romania; the 1923 Constitution of Romania; the 1938 Constitution of Romania; the documents with constitutional value drawn up in the period between 1944 up to the enactment of the 1948 Constitution; the 1948 Constitution; the 1952 Constitution; the 1956 Constitution; the documents with constitutional value drawn up following the Uprising in December 1989; the 1991 Constitution. We state that it is necessary to take into consideration also the amendments brought to the last Constitution by the Law for its revision in 2003, revision approved by the referendum held during 18th – 19th of October 2003[8].

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

2. Terminology concerning the executive used by the legal regulations previous to the Developing Statute of the Paris Convention in 1858

Therefore, starting from the assumption that the first constitution of Romania is the "Developing Statute of the Paris Convention" (1858), does not mean that "the period preceding the appearance of the Romanian Constitution, which was also characterised by strong movements and unrests which were the way to manifest the struggle to realise the state unity of the Romanian people, to expel the feudal system, for demands with democratic character" , can be ignored.

Nevertheless, it is necessary to see if we can talk about executive in relation to the other two powers, considering that the principle of separation of powers – it shall be introduced as constitutional principle only with the entry into force of the Organic Regulations [8].

If we appreciate that the answer is negative, we cannot ignore the existence of some state structures with responsibilities specific to the executive, in their centre being, as an institutional constant of our constitutional system, the head of state, namely the Ruler or Regnant of the Romanian Countries.

On the other hand, it would be wrong to appreciate that the Ruling Council in the Romanian Countries is the predecessor of the Council of Ministers or the Government from nowadays. One of the arguments which can be brought in favour of this statement are the provisions of art. 21, 22, 48, 51 of the Draft of Constitution, known as the Cărvunari Constitution, elaborated by the lower boyars or upstarts in Moldova, during the reign of Ioniță Sandu Sturdza, on September 13th 1822, joined in a council which was characterised by P. Negulescu as being "some sort of parliament" [6], [7], [9].

Therefore, during the second half of the 18th century, "an obvious preoccupation is manifested by the rulers and part of the nobility for the modernisation of the constitutional concepts and institutions in accordance with the Western models" [5, p.477].

In this context, the Draft of "Cărvunari" Constitution, which was never brought to life, is drawn up and was considered the first attempt to give some consistence to the liberal trends of Romanian nature and the democratic principles dominant worldwide. This appreciation was made by D.V. Barnovschi in the paper „Originile democrației române. „Cărvunarii". Constituția Moldovei de la 1822", *[*Origins of the Romanian democracy. "Cărvunarii" 1822 Constitution of Moldova"]*, Iaşi, 1822 [5, p.480].

According to this draft, precisely according to art. 19, the executive power falls on the Ruler, and the judiciary power was considered a branch of the executive power, an expression of the failure to apply the principle of separation and balance of powers, but also of the difficulty or even of the refusal to give up some responsibilities, powers of the boyars – reminiscences of the medieval period. The Ruler together with the Ruling Council were to exercise the legislative power.

Considered the first institution to regulate the powers and to set the relations between these powers, the Organic Regulations were considered rather constitutional and administrative codes, than actual constitutions [3, p. 39], [9].

They contain procedural norms for the judicial activity, norms concerning the administrative organisation of the Principalities, but also constitutional norms, the provisions truly having, by choice, an administrative nature [9].

The regulation of the powers and the relations between them in accordance with the principle of separation of powers, will

allow the identification of the three powers through the bodies exercising them. Therefore, the legislative power was assigned to the Public Assembly and the Ruler, the executive power fell on the Ruler and the judiciary power on the courts of law, acknowledging some prerogatives also to the Ruler. The regulations establish, at least formally, a bicephalous executive, in which the Ruler had the dominating role because he was the head of the executive power, but also because the Administrative Council, in Moldova, respectively the Great Council of Ministers, in Muntenia (Wallachia), - bodies which can be assimilated to a government in our days – had a pronounced administrative role, both by the responsibilities, as well as by name, as compared to the political – executive one. Therefore, the Ruler was the one who had the right to appoint and revoke all state clerks, including the ministers. Also the Ruler was the one to whom the decisions of the Administrative Council were mandatorily submitted for approval, a prerequisite for them to become enforceable. By contrast, the Administrative Council had responsibilities that involved preparing the drafts of law and providing the internal administration of the Principality [2, p.359-360], [5, p.481-485], [9].

