

PARLIAMENTARY OVERSIGHT IN ROMANIA, A GUARANTEE OF ACHIEVING SEPARATION OF POWERS IN THE STATE

Silvia MIHALCEA*

Abstract

This paper focuses on the dimension of the relationships between the Parliament and other state institutions in Romania (Government, chief of state, public administration authorities) from the point of view of the parliamentary oversight. The reason and the necessity of the parliamentary oversight comes naturally from the existence of the democratic principle of representation: using the mandate entrusted by the people in the electoral elections, the members of the Parliament are entitled and, in the first place, have the obligation to verify the public affairs related to the safeguarding of the national interest and achievement of the well being. This mechanism is a flexible one and involves collaboration, cooperation, balance and thus, it appears as the strongest form in accomplishing the separation of powers in the state. The paper approaches the early developments and the evolution of the parliamentary oversight, the wide range of tools used by the Parliament to carry out this function (procedures and forms) according to the stipulations of the Constitution, laws and European Treaties and emphasizes the role of the parliamentary practice in this field. The study also puts forward a series of detailed recommendations aiming to improve the quality of this act. A new element is the parliamentary oversight in the field of European affairs, introduced by the implementation of the Lisbon Treaty, which consolidates the role of the national assemblies in order for them to become important actors in the European construction by their active involvement in the decision making.

Keywords: *Parliament, parliamentary oversight, separation of powers, state, Constitution*

Introduction

The people are the sole holders of the power, which is exercised by the state through its institutions. A *division*¹ of the powers occurs and we distinguish between the legislative power, the executive power and the judicial power. The importance of this segmentation brings a balance, each power has control instruments on the others, limiting and preventing the power seizure and thus, avoiding abuses.

The parliamentary institution has remote origins, being recorded in Island in 1930 for the first time, when it was founded and when the first national forum met under the name of *Althing*; in Romania, the parliamentary history started in 1831 along with the Organic Regulations, in 1831 in Wallachia and in 1832 in Moldavia.

The mission assigned to the parliament is very much connected to its functions, namely to provide the citizens' needs according to the mandate received from them. One of these functions is the parliamentary oversight (control), which represents a democratic mechanism for ensuring that necessary balance between the powers in the state in order to prevent the seizing of the . Using

* Ph.D. candidate, Faculty of Law, "Nicolae Titulescu" University, Bucharest; Lawyer (e-mail: scmihalcea@gmail.com).

¹ Nicolae Popa, *General Law Theory*, (C.H.Beck Publishing House, Bucharest, 2008), p. 80

specific means, the legislative authority exercises influence on the Government and the public administration, but also on chief of state, pursuing the general interests of the society.

Even if there are very clear and precise provisions in the Romanian Constitution and other laws, in practice things are very often different and this study aims to underline these aspects taking into account the latest approaches and developments, identifying the slippages also targeting to put forward proposals for future amendments of the actual legislation.

1. Evolution of the parliamentary oversight concept

The Parliament, „the supreme representative body of the Romanian people and the sole legislative authority of the country”², is composed of the Chamber of Deputies and Senate, elected by universal, equal, direct, secret and freely expressed vote according to the electoral rules, each of them having different duties.

Professor Ioan Muraru identifies six tasks for the Parliament³:

- a) adoption of laws;
- b) establishment of the socio-economic, cultural, state and legal guidelines;
- c) election, appointment or removal of some state authorities;
- d) parliamentary oversight;
- e) executive board in foreign politics;
- f) own organization and operation.

The occurrence of the parliamentary control concept was born long time before the development of modern political parties. Etymologically, the word *control* comes from the old French, *contreroller*, undertaken from the mediaeval Latin word *contrarotulare* (to check by registering in a second register). In English, *scrutiny* is used for defining this concept, undertaken also from the French word *scrutin*, which comes from the Latin word *scrutinium* – exam and the verb *scrutari* – to search, to look over.

Adopted by the French National Assembly on the 26th of August 1798, the Bill of Human Rights and Citizens set at the art. 14 and 15⁴ the principle of the governors’ accountability to people, principle developed subsequently by the French Constitution from 1791, Title III About public powers: „ministers are liable for all the crimes perpetrated by them against national security and Constitution”⁵ meanwhile the regulatory power has the authority to prosecute ministers and main agents of the executive body before the High National Court.

In our country, as well as in the other European ones, the transparency of the scrutiny (parliamentary control concept) can’t have its origins but in the constitutional provisions, proceeding from the competencies assigned to the state institutions and their inter-relations on the state power separation-based principle.

Once the state power separation principle has been established in the Constitution, we can analyze the existence, size and forms of the parliamentary control within that period of time.

² Art. 61 of the Romanian Constitution

³ Ioan Muraru, Simina Tănăsescu, *Constitutional Law and Political Institutions*, C.H.Beck Publishing House, Bucharest, 2009, p 154

⁴ The citizens have the right to find out by themselves or by their representatives, the necessity of the public contribution and to willingly accept it, to follow its destination, to establish its quantum, bases, perception and time. The society has the right to take a public officer to task for the way he/she meet his/her duties.

