



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2022), pp. 176-181

GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

F.-C. MATEI

Florin Călin MATEI

Email: florinmatei79@yahoo.com

ORCID ID: <https://orcid.org/0000-0001-8911-2313>

Abstract

The concept of government has emerged since ancient times in history, even though it has been regarded by some as an absolute necessity and by others as indispensable for the defense of the rights and freedom of mankind.

Thomas Hobbes, reported in his work, that men in their natural state were in a continual war, and therefore argued that it was necessary for men to conclude a social contract, by which they invested all power in a third party, called the sovereign, which in turn, he gave them the security and rule of law.

At odds with Hobbes, John Locke described the state of nature as a state in which people coexist in relative harmony, without the existence of a political power to protect and judge each other.

Nowadays, when we talk about government, we think of that political institution, designed to lead and coordinate the entire administrative activity of the country. In other words, we are referring to the Government in a strict sense, namely to a political institution, which, we will see in the following, can be an emanation of the Parliament and the President, as is the case with Romania.

Key words: *Government reshuffle, government, political composition, government program.*

INTRODUCTION

From the political legacy received from Aristotle, John Locke, and Charles de Montesquieu, we know with certainty that the powers of the state are legislative, executive, and judicial. What is important to note is that these three powers should not be viewed in an isolated way, one from the other, with a certain balance between them, achieved by various means, known as means of mutual control.

These means can be grouped into two categories, namely: The means of action and control of the legislature over the executive, and the means of action and control carried out by the executive over the legislature.

The action and control exercised by the legislature over the executive is materialized by the appointment of various structures and persons that compose the executive power, for example: The appointment of the head of state by the Parliament, as well as the appointment by the Parliament of the Government (*Boc, 2000, pp. 28-31*).

Also in the category of control and action of the legislature over the executive, we include: The motion of censure, questions and interpellations, as well as the committees of inquiry (*Boc, 2000, pg. 33-37*).

In the second category, we include: The right of the Executive to dissolve the Parliament, legislative interference of the Executive, which materializes through the legislative delegation, carried out by the Government, through the modalities provided by the enabling law, or by the Constitution, as the case may be, the promulgation of the law and the right of veto, the legislative initiative and the budgetary prerogatives. It is essential to note that in addition to those already presented, the executive still exercises a certain influence on the legislature through the right of the head of state to close and open sessions of Parliament, as in the case of constitutional monarchies, by addressing messages on the state of the nation, How this procedure is well known in the United States (*Boc, 2000, p. 39-44*).

Another way to achieve the interference of the executive assumes the legislature is the referendum. The referendum is the way in which the Electoral Body decides on an important issue, usually of national interest. The referendum is of three kinds, optional, mandatory and abrogative, and is a primary means of achieving direct democracy (*Boc, 2000, p. 44*).

By referendum, the people directly participate in political life, participate directly in the making of decisions of national importance, as was the case in the 2009 referendum, by which the President of Romania, from that date, decided to organize a referendum to submit to the direct will of the people, the measure of reducing the number of MPs, referendum, which unfortunately did not have this goal, being an advisory referendum, as well as the local referendum, by which the mayor of the administrative-territorial unit is trying to be dismissed. We can say about the referendum that it is similar to direct democracy in Greek polities.

The geographical and numerical dimension of contemporary States practically excludes the use of such a formula, used in ancient democracy, which is still found today only in certain Swiss cantons. Direct democracy, according to the suggestive expression of I. Deleanu, “*has long passed into the world of memories, along with the oil lamp and the sail marine*” (*Boc, 2000, p. 62*).

Post-Decembrist Romania also adopted the system of separation of powers in the state, as stipulated in the Constitution, “*the state shall be organized according to the principle of separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy*” (*Art. 1 para. 4 Constitution*).

GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

The Government reshuffle is also a method of mutual control, which can be achieved only within the executive branch, between the Government and the President, because the Executive in Romania is double-headed, and in this case, we are in the presence of a simple governmental reshuffle, as well as between the legislative and the executive. When we are in the presence of governmental reshuffle by changing the political composition of the Government and the governing program. The latter form the central theme of this Article

Government reshuffle is a change in the composition of the Government accepted by the vote of confidence of the Parliament, whereby one or more ministerial positions will be held by persons other than those who were on the initial list accepted by the Parliament. (*Boc, 2018, p. 315*).

