ESTABLISH THE PRINCIPLE OF SEPARATION OF POWERS IN CONSTITUTION OF STATES FROM EUROPEAN UNION

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ABSTRACT: *IN DEMOCRATIC REGIMES OF OUR TIME, THE PRINCIPLE OF SEPARATION OF POWERS RETAINS ALL ACTUALITY, THE EXACT DEFINITION OF THE FIELD OF ACTIVITY OF EACH "POWERS" (OR STATE AUTHORITY OR FUNCTIONS) AND BY PREVENTING INTERFERENCE OF ONE OVER THE OTHER ACTIVITY, KEEPING, HOWEVER, THE "COOPERATION AND COLLABORATION OF POWERS" [1]. SOME RESERVATIONS TODAY MANIFESTING THE CLASSICAL THEORY OF SEPARATION OF POWERS SHOULD NOT BE INTERPRETED AS MEANING THAT IT HAS LOST ITS ACTUALITY AND REMAINS A THEORY OF THE PAST. NEWS AXESTEI THEORY IS EXPLAINED BY THE FACT THAT THE STATE IS IMPORTANT IN ORGANIZING THE INDEPENDENCE OF THE STATE, WHICH CAN NOT BE TOTAL, BUT IT MUST BE VERY WIDE. THIS THEORY CAME INTO CONSCIOUSNESS CROWDS, WHO PERCEIVED IT AS AN EFFECTIVE COUNTER AGAINST DESPOTISM AND IN FAVOR OF FREEDOM AND DEMOCRACY, AND NOW CONTINUING TO BELIEVE IN IT [2]. VIABILITY THEORY OF SEPARATION AND BALANCE OF POWERS WAS GREATLY INFLUENCED BY THE FACT THAT IT IS RATHER A RECOGNITION OF EVIDENCE PRAGMATIC THAN ABSOLUTE THEORY.*

KEYWORDS*: THE LEGISLATIVE, THE EXECUTIVE, THE JUDICIARY, SEPARATION OF POWERS, CHECKS AND BALANCES.*

1. INTRODUCTION

In any state document reflect economic realities, political, social, religious and cultural needs of the nation, in a certain stage of its historical development, the Constitution State. In this sense, Hegel believed *that "every people has its own constitution which fits them properly. Therefore people should have, to his constitution, feeling his right and his state of fact, otherwise, it may exist, indeed, the external chip, but has no meaning and no value "[*3]. Any constitution enjoys supremacy over other laws and regulations, placed in the top of the hierarchy of political acts, as well as normative acts (laws, ordinances, regulations, decrees, decisions, etc.), which gives them political legitimacy, respectively , legal, insofar as they correspond to all the rules and principles which it enshrines.

2. THE PRINCIPLE OF SEPARATION OF POWERS IN STATES WITH PARLIAMENTARY REGIME

Constitution which may be cited as the classic model constitution which was imposed in the second half of the nineteenth century and the first decades of the twentieth century, influienţând constitutional regulations in other European countries, including our country, is the constitution of **Belgium** 1831 [4]. To allow changing the structure of government, the Constitution of 1831 was revised several times, the effect being that the 1994 Constitution of 1831 reflected the liberal doctrine of the state, in vogue in Europe at the time. This is the text that explains why the Belgian Constitution of 1831 were the source of inspiration for other states regarding in particular the institution of civil rights and liberties, guaranteeing private property, considered to be sacred and inviolable, and ways of implementing the principle of separation of powers in the state.

Belgian Constitution provides that all powers emanate from the nation and are exercised in the manner established by the Constitution, (33) enshrining in a specific form, the principle of national sovereignty. It is worth mentioning that in this constitution, in addition to the classic triad (legislative, executive, judicial power) find other meanings of the term of power. In art. 36 states that federal legislative power is exercised collectively by the King, the House of Representatives and the Senate, and Article 37 provides *that "King belongs to the executive power, as regulated by the Constitution"*.