⁵ <http://sourcebook.fsc.edu/history/constitutionof1791.html>

One of the first constitutional moments was present in Romania in 1822, „the first attempt to give consistency to the Romanians’ liberal trends and democratic ruling principles worldwide”⁶, by the commissary’s, Ionică Tăutu, constitutional project, known also under the name of “*Carvunariilor Constitution*”. Being inspired by the Bill of Human rights and citizens, the text broadly underlined the separation of power between the Lord and the Public Assembly. The executive power belonged to the Lord; the legislative power could be carried out by the Lord together with the Public Assembly, while the judicial power was subordinated to the executive one. The great historian, A. D. Xenopol named it as “the first Moldavian constitutional project”, but the act couldn’t be applied because of the great boyars’ opposition, supported by the Ottoman Porte. We do not consider that it has significant items which could have specified the idea of a control performed by the legislative power, but „it announced even from the first years of the earthling reigns the institutional searches which were to mark out the second half of the century”⁷.

The first constitutional delimitation of the state power duties, although faulty and “confusedly described in a less clear style,”⁸ can be found in the Organic Regulations, acts which instituted a modern state machine, ousting a series of feudal-like institutions.

The executive power was in hands of the Lord, vassal of the Turks and protected by Russia, who appointed and discharged ministers, he also granted clemency and could reduce punishments, he granted and withdrew noble titles, he concluded treaties with foreign powers, within certain limits, but he could also enjoy exclusively the right of legislative initiative, and he shared the legislative prerogatives with the unicameral parliament established under the name of Public Assembly. The Public Assembly was elected for a five-year mandate and although it had the right to vote legislative proposals with full majority, it had no legislative power as the modern parliaments, as the Lord held a veto right.

We have reached to the matter in question for the present research, being found within the text of article 49 of the Wallachia’s Organic Regulations and in article 52 of the Moldavian Organic Regulations: „The ordinary deliberations of the Public Assembly shall only have legal power when approved by the Lord who is free not to approve them without giving an explanation on his reason of not doing it”. As Marian Enache noticed, within the Lord’s right to vote for the implementation of the adopted laws, we find “the origins of the Romanian parliamentary control, origins which were valued in the next constitutional acts of Romania”⁹.

There are also similar provisions, but more consolidated, in the Developing Statute of the Paris Convention, adopted within Alexandru Ioan Cuza’s reign, in 1864, according to which, due to the state power collaboration, the Assembly was supposed to listen the ministers within the legislative process, if those were asked for taking the floor; The Lord could reject law promulgation.

The provision of Alexandru Ioan Cuza’s constitutional project is also deemed to be mentioned, being published in a French newspaper, *La Nation* in 1863 and unapproved by the great powers through which the MPs were granted the right to address questions to a minister without involving the government’s political liability. Moreover, the questions were supposed to be notified to the president of the correspondent forum who decided in respect to their opportunity but under the conditions to be appointed for that position by the Lord’s decree.

The 1866 Constitution, of Belgian inspiration, was the one which would really establish the state power separation and in consequence a more consolidated form of the parliamentary control;

⁶ Cristian Ionescu, *Constitutional Law and Political Institutions*, vol. I, (Lumina Lex Publishing House, Bucharest, 1997), p. 19

⁷ *Constitutional Reform in Romania. Theoretical and historical aspects related to constitutional evolution*, (ProDemocratia Association, Bucharest, 2008) p. 19

⁸ Gheorghe Gh Tănase, *Separation of Powers in the State*, (Editura Științifică, Bucharest, 1994), p. 218

⁹ Marian Enache, *Parliamentary control*, (Polirom Publishing House, Iași, 1998), p. 125

„by its essence it is a modern, democratic constitution”¹⁰. The legislative power was collectively granted to the monarch and to the National Representation, the executive one exclusively to the monarch and the judicial one to the Courts.

The control performed by the Parliament over the executives took concrete shape by establishing the institutions of parliamentary inquiry, questions and by the citizens’ right to petition.

Article 47 stated that „Each and every Assembly had the right of inquiry”, being performed by each chamber the way they thought suitable and provided in the parliamentary regulations as well. The right of MPs’ to address questions to ministers was established for the first time in a promulgated constitutional text (although that was also provided in Cuza’s constitutional project as we have shown above): art. 49 - „Each and every member of Assembly has the right to address questions to Ministers”.

The parliamentary control was also performed by the motion (petition) right stipulated in art. 50: „Anyone has the right to address motions to Assemblies by means of office or any of its members. Each and every Assembly has the right to submit the addressed motions to Ministers. Ministers have to give explanations over their activity each time the Assemblies would ask for it”. In this way, ministers are obliged to notify the Assemblies regarding the solutions to the corresponding requests. There is also important to underline the fact that the right of motion was recognized regardless age, sex, political affiliation, ethnical origin, etc.

Not last, article 99 established „as a pregnant necessity”¹¹, the collaboration that should exist between the state powers, by a minister’s attendance to the parliamentary chambers’ debates: „If the ministers aren’t members of the Assemblies, they can participate in law debates, but without having right to vote. There is necessary the presence of at least one minister to the Assemblies’ debates. Assemblies can ask for the ministers’ attendance to their deliberations”.

According to the new adopted Constitution, the Lord, exercising the executive power, was deemed to be „inviolable” and couldn’t be made liable in the terms of the fundamental law. This situation had to be balanced somehow, and so the official papers issued by the monarch had to be countersigned by the ministers, being liable for that before the Lord and the Parliament, too.