The simple Government reshuffle is enshrined in Article 85 paragraph 2 of the Constitution, which reads as follows: “*In case of governmental reshuffle or vacancy, the President shall revoke and appoint, on the proposal of the Prime Minister, some members of the Government*” (Article 85, paragraph 2). Constitution).

As can be seen from the constitutional Article, simple governmental reshuffle is carried out by the President, at the proposal of the Prime Minister, being an emanation of the executive power, without interference of the legislature.

This type of reshuffle can be regarded as a sanction of the members of the Government, due to incompetence or other reasons related to the appreciation and political cults of the Prime Minister (*Boc, 2014, p. 4*).

In practice, the question has been asked whether the President can refuse a proposal made by the Prime Minister. The answer is yes, the President, although he has no veto right, can ask the Prime Minister once, motivated, to make a new proposal for the appointment of another person as minister. The reasons for the President’s request cannot be censored by the Prime Minister, who has only the right to propose the appointment to the President, and not the decision-making power. Regarding the reasons invoked by the President, in the request for review, he is politically responsible to the electorate, about how he motivated the refusal made by the Prime Minister, and the Government are politically responsible to the Parliament (*Constitutional Court Decision no. 98/2008*).

The entire constitutional court has established that just as the Parliament does not have the right to veto, but only exercises an activity to verify the fulfillment of the conditions of compliance in office, so the President does not have the right to veto the Prime Minister’s proposal, it is only the right to check the suitability of the candidate for office, and may ask the prime minister for another proposal for a candidate for office. In all cases, the retrial must be reasoned (*Constitutional Court Decision no. 356/2007*).

Another question that was asked was whether the Prime Minister can propose again the same person as a condition, who was previously rejected by the President?

The Constitutional Court has also settled this issue, establishing that the possibility of the Prime Minister to reiterate the first proposal is excluded, the Prime Minister having the obligation to appoint another person (*Constitutional Court Decision no. 98/2008*).

1. GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

If the simple government reshuffle is the excrement of the executive power, in the case of reshuffling through which the political composition of the Government changes, the Parliament's vote of approval is required.

The Constitution stipulates that "*if the reshuffle proposal changes the structure or political composition of the Government, the President of Romania shall be able to exercise the attribution provided for in paragraph (2) only on the basis of the approval of the Parliament, granted on the proposal of the Prime Minister*" (art. 85 paragraph 3, Constitution).

From the above Article, it appears that we were dealing with a governmental reshuffle which has as a consequence the change of the structure or political composition of the Government, this implies that either the number of members of the Government is increased or decreased, As well as the situation in which either one or more parties are co-opted to the government, or one or more parties are removed from the government, in this case, parliamentary control exercised by a vote approving the new government (*Muraru, Tanasescu, 2019, p. 757*) is required.

In this situation, the Parliament's approval is required for the President to be able to reshuffle and appoint other members of the Government in office, the proposal for reshuffle is made by the Prime Minister, and is submitted to the Parliament. (*Muraru, Tanasescu, 2019, page 757-758*).

From a procedural point of view, as I mentioned above, the Prime Minister sends the proposal for a remanation to the Parliament, which will be examined by the presidents of the two chambers, after which he will submit to the joint plenum of the two chambers, the Chamber of Deputies and the Senate, the new composition of the Government.

From the constitutional provisions, it follows that the simple vote of confidence has no effect, because the competence of reshuffle belongs to the President of Romania, who will do so after the Parliament has granted the vote.

But we must not forget that without Parliament's approval, the President has no right to follow up on the reshuffle proposal, because the legal act on the basis of which the President makes the reshuffle is the Parliament's decision. It is important to note that the decision given by the Parliament is binding on the

GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

President, and in case of non-compliance with it, the President may be suspended from office for committing a serious act. (*Ionescu, 2013, p. 435*).