Belgian Constitution established a bicameral parliamentary system, providing that Parliament consists of the House of Representatives and the Senate, the two chambers each having its own powers. The House of Representatives has political control over the government and has a decisive role in public finance, while the Senate has the role of a Board of reflection in the legislative process, expressing the particularities of communities and regions. Being a parliamentary monarchy type, Chief has no powers in the government, its powers are limited to the fulfillment of protocol procedures. If art. 37 of the Constitution provides that the executive power belongs to the king art formally. 105 of the same Constitution provides that the Chief has no powers other than those formally attributed to him by the Constitution and special laws, adopted under the Basic Law. Art. 99 of the Constitution provides that the Government is composed of Prime Minister and Ministers, the Prime Minister holding a decisive role in the composition of the Government [5]. According to art. 40 of the Constitution, judicial power is exercised by courts and tribunals and judgments they shall be enforced in the name of the King.

Grand Duchy of Luxembourg Constitution, adopted in 1868 and subsequently amended several times, contains in Chapter 3, entitled *"On the sovereign power"* following paragraphs: *"About prerogatives Grand Duke", "About legislation", "About Justice" and "About international powers "*. Although in the first article of this chapter, use the singular, consecrating the principle of national sovereignty in art. 34 states that *"the exercise of power which is conferred and the limits of the Constitution, confedaraţia take into account the needs of the family"* and in art. 71 states *that "subject to the rights of the population and the cantons, the supreme authority (and not legislative power) is exercised by the Federal Assembly which consists of two sections or councils, namely: A) National Council and B) Council of States*".

As the **Spanish** Constitution, adopted in 1978 and amended in 1992, it is characterized by a variety of terminology in both the regulations established a principle and in part on public authorities. In this regard, it is sufficient to show that the preliminary

title, after Article 1 para. (2) was referred to the phrase *"state power"* in Article 9 refers to the term *"public authorities"* so *"Citizens and public authorities are subject to the Constitution and other rules of public order."*

The political regime based on the principle of national sovereignty that the state powers emanate from the people [6]. The Constitution provides for a flexible system of cooperation between national sovereignty bodies: the institution of kingship (Crown), the Parliament, the Government and the Supreme Court. Each of these four bodies, called constitutional bodies, their respective specific tasks established the principle of separation of powers in relation to the characteristics of parliamentary political system. As a form of government, Spain is a parliamentary monarchy nature, which means that the prerogatives of power are divided parliament and government, as the main political actors. From the point of view of the prerogatives of the Crown, monarchical institution illustrates the principle that *"the King reign and does not govern."* The Constitution limits the powers of the monarch providing the art. 56 para. (1) that it performs the functions which are expressly conferred by the Basic Law and other laws. Spanish Parliament or Cortesurile General represents the Spanish people and consists of the Congress of Deputies and the Senate. While Congress MPs room appears as a representative of the population [7], the Senate is the Chamber of territorial representation. Executive function is exercised by the government, which, under the Constitution, lead domestic and foreign policy, civil and military administration and State defense. Under the Constitution, justice emanates from the people and is administered on behalf of the King by judges and magistrates, independent and irremovable. The organization and functioning of the courts is based on the principle that jurisdiction, according to which there is only one system of courts established by the central government.

The Dutch Constitution, adopted in 1814 and amended to date on several occasions, not found any reference to the legislative and executive function, however, appear the words *"public authority"* (Article 19, Article 22) that the phrase " *royal authority* "(33, art. 36, art. 37) and the traditional*" judicial power "*.

Considering these aspects, we can say without fear of error, that in some way, the Dutch Constitution is the "non-conformist" west of the newly adopted constitution. It should be noted however, that in art. 110 is used and the expression "public power" and one of the chapters is entitled *"On the law and the administration"*.