The Paris Convention on August 7th 1858 ends the war started in 1853 between Russia and Turkey, but also sets a new international statute of the Romanian Principalities for which, being allowed to have "an independent and national administration", the path was clearing for the union. Although it was an international act, the Convention, specifically its provisions, is equal with the provisions of a real Constitution of the Principalities in which the state organisation was established according to the principle of the separation of powers. Therefore, the executive power was exercised by the Ruler, also called Hospodar *[*Lord]*, while the legislative power was assigned not only to him, but also to an Elective Assembly, as well as to the Central Commission in Focşani (common for the two Principalities); and the judicial power was exercised in the name of the Ruler by magistrates appointed by him [5, p.488].

The Ruler governed together with its ministers, being able to participate directly to the daily activity of both the Government, as well as of the various executive departments.

Through these regulations a parliamentarian regime was established, whose dominant feature was the more or less stable balance between the legislative and the executive power, a balance materialised in the frequent use by the Ruler of his right to dissolve the legislative, but also in a number of votes of censure given to the governments by the legislative [2, p.365].

3. Terminology concerning the executive in the constitutional regulations between 1864 -1948

3.1. Terminology concerning the executive in the Developing Statute of the Paris Convention in 1858.

Promulgated by Al. I. Cuza on May 2nd 1864, the Developing Statute of the Paris Convention, together with the election law can be considered the first Romanian Constitution. [2; 1; 8]

However, in the interwar doctrine it was also claimed that the Paris Convention in 1858 served "as constitution of the Romanian Country until 1866", which was completed by its Developing Statute. [9]

The Statute of Cuza sets the fundamental rules for the organisation of power, the separation of powers is maintained, although the Ruler even tried by this normative act to increase his powers, his responsibilities falling both in the area of

legislative power, as well as in the executive one. For this purpose, it is expressly mentioned in art. II that "the legislative power is exercised collectively by the Ruler, the Moderating Assembly and the Elective Assembly". But the Ruler was also part of the executive power due to the manner in which the power had been taken and this Statute had been enforced, which lead, as we previously said, to the "institutionalisation of a personal political regime, the personal reign". [5, p.489]

The statute provides rules related to the government but it does not mention expressly its role, functions or attributions, lacking any wide regulation for this purpose or at least concerning its place in the activity of exercising public powers. From the first article of the Statute, according to which "public powers are entrusted to the Ruler, Moderating Assembly and Elective Assembly", we could deduce that the Government was not considered to be one of the state bodies that exercised public powers but from the subsequent provisions of the Statute we notice that this point of view cannot be sustained.

Therefore, according to A art. XIV par. (5) – concerning the procedure for the elaboration of laws – in case of rejecting amendments to a draft law by the Elective assembly, the draft shall be sent to the State Council and "the Government can then present the draft reviewed by the State Council to the Chamber, in the current or future session", namely according to art. XVI pursuant to which "the internal regulations of the Elective assembly and of the Moderating body are prepared by the Government".

Also, according to art. XVIII par. (2), the decrees given by the Ruler and elaborated "according to the suggestion of the Council of Ministers and of the State Council", until the convocation of new Assemblies, shall have legal force.

From a terminological point of view, this normative act uses only once the term "executive", mentioning in art. VI the manner in which the annual preparation by the executive of the expenditure and prescription budget is carried out. It was preferred, instead, the use of the term "government", except in art. XVIII which used that of "Council of Ministers". Therefore, it was decided to mention the authorities and bodies that exercise the executive power and their attributions related to its exercise.

3.2. Terminology concerning the executive in the Constitution from 1866

The Constituent from 1866 did not take into account the Romanian constitutional traditions and elaborated a Constitution inspired by the Belgian Constitution from 1831, considered to be the most Liberal constitution from that period.

Approving both the principle of representation established by Montesquieu and the principle of national sovereignty established by Rousseau, art. 31 of the Constitution specified the fact that the state powers are given by the nation. The separation and balance of the three classical powers result from the constitutional provisions, as there wasn't any express constitutional definition of this principle.