The vote of non-confidence represented a component of the control performed by the Parliament and although in the previous parliamentary practice prior to 1866 there were cases related to the ministers’ joint or individual political liability – the so-called reprimand passed in the Assembly of Deputies - (on the 18th of February 1863, Nicolae Crețulescu government -50 pro votes, 5 against votes, 50 abstention votes), the Constitution of 1866 did not comprise any explicit provision related to those situations, acknowledged in a customary manner¹². After the adoption of the fundamental law, the Government was supposed to resign not only after a negative vote passed in the Assembly, but also in the Senate, but in practice, if an express motion of confidence was adopted in the Assembly, the vote given in the Senate didn’t have much importance; moreover, that parliamentary chamber would have been dissolved by the Lord, as it happened in the case of Lascăr Catargiu Government in 1876.

The ministers’ legal liability was stipulated in the fundamental act of 1866, in article 101: the Assembly of Deputies, the Senate or the Lord could send them before the High Court of Cassation and Justice, in joint sections.

If things were clear at the level of constitutional provisions, related to the parliamentary control and performance methods, in practice they were totally different. The executive power succeeded many times to assign a predominant role by majority mechanism, dependent on the

¹⁰ Emil Cernea, Emil Molcuț, *The History of State and Romanian Law*, (Universul Juridic Publishing House, Bucharest, 2006), p. 275

¹¹ Marian Enache, *op. cit.*, p 127

¹² Tudor Draganu, *Constitutional Law*, (Editura Didactica si Pedagogica, Bucharest 1972), p. 170

government's influence, as it used many times the state machinery for the candidates' service in order to win the elections. There were many cases when ministers asked the MPs, who constituted the majority, to vote laws they did not agree with. As an example, we present the confession of Constantin Argetoianu, minister of internal affairs, regarding the situation occurred in 1921, when more MPs of the Peoples' Party didn't want to vote certain articles of agrarian law: „Within the 2-3 days prior to voting, we arranged the groups and on the voting day I assigned my people to demand a vote with nominal appeal. I sat down on the office stairs in front of the banks – I was nearly to say the rack – and on calling each name of our party, I was looking into the called person's eyes and no one dared to be “against” under my stare¹³”.

After a five-year reign, Carol I noted in a dateless Memory¹⁴ the insufficient level of development of the Romanian parliamentary regime caused by the existing traditions and continuous confrontations among politicians and came to the conclusion that the Constitution of 1866 needed to be revised for the parliamentary power to be limited, using: withdrawal of the right to control finances, the Lord's approval for the election of the president of Assembly of Deputies, the reduction of time assigned to questions addressed to ministers and the debates related to the vote for the answer of the throne message. But, following “the received suggestions from the diplomatic groups of Berlin”¹⁵, that desire of the monarch was to remain at the level of a mere initiative.

The constitution of 1866 suffered a series of revisions in 1879, 1884, 1917, but the amended dispositions are not important for the subject approached in our research.

The new social, economical and political reality of the country will be regulated by the Constitution of 1923, one of the most European democratic Constitutions of the inter-war period¹⁶, based on the governmental act of 1866, of which 87 articles were entirely kept. The state powers were equally kept, but some improvements were brought in, regarding the Parliament control over the Government.

Besides the MPs' rights to start investigations (article 50) and to address questions and petitions received from citizens to ministers, the obligation to answer the questions was established within the terms provided by the rules of each chamber (article 52), but also the obligation to give explanations about the forwarded petitions (article 53- ministers are obliged to give explanations over their activity each time the Assembly asks for it).

Regarding the subjects approached by the members of the two chambers within the questions addressed to ministers, those had in view matters of different fields as economy, culture, external politics, minorities, education, various social categories, etc.

It is interesting to notice that concerning the collaboration between powers, provided in article 96 of the Constitution¹⁷, this gets new values by the amendment of the two chambers' regulations, in the sense that public sessions of the two Assemblies could only be opened in front of at least one minister.

As an innovation regarding the executive power, the Government is regulated as a distinct body in article 92: „The Government performs the executive power on the King's behalf as

¹³ Constantin Argetoianu, *For those of tomorrow. Memories of those of yesterday*, vol. VI, And Publishing House, preface Stelian Neagoe, Bucharest, 1996, p. 235 – 236, taken from <http://www.ioanscurtu.ro/content/view/112/28>

¹⁴ A.N.I.C. fond Casa Regală, file 12/1871, p. 1-36, taken from <http://foaienationala.ro/carol-si-constitutia-romna-de-la-1866.html>

¹⁵ *Memories of King Carol I of Romania. By an eyewitness*, vol. II, Bucharest, (Scripta Publishing House, 1993), p. 146-147, taken from <http://foaienationala.ro/carol-si-constitutia-romna-de-la-1866.html>

¹⁶ Gheorghe Gh. Tănase, *op.cit.*, p. 263

¹⁷ If ministers are not members of the Assemblies, they can attend law debates without having the right to vote. At the Assemblies' debates, the presence of at least one minister is necessary. Assemblies can request the ministers' presence at their deliberations.

established by Constitution” and the Council of Ministers is established in article 93 being ruled by a person appointed by the monarch in order to create the Government: „The gathered Ministers constitute the Council of Ministers which is presided under the title of President of the Ministers’ Council by the one in charge with the government creation”.

Under the auspices of those new fundamental laws, they also kept the ministers’ liability and the practice of censure votes given in Parliament, a minister or even the entire Government being likely to resign in the event of receiving a vote of non-confidence within the Assemblies.

During that period, the executives manifested their tendency to prevail over the Parliament power, but also to elude the debates on the normative acts of the two Assemblies by using the decree-law method, method which was frequently used starting from 1934 by the governments ruled by Gheorghe Tătărescu.