About the Constitution of the **Kingdom of Denmark** can say that it is maintained in classical note, even dedicating art. Three traditional triad *"legislative power is exercised jointly by the King and the Folketing. Executive power is exercised by the King. The judicial power is exercised by the courts. "*

The **Italian** Constitution, adopted in 1947, the traditional hand "about the power of the state" is called *"Organization of the Republic"* and includes the following titles: I.*The Parlament* is divided into two sections: Section *1. Rooms* (art.55-69) and Section *2 . Legislation* (art. 70-82); II. *President of the Republic* ; III. *Government*, divided into three sections: Section 1. The Council of Ministers (art. 92-96); Section 2. General government (art.97-98); Section 3. Subsidiary Bodies (Art. 99-100).

In reality, those subsidiary bodies, as well as those contained in Section 2, are part of the government, and hence the 1947 Italian constituent legislator was not on the name of the title, very strict requirements in terms of science right public. Normally, the title would have to be called "Government and public administration" or simply "Public

Administration". Italian constituent legislature opted for a bicameral organization of legislative power: the Chamber of Deputies and the Senate. According to regulations, rooms functional and organizational autonomy, the Constitution did not provide than that each House shall elect from among its members the President and the Executive. The main functions and powers of the two chambers are: the legislative function; prerogatives in finance; executive control function; responsibilities in international relations etc. Legislative function is exercised collectively by the Assembly of Deputies and the Senate. According to the Italian Constitution, the executive powers are exercised by the President and Prime Minister. The functions and powers conferred on it by that Constitution, the President of the Republic personifies: the unity and continuity of the state (art. 87). It features classic presidential prerogatives in parliamentary regimes: holds honorary positions, the Prime Minister is the main actor in the political game between the legislative and executive.

Cabinet holds the key governance levers but was legitimized by the vote of confidence of Parliament. While the legitimacy of Parliament is direct and is elected by direct universal suffrage, government legitimacy is indirect, as it is called by the president, but only by agreement of the Legislature.

Italian Constitution contains no specific provision on specific duties or powers of government, limiting the role of the Prime Minister to state only the general policy of its leadership. This provision makes lacunar Government a very powerful tool, which establishes specific skills. Government power, depends on the support they receive from Parliament. The Prime Minister is appointed by the President of the Republic and ministers are appointed by the President, the Prime Minister's proposal.

Regarding the **German** Constitution, adopted in 1949 and amended in 2008, it refers even in the Preamble, to *"constitutional power of the German people"* and establishes the principle that *"the legislature is subject to the constitutional order and the executive and judicial powers subject to the law and the law "(*Art. 20 para. (3).

German Constitution may be made to, in theory, the same criticism that has come to Romanian Constitution of 1991; not expressly provide separation of powers. It is not, however, omission of the legislature established. Moreover, no other country in the Constitution makes no express this principle. However, the three powers are held and exercised separately from each other constitutional bodies which achieves a power or another individual as well. In fact, for any constitution, it is important to organize the three branches based on the principle of separation, not only to enunciate solemnly. Basic Law also provides for mechanisms for cooperation and the three powers, as they are set in parliamentary democracies.

The German Constitution states that sovereignty is emanating from the people and is exercised by him by election and referendum, and the organs vested with legislative, executive and judicial.

Parliament has a bicameral structure: *Bundestag and Bundesrat.* The legislative process is carried out in parallel in the two chambers, the law passed is the result of collaboration between the two Parliamentary Assembly.

As for the President of the Federal Constitution provides that it is elected by the Federal Assembly, a body composed of members of the Bundestag and an equal number of members that of deputies elected on the principle of proportional representation in representative assemblies of the Länder. Under the Constitution, Federal Chancellor holds

considerable power, setting guidelines of government policy and assuming responsibility for their implementation. It follows that the main policy maker of power system is Chancellor.

About popular sovereignty and its mode of exercise, the **Greek** Constitution, adopted in 1975 and subsequently amended, states that it is the foundation of the political system and that all power emanates from the people and is exercised as provided by the Constitution. To evoke the *"classic power"* constituent legislator uses Greek and other notions such as *"institutions of the Republic", "authority", "function".*

Article 44 para. (1) of the Constitution provides for a complicated procedure, which interferes and interdependent three public bodies: the Government, the Chamber of Deputies and the President of the Republic. This blending of powers aims to ensure the democratic nature of the political regime and prevent the executive from becoming tyrannical and subordinated Parliament. The composition and functioning of the Cabinet are established by a special law. President of the Republic is the peak body of executive power, but do not exceed its powers duties of state in parliamentary regimes. However, the President of the Republic has a leading role in the executive power [8].