However, art. 32, art. 35 and art. 36 of the same normative act mention in their classical order the three powers, as well as the authorities responsible for exercising them. Thus, concerning the executive power, art. 35 states that it is entrusted to the King, but it is exercised, according to the constitutional provisions– art. 35, art.62 par. (2), art. 96 – by his ministers [5, p.230].

Although this constitution does not acknowledge the notion of "minister" or "council of ministers", and that of

"government" is used only once related to the obligation of Romanian citizens not to enter into the service of another state except with its consent, a provision found in art.30 par. (1) of the Romanian Constitution from 1866, nor the principle of political responsibility of the latter towards the legislative, thus we cannot consider that a two-headed executive is not defined, within which the scale sways in favour of the head of state – the King in the detriment of ministers, even if its attributions, powers are reduced as compared to the defined ones, as we had mentioned previously, by the Statute Expanding the Paris Convention from 1858 [2, p.366].

Although the text of the Constitution from 1866 analysed in this paper uses the term "King", it must be mentioned that the correct title was that of "Ruler", Carol I being Ruler between 1866-1881 and King between 1881-1914.

Therefore, arguing that the ministers are part of the executive, we shall notice that in Title III dedicated to the powers of the state of ministers and to their relations to the King, two chapters are dedicated to them, namely Chapter II – "About King and ministers" and Chapter III – "About ministers".

Another argument for this purpose is also the King's attribution "to make regulations necessary for the enforcement of laws, without being able to amend or suspend the laws" and also exempt nobody from their enforcement, an attribution found in art.93 par. (9) of the Romanian Constitution from 1866, but their elaboration – namely of regulations – is divided with the ministers which is an obvious fact because the latter sign them and take responsibility for them. On the other hand, the constitutional attributions of the King exceed the executive sphere taking into account that according to art. 32 of the Constitution, the legislative power is exercised jointly by the King and National Representation.

But we must notice that the King's involvement in the legislative activity was limited to the possibility to exercise his right to legislative initiative – art. 33 par. (1) -, as well as the right to sanction and promulgate the laws adopted by the National Representation – art. 93 par. (2) -, having the possibility to refuse their sanctioning – art. 93 par. (3).

These were the attributions exercised by the King as head of the executive power, being also taken into account the fact that in order for a law to "be strong", "a concurrence of will" between the executive and the legislative is necessary [9].

The promulgation of laws – the attribution of the head of state – was kept for the same reasons throughout time, being also found today in the constitutions of different states, as it can be noticed in the provisions of art.77 from the Constitution.

Also, although the position of prime-minister was created by Alexandru Ioan Cuza, being thus appointed head of the Government, the Constitution from 1866 does not include provisions related to this [7].

3.3. Terminology concerning the Constitution from 1923

Although it was a good Constitution for Romania during those times, even with the amendments brought in 1879; 1884; 1917; 1918 and 1919, the Constitution from 1866 no longer corresponded to the social-political and economic reality, which determined the adoption of the Constitution from 1923 considered sometimes only a modification of the previous one or considered to be a new constitution as form and the old constitution widely revised as content [4], [9].

Although it introduced new principles, such as the principle of legality and "rule of law" as foundation of the state (art.103, art.104),

this constitution did not provide "expresis verbis" the principle of separation and balance of powers in state, this being deduced from the constitutional regulations and from the technical-legislative structure of the fundamental law [10].

Thus, Title III of the Constitution includes Chapter I – "About National Representation"; Chapter II – "About King and ministers"; Chapter III – "About ministers"; Chapter IV – "About judicial power"; Chapter V – "About county and communal institutions".

Although according to this Constitution, namely art. 34 par. (1), the King exercised the legislative power, with the National Representation, unlike the provisions of the previous constitution, it was expressly provided in art. 92 that the executive power was exercised by the Government in the name of the King, as established by the normative act.

The need to establish a government based on the real limitation of the monarch's prerogatives, on the responsibility of ministers towards the parliament and on the establishment of its efficient control of the entire administrative activity, determined the constituent legislator from 1923 to not only modernize the already existing institutions but to also adapt them to its new requirements [2, p.369].

In this context, the Government, namely the Council of Ministers, the Constitution using both expressions, was constitutionally outlined so as to correspond to the requirements of an executive specific to a parliamentary regime.

Although from a structural point of view the executive was a dualist one, the role of the head of state – the King was reduced, the royalty appearing only "as the regulator of the social activity intended to supervise this activity and avoid conflicts between the powers of the state" [9].