In 1938, on an intense political tension background and on external threats as well, the King Carol II installed the monarchical dictatorship by introducing a new Constitution approved by the Referendum of the 24th of February, held under a state of siege conditions, by open vote, with a separate list for opponents.

The democratic rights and freedoms were severely limited, but the mimed principle of state power separation was maintained. The Parliament’s power was diminished, being granted the limited right of normative initiative¹⁸, and the executive power, the King, was assigned a more important role being the “head of the state”. The Constitution stipulated throughout Chapter 3, *About the Government and Ministers* the composition of the government, the necessary requirements for acceding the office of minister or secretary of state, liability and restrictions after the mandate expiry.

In the parliament control field, we can’t find anymore the right of parliament chambers to initiate inquiries and to submit the received petitions to ministers, art. 25 stating as follows: „Anybody has the right to address petitions, undersigned by one or more persons, to public authorities, but on behalf of the undersigned only. The authorities have the right to address collective petitions by themselves”.

Ministers are accountable from the political point of view only to the King, the Parliament has no more power to sanction and dismiss the Government, having only a small influence, most of the time invested with a greater importance by some authors of the time¹⁹, just from their desire to justify the new constitutional provisions.

Interpellations were replaced by the institution of the parliamentary questions, article 55 stating as follows: „Each member of the Assemblies has the right to address questions to ministers to which they are obliged to respond within the regulation provided term”. The debates are avoided in this way within the Parliament which could have led to the passage of motions and to a censure vote for government as the „question didn’t have the value of a question anymore”²⁰.

The Constitution was suspended in the fall of 1940 following to the forced abdication of King Carol II, the two parliamentary chambers dissolved and Romania was to be ruled for four years throughout decrees by Ion Antonescu’s military dictatorship regime. In 1946 the Parliament restored the unicameral Chamber of Deputies and it became the Grand National Assembly by the Constitution of 1948.

This fundamental law, as well as the subsequent ones from 1952 and 1965, established the authoritarian character of the communist regime and visibly diverted from the “state power

¹⁸Article 31: „The initiative of laws is granted to the King. Each of the two Assemblies may propose laws for the State public interest only by their own initiative”

¹⁹„Of course, an unfavourable vote, especially repeatedly, will jeopardize its situation” (Government), Andrei Rădulescu, *The New Constitution, FIVE RADIO CONFERENCES*, Ed.-II-, Cuvântul Românesc Publishing House, 1939, Bucharest, p. 49, www.dacoromanica.ro

²⁰Gheorghe Gh. Tănase, *op.cit.*, p. 281

separation principle”²¹. Gheorghe Gh Tănase believed that those „did not establish the state power separation principle, as the Marxist doctrine stated the uniqueness of state power and defined it as an organized power of one class oppressing the other”²².

We'll summarize below the means of the so-called parliamentary control stipulated in these fundamental acts, adapted means which led to the application and fulfilment of the unique party's policy, Romanian Communist Party: the questions and interpellations addressed to the Government or ministers individually, investigations and researches in any field, hearing the reports of the state administration chiefs, of the Prosecution and Supreme Court by the parliament standing committees.

After the Revolution of 1989, Romania returned to a democratic regime based on free elections, political pluralism, separation of state powers, the observance of human rights and the governors' liability before representative bodies. The new Constitution was adopted in 1991 and reviewed in 2003.

2.Parliamentary control – actual constitutional provisions

2.1 Control mechanisms and procedures

In his work,²³ professor Ioan Muraru underlines the parliamentary control and he divided it into six directions, mentioning the powers of the legislative:

1. control performed by giving explanations, messages, reports, programs;
2. control performed by parliamentary commissions;
3. control performed by questions and interpellations;
4. the MPs right to request and obtain necessary information;
5. control performed by settling the citizens' claims;
6. control performed by the Ombudsman.

In the French professor's opinion, Yves Mény²⁴ we can distinguish three types of parliamentary control over the executives:

- Partisan control, led by the opposition being efficient under the government's condition of vulnerability;
- non-partisan control, by means of the parliamentary control which can embrace various forms: questions, commissions, hearings, etc;
- control with sanction, as a censure motion, which is the most drastic, but it cannot be used many times without destabilizing the system;

2.1.1 Motion

The punitive dimension of control function refers to the effective sanction for the Government. This can be done, as in Romanian Parliament case, by censure or simple motions and it may concern, in increasing order of importance: forcing the Government to adopt certain policy measures (by approving a simple motion), the dismissing one or more ministers (by approving a simple motion where expressly required) or dismissing the entire cabinet (by voting a censure motion).

²¹ Marian Enache, *op. cit.*, p. 130

²² Tănase Gheorghe Gh. Tănase, *op.cit.*, p 282

²³ Ioan Muraru, Simina Tănăsescu, *op. cit.* p.158

²⁴ Yves Mény, *France: The Institutionalization of Lordship, in Political Institutions in Europe*(edited by Josep M. Colomer), (Routledge Publishing House, London, 2002).

The procedure for submitting and adopting a motion is basically the same in Romania as in the other former-communist countries, with some small differences. Romania does not practice the so-called "constructive motion of censure" which obliges the initiators to mention the name of the potential prime-minister who would probably undertake that charge in case of motion approval. Poland and Hungary are the ones which apply this system. Another noteworthy difference refers to the necessary number of signatures for putting forward a censure motion. Poland has the most permissive Constitution which allows the introduction of a non-confidence vote by 46 MPs of the total of 460. As for the other Central and East European countries, the number equals to one-fifth (Bulgaria, Hungary) or a quarter (Czech Republic) of all those which have the right to initiate a motion of censure. From this point of view, Romania is part of the more restrictive states, being necessary one-third of the total number of MPs.