Justice is administered by courts composed of judges, who enjoy both functional independence and personal (art. 87). All results of the independence of the text of the Constitution, which states that in exercising their powers, magistrates are subject only to the Constitution and laws. The court is composed of courts, courts of appeal and the Court of Cassation.

The Constitution of **Estonia,** adopted in 1992 and amended later, the term *"power"* is used with a different meaning than the traditional, but both operate with the notion of "authority". For example, if the *"supreme power"* belongs to the people (Article 35), Parliament exercises *"legislative power"* (chapter 5), the Government has the *"executive power"* (Article 63), and related to justice using the term *" judicial authority "(*art.105).

In this constitution, separation of powers expressly mentioned; Thus, Article 4 provides that Parliament, President of the Republic, the Government and the courts will be organized according to the principle of separation and balance of powers.

As the **Latvian** Constitution, adopted in 1992, which regulates the state powers from Parliament and continuing with the President and Cabinet, indicating that the composition of the Cabinet, Cabinet falls president and ministers designated by it, but the number of Ministers and their duties shall be established by law .

Czech Constitution, adopted in 1992 and subsequently amended several times, states that *"the people are the source of all state authority; He exercised by the legislative bodies, executive and judiciary "*and in Chapter III, entitled*" Executive Power "*covered two institutions: the President of the Republic and the Government.

3. THE PRINCIPLE OF SEPARATION OF POWERS IN STATES WITH SEMI-PRESIDENTIAL REGIME

Although it is by execelent, "a pattern" modern drafting the **French** Constitution, adopted in 1958 and subsequently amended several times, avoid the phrase "separation of powers". In art. 3 is devoted to national sovereignty and the titles devoted to public authorities is usually used, the term *"public authority"*. French doctrine is unanimous in finding that the French constituent legislature in 1958 established a new game of profit executive powers, which was likely to create political stability of the country.

French initiators of current Constitution had in mind a clear separation, the three powers almost absolute and achieving a balance between them. The whole process of social management, the Constitution establishes a preponderance of the role of executive power. Parliament retains its traditional functions: voting laws and control the executive power, which are limited by constitutional prerogatives of the Government. Article 20 of Constitution provides that "Government policy sets and leads the Nation" and art. 21 provides that *"the Prime Minister shall direct the actions of the government"*. French Parliament consists of two chambers which enjoys financial and administrative autonomy in their field: the National Assembly and the Senate (art. 24). Members of the National Assembly represents the nation and Senators represent local and French residents abroad. In accordance with art. 64 of the Constitution, the President of the Republic shall guarantee the independence of the judicial authority, which does not mean that the president should be a component of the judiciary or judicial powers it would have. Guarantee the independence of the judiciary in the person sitting head of state, the constituent legislator has considered strengthening the social prestige of the judiciary, guarantees supreme confer a formal their independence. Relying on express warranty President of the Republic - chief executive - is a reflection of its role of arbiter of the proper functioning of public authorities [9].

From the French judicial system and administrative tribunals are part of the State Council, an advisory body of the Government and at the same time, the supreme body of administrative jurisdiction.