Therefore, "the ratio of forces" between the two executive authorities – head of state and Government, sways in favour of the Government, the role of which increased in the detriment of that of the King, "the real power of decision" belonging even to the prime-minister [5, p.509].

3.4. Terminology on the executive in the Constitution of 1938

In the historical conditions of 1938, King Carol II established, on the 10th of February 1938, a personal dictatorship, and the legal consecration of this dictatorship is realized through a new Constitution [8].

One of the principles introduced by the new constitutional regulation was the concentration of political power in the hands of one person, namely the King who held both the legislative power exercised by the National Representatives and the executive power exercised by his Government, as stipulated by the basic law.

At least formally, based on structuring its provisions, the Constitution of 1938 could create the false and erroneous impression that the place of the principle of separation and balance of the powers of state was not affected. In this sense, we can see that the structure of the IIIrd Title – "About the state powers" is approximately the same as the one in the earlier constitution, but the chapter on the Head of State – "About the King" – was to be placed above the others, firstly against the one governing the legislature. Moreover and consequently, shaping as appropriately as possible the instituted authoritarian monarchy in which the "King not only reigned, but also governed", article 30 of the Constitution provides that the King is the Head of State [4].

Also, the corroboration of the constitutional provisions of article 29, art. 30, art. 31 paragraph (1), art.32- allows the support of the claim according to which the Constitution emanated from the

executive power - personified through the King, and not from the nation [4].

This is just another argument in favor of the fact that all the power in the state was concentrated in the hands of a single person, namely the King, taking into account that the adoption of a constitution was by no means the prerogative of the executive power, but of the legislative one.

Hence, the executive power acquired full authority, mainly over the legislative one, as it was to be observed during the period 1948-1989, by executive power meaning the King and a Government which, on the background of the royal dictatorship, had become a purely formal institution, being appointed and removed by the King, before which political responsibility was undertaken, as shown in art. 44 and 56 of the Constitution of 1938 [7].

Hence art. 44 provides that the person of the King was intangible, his ministers being accountable, and the state acts of the King to be countersigned by a minister, who assumed responsibility over them and, an unprecedented provision in the previous constitutional provisions, in accordance with art. 65, the ministers exercised the executive power in the name of the King, as determined by the Constitution and upon their own responsibility, the ministers having political responsibility only towards the King.

We should also mention the fact that this fundamental law maintained, through art. 46 par. (6), the King's task to develop "the regulations necessary for the enforcement of laws, without being able to amend the laws and relieve someone of their enforcement".

3.5. Terminology on the executive in the acts with constitutional character adopted in the period of 1940 - August 1944

Subsequently, through the Royal Decree no. 3067 of September 6th 1940 on investing with full powers of state leadership, the King's prerogatives were reduced. Thus, for example, the monarch loses the power to amend organic laws and to appoint ministers and undersecretaries of state, so that through the Royal Decree no. 3072 of September 8th 1940, the King was to be invested only with honorary duties, such as: head of the army, issuing currency, etc.

According to these constitutional acts, the main power of the state apparatus was held by the Leader of the State in the person of the Prime Minister, who concentrated in his hands both the executive and the legislative power, the fictional character of the Government reaching its peak during this period - September 1940 - August 1944 [4], [5, p.517-519], [7], [10].

4. Conclusions

The brief presentation of the terminology on the executive used in the constitutional and legal regulations analyzed in the paper herein allows us to determine the legislator's intention to show its own vision on this notion in relation to the economic and socio-political context of a certain period.

For this purpose, the legislator does not only mention the executive, sometimes expressly, other times by stating its elements, but it regulates its structure, the attributions of its components, the acts issued by them, the relations with other powers.

The analyzed regulations not only show the constitutional and legal reality concerning the executive from a certain moment, but also its evolution and implicitly that of the above mentioned regulations throughout time.

This paper mostly presents the executive and its evolution in the monarchic period, recording also the new elements brought by the Constitution from 1866, but also

brought by the regulations with constitutional value from the period of 1940-1948, the changes that occur on multiple levels in society and in the Romanian state being thus revealed. The adaptation, including that of the constitutional provisions on the executive, to the political-legal and social-economic reality from one state, is important and essential in order for these provisions to be also functional, not only present within a normative act.

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