Due to the system drawbacks described in the previous chapter, for the MPs forming the opposition, the motion of censure has acquired another stake, which is missing for the countries where communication between Parliament and Government works normally. The initiation of a censure motion has become almost the only opportunity on which the Prime Minister may be brought before Parliament for an effective debate on actual acute problems. This is also valid for simple motions which determine the presence of the other cabinet members before the regulatory forum, depending on their subject. In this way, the Romanian, "parliamentarism" is the generator of a paradoxical and abnormal phenomenon for an operative system: in conditions in which, on one hand, the information dimension of the parliamentary control function is atrophied and on the other hand the chances that a simple or censure motion to be adopted are minimal, as a translation produces between the punitive and information dimension of the control function. In other words, the second dimension – represented by motions – loses its punitive character and it assumes the role and purpose of the information dimension. Given the fact that the mechanisms designed to generate debates among the MPs and cabinet members and to ensure communication, information – interpellations and questions – slightly fulfil their role, they were undertaken by stronger mechanisms - motions. Thus, the tolls of parliamentary struggle involving sanctions are used to generate debates which questions and interpellations would have meant. This aspect explains the increasing frequency of filed simple motions in both Chambers.

Moreover, the public "attention"-enjoyed motions and in general parliamentary debate of utmost importance is extremely low. The public character of Parliament sessions does not equal and does not trigger their promotion. Only motions of censure enjoyed some publicity in the last legislation (there were 10 censure motions initiated in the actual legislature).

Simple motions filed in the Chamber of Deputies and Senate

Legislature	Chamber of Deputies	Senate
2008 – up to present	15	8
2004 – 2008	15	13
2000 – 2004	20	12
1996 – 2000	13	6
1992 - 1996	3	5

2.1.2 Questions and interpellations

These tools represent the most common and convenient way to control the executive power activities. According to article 112, par. (1) in the Romanian Constitution „The Government and each of its members shall be bound to answer the questions or interpellations raised by the deputies or senators, under the terms stipulated by the regulations of the two Chambers of the Parliament”. Thus, the Romanian fundamental law, unlike other European constitutions (Austria, Bulgaria, Cyprus, Ireland, Luxemburg, Russian Federation), provides the difference between these two parliamentary tools, belonging to the so-called non-legislative activity of Parliament.

The differences between questions and interpellations are basically related to procedure and content.

Questions

In European countries with a rich parliamentary tradition, to address questions to Government is one of the most ancient rights of the members of legislative power, being used for the first time in 1721 by the House of Lords in UK. Also in that country in 1902, there was inaugurated the system of written responses for the questions which couldn't receive one due to lack of time.

This mean of parliamentary control is defined both in the Regulation of the Chamber of Deputies in article 165, par. 2, and in the Senate's in article 158, par. 2, as a “simple request to answer whether or not a fact is true, whether or not an information is accurate, whether or not the Government or other public administration bodies will release to the Chamber the information and documents required by the Chamber of Deputies or by the Parliamentary Committees, or if the Government intends to rule on a particular matter”.

Thus, certain information is required by means of questions, explanations and the Government, ministers or other leaders of public administration are their targets. An MP cannot address more than two questions in the same week.

Regarding their content, the questions of personal or private matter are not allowed, as well as the ones which aim to obtain legal advice, or refer to lawsuits pending before courts or the ones concerning the activity of some persons who do not hold public offices.

The questions raised by the Romanian MPs should have a single author, while in some countries there are regulations regarding the number of persons who can initiate such question: for instance five in Austria or Latvia or nine in Lithuania.

We can distinguish between oral and written questions, each category being subject to certain procedural rules which varies depending on parliamentary chamber.

The Chamber of Deputies has schedule for receiving questions on Monday at every two weeks, between 18,30-19,30, provided prior notification of the object, the answer being received within 15 days after sending. The answer cannot exceed 3 minutes and another 2 if there are comments from the author or clarifications are required. Also, for justified cases, the answer can be delayed, fact which occurs in the absence of the targeted minister.

Written questions are sent to the appointed secretary of the Chamber of Deputies and there should be mentioned the type of desired answer: oral, written or both which will be done within maximum 15 days from filing. No deputy can address more than two questions in the same meeting.

Questions pending on answer are published in the Official Gazette of Romania, Part II, at the end of each ordinary session.

In the Senate, although not stipulated in the Regulation, according to the parliamentary custom, the answer to the oral questions addressed by senators is given on Mondays too, being the last point on the agenda between 18:00 -19:30 and they are usually broadcasted live on public radio

station. The time allocated to an intervention is also of three minutes and it may be extended with another two minutes for further clarifications or comments. If the orally asked person is not present, the answer will be given in the next week meeting.

Oral answers to written questions are given after the questions are over and the written ones are sent to the author within maximum 15 days.

Questions and answers are recorded in the transcript and they are published in the Official Gazette of Romania, Part II.

The questions' subjects cover a large range of topics and they can be both of local issues, of the parliamentary constituency and of general interest.