The democratic constitutions with the highest number of articles, having a split structure, chapters, in particular, is part of the **Portuguese** Constitution, adopted in 1976 and subsequently amended on several occasions. In terms of reflecting the principle of separation of powers, it can be said that the Portuguese Constitution avoids the phrase *"separation of powers"*, although the word *"power"* appears repeatedly and in different ways. In classic titles and chapters consecrate powers not meet, however, the terms *"legislative power", "executive", "judicial power"*. Portugal constituent legislature created a semi-presidential republic, similar in terms of power and functions of head of state with the fifth Republic of France. The President represents the republic, guarantee the independence of the nation, the unity of the state and the proper functioning of democratic institutions (Article 120) .According to the Constitution, the Parliament (Assembly of the Republic) is the headquarters of the sovereignty of the people, it is composed of representatives appointed by universal suffrage. Government's role is to perform general policy of the country, the peak body of government. The Portuguese judicial system there are three levels of jurisdiction, namely: courts of first instance, courts of appeal, the Supreme Court of Justice. Under the Constitution, the courts are the organs with supreme authority, which have the power to administer justice on behalf of the people. In addition to traditional prerogatives incumbent courts, courts the right to assess Portuguese constitutionality of laws in cases that are subject to judgment.

The **Irish** Constitution, adopted in 1937 and subsequently amended several times, given the times in which it was adopted, we find explicit reference to the nation, national sovereignty, to the inalienable, indefeasible and Irish sovereign nation to choose form ruling that he wants. In article 6 of the constitution states that all powers - legislative, executive and judicial ruling - *"come under divine authority, from the people who have the right to appoint state leadership, and, lastly, to decide all national issues, in line with the*

common good. " Irish constituent legislature is not, however, consistent to the end because in art. 15 para. (3) refers to *"the exclusive power to make laws for the State ', which is conferred on Parliament and not " legislative power "*; in art. 28 para. (2) uses the expression *"the executive power of the state"* and in art. 34 para. (1) talking simply about justice and not the judiciary.

Finnish Constitution, adopted in 1999, focused on increasing the role of Parliament in the functioning of the political system of a unique chamber sitting of the Legislature. The first chapter is devoted to the sovereignty of the people, the Constitution provides that *"state powers are vested in the people, represented by Parliament"*. The wording used to express the people's power, however, is the constitutionally improper. According to the general theory of public institutions, *"State powers"* are not invested in people, as it is entrusting the exercise of power through elections and institutions of state authority, which may be revoked by elections. According art. 3 paragraph (1) of the Constitution, *"Legislative power is exercised by Parliament"*. Constitution opted to limit the powers of the President farm setting in art. 57 He shall perform the duties that the Constitution and other laws. In art. 65 of the Constitution states that the Government has expressly stated in the text of the constitutional duties and other governmental and administrative powers entrusted to the Government or a Minister, or have not been assigned a Presidential or other public authorities. From the court system as part of district courts, courts of appeal and the Supreme Court.

The **Romanian** Constitution of 1991 does not provide expressly the principle of separation of powers, but devoted the entire Title III Public authorities conducting three classic functions of the state: the legislative, executive and judicial, where the conclusion of a tax default of this principle. [10] Subsequently, in 2003, the law amending the Constitution completed art. 1 two fundamental principles: separation of powers and the balance of powers and, second, supremacy of the Constitution and laws obligation; consecration express these principles has the advantage that it is always a specific time, to that resulting from the interpretation: certainty and predictability.

4. CONCLUSIONS

While all constitutions from ex-communist countries in the European Union have opted for a semi-presidential regime formally divided the functions between Parliament, President, Government and judiciary, separation of powers was not mentioned explicitly only in the constitutions of Bulgaria , Slovenia, Poland, Estonia and subsequently with the revision of the 2003 National Constitution. It is obvious, legislators tend to constitute phased express mention of the principle of separation of powers, which is rather suggested the separation of powers is subject to implicit manner, by using specific terms, such as function of the state, public authority, local authority, etc. [11]. Title III of the Constitution, revised uses the notion of public authority designating the narrow sense organs exercising the classical functions of the state, they reflected the spirit of current doctrine, the principle of separation and balance of powers devoted specifically to par. (4) art. 1. Direct the lack of expression in the constitutions of many countries of the principle of separation and balance of powers, is due to several reasons: either because there is a clear separation of powers or the principle of separation and balancing mechanism of powers is not expressed, expresis verbis, the mechanism of separation and balance of powers cooperation based on

the constitutional provisions regulating bodies authorized credentials to perform state power.

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