In the practice of governmental reshuffle by changing the political composition of the Government, the question was asked whether the change of the governing program with the change of political composition also involves the initiation of the procedure for the appointment of a new Prime Minister? The answer is negative, because the end of the term of prime minister automatically leads to the end of the mandate of the entire government. Under these circumstances, the President of Romania will appoint a minister to serve as interim Prime Minister until a new Government is appointed (*Boc, 2014, p. 5*).

The question that gave rise to many controversies and political opinions is whether by changing the political composition of the Government is necessary an update of the governing program? Some authors would be tempted to reply that there is no need for an update, because the Government is politically accountable to Parliament, which can at any time initiate a no-confidence motion, However, we believe that it would be more appropriate for any governmental reshuffler that changes the political composition of the Government to automatically lead to a debate on the governing program (*Boc, 2014, p. 6*).

Although the wording of the constitutional text leaves room for interpretation regarding the debate on the governing program, in the case of a governmental reshuffle, through which the political composition of the Government is changed, the reshuffle should be accompanied by the Government's commitment to the governing program. The reason is very simple, it is inevitable that the reshuffle will not affect the governing program, for example, if a new party is co-opted into the government, it certainly comes with some reforms it wants to implement as part of the executive (*think about the importance of the government's strategy and program in the field of public finance, Cîrmaciu Diana, 2010, p. 21*).

We consider it appropriate for both constitutional procedures to be exercised simultaneously, namely the Prime Minister when notifying the Parliament with the proposal for a Government reshuffle to trigger the procedure for the Government's liability under Article 114 of the Constitution, so that the Parliament will also analyze the new governing program. The two procedures involve different deadlines, because the reshuffle does not require a long period of time, because in this procedure, the candidates proposed for ministerial portfolios are heard in the specialized committees, and the vote is given in the joint plenary of the Parliament, while in the case of the Government's accountability, The time is longer, as it may lead to the submission of a motion of censure, with a term fixed by the Constitution. (*Boc, 2014, p. 8*).

As regards voting orders in Parliament, we believe that the procedure for the Government's accountability on the governing program should first be voted

on and subsequently the vote on the composition of the Government. The order is a logical one, because the Prime Minister comes before the Parliament and presents how he will govern the country, on the basis of what program of government, and in what composition. The reason for order is this, if the Parliament dismiss the Government by no-confidence motion, the governmental reshuffle by changing the political composition of the Government remains without object. (*Boc, 2014, p. 8*).

CONCLUSIONS

In conclusion, the governmental reshuffle by changing the political composition of the Government is a way of mutual control by the legislature over the executive.

The important thing to note is that the update of the governing program should be carried out immediately, through the procedure of committing the Government's responsibility over the governing program, because it is inefficient to change the structure, but not to have a realistic and credible program to achieve the governing act.

Regarding the content of paragraph 3 of Article 85 of the Constitution, I believe that it should have the following content, in order to remove any arbitrary interpretations: "If the reshuffle proposal changes the structure or political composition of the Government, the President will be able to exercise the attribution provided for in paragraph 2 only after the Parliament has voted on both the proposal to change the political structure and the governing program assumed by the Government."

BIBLIOGRAPHY

- Constitution of Romania, Official Gazette Publishing House, 2003;
IT'S Boc, political institutions and Constitutional procedures in Romania, course schemes, ed. Cluj University press, Cluj –Napoca, 2018,;
IT'S Boc, Government reshuffle by changing political composition and governance program, Article published in the Transylvanian Journal of Administrative Sciences, 2014;
IT'S Boc, separation of powers, ed. Cluj University press, Cluj-Napoca, 2000;
D. Cîrmăciu, Dreptul finanțelor publice, Editura Universității din Oradea, Oradea, 2010;
C.. Ionescu, reports of the Parliament with the Government and the President of Romania, ed. The legal Universe, Bucharest 2013;
I. Muraru, E.S. Tănăsescu, Constituția României Comertariu pe articole, Ediția a 2-a, Editura C.H. Beck, București 2019.