Sometimes, using this mean of parliamentary control can be a launching springboard, being used by the MPs to improve, enhance the public image or inside their own party. In this way, the remarks, made in the XIX century by the famous essayist and British journalist, Walter Bagehot, are still valid: „there are no limits concerning the parliament curiosity. (...) Some of them address question from a genuine desire of knowledge or a real desire to improve the subject of what they ask; others to see their names in newspapers; others to demonstrate to a vigilant constituency they are always in alert; others to go ahead and get an office in the government; others because their habit is to ask questions”²⁵.

Interpellations

An interpellation is, according to article 173, par. 1 in the Regulation of the Chamber of Deputies and article 161, par. 1 of the Senate's, a request addressed to the Government or to a minister by one or more MPs or by a parliamentary group by means of which they require explanations on Government policies.

They differ from questions both by their high importance and their regulatory procedure.

In the Chamber of Deputies, interpellations are made in writing by underlying their object and they are read in public sessions assigned to questions, following to be sent by the president to the chamber of the receiver; they occur on Mondays in the same time with the question sessions and the time of an interpellation cannot exceed five minutes. The answer has to last five minutes too and it can be extended with another two minutes if any further questions or comments from the author.

An interpellation is formulated to create a debate, sometimes its object can turn into a simple motion adopted by the Chamber of Deputies.

Interpellations addressed to the prime-minister are filed to the Secretary of the Chamber of Deputies till Wednesdays, hours 14,00, from the week preceding the prime-minister's responses and they should refer to the Government policy on important issues of its external or internal affairs and the answers are given on Mondays at every two weeks, hours 18,00-18,30, and they can be postponed one week only.

The Regulation also provides, at the request of one or more parliamentary groups or of the prime-minister, the possibility to organize political debates in the plenary with the prime-minister's attendance at issues of major interest for the political, economical and social development. The same parliamentary group can ask for a political debate just once per session, while the prime-minister can ask for maximum two political debates per session.

In the Senate, unlike the lower chamber, interpellations are filed in writing by underlying the object and the motivation, following to be sent after their reading in public session established by

²⁵ Walter Bagehot, undertaken by Matti Wiberg, *Parliamentary Questioning: Control by Communication*, in the work *Parliaments and Majority Rule in Western Europe*, edited by Herbert Döring, St. Martin's Press, New York, 1996, p 181

the Standing Bureau. The deadline for answering is of two weeks and sometimes three weeks in certain occasions.

The author of an interpellation has three minutes in the debate session and the prime-minister or his representative five. These terms can be extended by the same ones in case of replies. The answer to the interpellations addressed to the Government members is presented by the minister or, as it might be, by a state secretary.

The Senate may also pass a motion by which it can express its position on a matter which was the object of an interpellation.

As the lower Chamber of Parliament, interpellations are written, in chronologic order, in a special register and they are displayed at the Senate's.

Due to the blooming activity of the parliamentary groups in the opposition, the number of questions and interpellations addressed to Government has dramatically increased so that we can notice by comparing them to the registered figures in the Chamber of Deputies in fig. 1 for 2000 and 2010, that the number of questions has multiplied by more than 13 times and the interpellations by approx. 10 times. The Senate has recorded the same upward trend.

Another factor which increased the number of questions and interpellations is represented by the electoral law amendment, as the uninominal vote was preferred instead of the party list, a fact that generated a stronger relationship between the MP and his electoral constituency. There can be noticed the great importance of local issues within the approached topics by these parliamentary control means.

Analyzing the actual regulations of the Chamber of Deputies and Senate and the way they are reflected in practice, we can notice certain inadvertences which influence directly the relations between Parliament and Government and also the efficiency of the parliamentary control.

Thus we take into account the fact that many times the prime-minister or ministers don't answer the questions and interpellations addressed to them. In order to illustrate this fact we'll use the data presented in a report²⁶ elaborated by The Institute of Public Policies which reveals that 24% of the formulated interpellations in the February – June 2009 session by MPs remained unanswered.

Another important element is the fact that the direct receivers of questions and interpellations attend the plenary debates very seldom. The parliamentary rules have been amended and they allow the prime-minister's replacement with a representative and the ministers' with a state secretary, but we do consider that their direct involvement would improve the scrutiny performance and would fully justify the institution of the executives' political accountability to the legislative power as found in modern states with strongly consolidated democracy.

Also, the two-week interval, long enough for receiving answers, leads in certain situations to the topic out of date, to the loss of attention and topicality. In order to avoid such situations, we consider as compulsory the introduction of the institution of urgent questions/interpellations on current issues at least in the regulations of one parliamentary chamber as demonstrated by some member states in the EU: Austria, Denmark, France, Germany, Greece, Ireland, Latvia, Lithuania, and Luxembourg. In UK, questions can be addressed from Monday to Thursday, after exhausting the agenda and answered within maximum 3 days, except the emergencies, whose answer is formulated on the same day.

²⁶ Institute for Public Policies, *MPs' activity in the February – June 2009 session*, Bucharest, July 2009, p 45: the deputies addressed 584 interpellations and 143 of them did not get an answer at the end of the session.

2.1.3 Committees of Inquiry

In order to conduct further inquiries, clarification of cases or circumstances related to particular events or facts, the parliamentary control can be performed the standing committees, but, basically, these powers may be assigned to some special inquiry committees.

Article 64 par. (4) in the Romanian Constitution states that „Each Chamber shall set up Standing Committees and may institute inquiry committees or other special committees. The Chambers may set up joint committees”. The Chambers can also constitute joint committees; the dispositions related to their establishment and functioning are detailed within the rules of each parliamentary chamber as well as in the rules of joint meetings.

In order to establish an inquiry commission there are required signatures of at least 50 deputies coming from two parliamentary groups or of 1/3 of the number of senators, and the joint decision shall be submitted to the Standing Bureau/Joint Standing Bureaus of the respective chamber or parliament, accompanied by the list of signatures; the vote will follow in the plenary. The committee starts its activity and it can hear any person who may be aware of facts or circumstances which can lead to the truth and can also instruct for an expertise to be conducted. After finishing and submitting the report to be voted, the committee ceases its activity.

The reports originated from such a committee have a consultative character and they do not constitute legal evidences, but they can be a start for criminal prosecutions by the judiciary bodies. The influence of such an inquiry committee on the public opinion shouldn't be overlooked.

Legislature	Inquiry committees Chamber of Deputies	Joint inquiry committees
2008 – up to date	5	-
2004 – 2008	2	6-
2000 – 2004	-	-
1996 – 2000	2	3
1992 – 1996	-	-
1990 - 1992	2	1

2.1.4 The investigation of citizens' petitions

Citizens can send petitions to MPs in virtue of the received popular mandate, being an intermediary between citizens and the Government. In the Chamber of Deputies works the Committee for the Investigation of Abuses, Corrupt Practices, and for Petitions and in the Senate the Committee for the investigation of Abuse, Corruption and Petitions.

The cases reported by petitions are examined, processed, investigations can be made regarding the reported cases or they can notify the competent public authorities.

2.2 Parliamentary control on European affairs

One of the goals of the Lisbon Treaty, ratified by the member states on the 1st of December 2009, was to strengthen the role of national parliaments, making them important players for the European construction by active involvement in decision-making.

Under the Treaty decisions, the European institutions (The Commission, the European Parliament and the Council) send their draft projects of normative acts to national parliaments, the latter being able to express its motivated point of view regarding the subsidiarity principle within 8 weeks.

Thus, the Romanian Parliament is granted the competence to perform parliamentary control on the government's activity with respect to the European affairs as well. The received informational flow is also relevant (either it is about projects of normative acts, consultative documents as white, green books or communications or by the Council's agendas and minutes), which can be fructified and also the political dialogue²⁷ with the European Commission.

Parliamentary control on European affairs (scrutiny) is a control which has in view the following documents issued by the institutions of the European Union:

- a) draft projects of eligible normative acts for checking the compliance or breach of the subsidiarity principle (it also bears the name of subsidiarity test);
- b) draft projects of normative acts of the European Commission, European Union Council or European Parliament and the consultative documents of the European Commission selected by their political, economical, legal, social or financial relevance;
- c) draft projects of normative acts of the EU for which the Romanian Government elaborates general mandates.

The procedure of parliamentary control on European affairs is an *ex-ante* intervention, performed before the adoption of the European acts (directives, regulations, decisions), unlike the legislative ordinary procedure, which operates after their adoption in order to be implemented in the national law. Its final product is an opinion, a point of view formulated after analyzing those policies which do not generate legal obligations and do not produce direct applicable effects, while the final product of the legislative procedure is the law itself which is directly applicable.

In order to perform this operation, it is necessary to establish a whole construction with implications to normative, institutional and administrative level. At institutional level, a cooperation law is required between Parliament and Government on European affairs; finally, after a long delay the Government put forward, on the 18th of January 2012, a draft bill²⁸.

According to the Treaty's provisions, the Chamber of Deputies and the Senate have each one vote and also a specific procedure.

3 Relations between the Parliament and other institutions

3.1 Chief of state

We chose to use this title as, in our opinion, these two institutions, the Parliament and the chief of state, should have permanently collaboration and balanced relations, considering the fact that they both express the will of the majority among citizens and also the fact that the President is a mediator between "the state powers and between the state and society"²⁹; the control mechanisms should be used responsibly, without generating crisis and constitutional instability.

These relations between the Parliament and the President can only come from the Constitution and are determined by analyzing and interpreting the provisions of the fundamental act.

Article 88 from the Constitution gives the President the power to address "messages on the main political issues of the nation" and does not represent a mechanism of parliamentary control; but it was long discussed when we came to the moment of the debates in the two chambers of the

²⁷ Also named the „Barroso initiative”. It was initiated on September 2006 and it meant an important change especially in the countries where Parliament depended on the information offered by Government regarding legislation discussed in Strasbourg or Brussels.

²⁸ In more European member countries there are inserted dispositions in the fundamental acts with respect to control on European affairs – Finland, Greece, Bulgaria

²⁹ Muraru Ioan, Tănăsescu Simina, *op.cit.* p. 250

Parliament and lead to the conclusion that it can even be rejected, which, in our opinion, is the equivalent of exercising parliamentary control.

The Constitutional Court of Romania was called in 1994 to decide on the issue of constitutionality of Article 7 in the Standing Rules on the joint sessions of the Chamber of Deputies and of the Senate. On this occasion, the Court³⁰ defined the message as "an exclusive and unilateral politic act of the President of Romania, which the Chambers, met in joint session, have ... only the obligation of *receiving* it". Therefore, a parliamentary debate cannot be organized in order for the message to be discussed with the participation of the President, because this would mean engaging his political responsibility; after the presentation of the message, the Parliament can debate it and even adopt measures, without rejecting the message, as "*receiving*" cannot be confused with "*rejecting*". In the same document, the Court interpreted the provisions from article 88 as a "modality of cooperation between the two authorities, elected by direct vote – The Parliament and the President of Romania".

The parliamentary control resides in other two constitutional articles: suspension from office and impeachment.

Article 95 refers to what professor Ioan Muraru calls "the political responsibility of the President...in order to differentiate it from the criminal liability"³¹. The same author considers that the suspension from office is in fact an element of the parliamentary control exercised upon the executive power represented by the President of Romania³².

Thus, in case of having committed grave acts infringing upon the provisions of the fundamental law, the President may be proposed for suspension from office by at least one third of the number of deputies and senators. The proposal must include a motivation, all the imputations and all the proofs. This initiative is debated in the joint meeting of the two chambers which can decide, with the vote of the majority and after a consultation with the Constitutional Court³³. The President may participate in the debate in order to explain the facts which are imputed to him. After a positive vote, the Parliament decides the date for the referendum, organised for the dismissal of the President³⁴, but no later than 30 days, according to Law 3 / 2000. The interim chief of state is the President of the Senate, second in the state line.

When the 1991 Constitution was written, the provisions of article 95 were taken from the Austrian Constitution, but in an incomplete way, as that article states the dissolution of the Parliament in case of a favourable result in the referendum for the chief of state. This is a fair situation, so in case the initiative for the dismissal of the President fails, before term parliamentary elections should come as a natural consequence. In our opinion, this change should be also introduced in case of a future amendment of the Constitution.

The criminal liability of the chief of state is engaged in case of high treason and the members of the two chambers, in joint session, based on a two thirds votes, can impeach him, according to article 97, paragraph (1) from the Constitution.

³⁰ Decision no.87 of September 30th 1994

³¹ Ioan Muraru, Simina Tănăsescu, *op cit*, p. 257

³² Mihai Constatinescu, Ioan Muraru, *Parliamentary Law*, (Gramar Publishing House, Bucharest, 1994)

³³ The Parliament debated so far two such suspension cases:

1. On the 4th of July 1994 regarding Ion Iliescu's suspension, initiated by 167 members of the Parliament; it was rejected with 242 votes against and 166 votes in favour.

2. On the 19th of April 2007 regarding Traian Băsescu's suspension, initiated by 182 members of the Parliament; it was adopted with 322 votes in favour, 108 votes against and 10 null votes.

³⁴ The Referendum for Traian Băsescu's dismissal took place on the 19th of May 2007 and the results were: 24,75% in favour and 74,48% against.

The New Criminal Code, coming into force on the 1st of September 2012, introduces the high treason offence in article 398 and it defines the following facts: treason by transmitting secret state information, treason by helping the enemy, actions against the constitutional order, which are punished with life imprisonment or prison from 15 to 25 years and prohibition of certain rights.

The decision issued by the Parliament and signed by the presidents of the two chambers is sent to the General prosecutor for the High Court of Cassation and Justice to be notified.

3.2 Authorities of the public administration

The fundamental law institutes three types of control for the activity of the authorities of the public administration: parliamentary – the Government and other bodies of the public administration have the obligation to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents (article 111), judicial – article 25 and 52 and administrative – article 102.

Some of the instruments presented above are also used in this type of control performed by the Parliament: questions, interpellations, inquiry committees, but in this case we shouldn't be dealing with a strict political control aiming for the law, human rights and citizens' freedoms to be observed, for the prevention and sanctioning of the abuses of the public servants.

A peculiar aspect is represented by the autonomous administrative authorities which may be established by an organic law and are also situated in the area of the parliamentary control. They are not under the authority of the Government but they have a special relation with the legislative body, either by presenting annual reports or by having their leadership appointed by the Parliament:

- Court of Accounts
- Legislative Council
- Romanian Ombudsman
- Romanian Intelligence Service
- Competition Council
- Foreign Intelligence Service
- Guard and Protection Service
- Special Telecommunications Service
- Insurance Supervisory Commission
- National Audio-Visual Council
- Romanian Broadcasting Society
- National Council for the Search of Security Archives
- Romanian Television Society
- National Authority for Communications
- National Council for Combating Discrimination
- Private Pension System Supervisory Commission
- Romanian National News Agency AGERPRES
- National Bank of Romania
- Romanian National Securities Commission

As for the parliamentary oversight of the intelligence agencies, there are The Joint Standing Committee of the Chamber of Deputies and the Senate for the exercise of parliamentary control over the activity of the Romanian Intelligence Service SRI and The Joint Standing Committee of the Chamber of Deputies and the Senate for the exercise of parliamentary control over the activity of the Foreign Intelligence Service SIE. These committees permanently evaluate the manner in which the political option is converted and applied. Thus, the parliamentary control represents a dimension of the decisional activities accomplished by the public supreme authority.

The powers of the two committees extend over examining the observance of the constitutional provisions and of other acts in this field, controlling the way the money from the state budget is spent, approving the draft bills and resolving the complaints and petitions of the citizens which consider their rights and freedoms affected by the means used in intelligence.

4. Conclusions

The dimension of the mechanisms of parliamentary control, their intensity and quality may vary according to the state's form of governance – political regime, electoral system, unicameral/bicameral organization of Parliament, its political structure, criteria which are also heightened by the tradition and parliamentary culture of each state. An interesting situation and transformation might follow in case of the announced changes to take place in Romania: unicameral Parliament (as a result of the referendum held on the 19th of May 2007), amendment of the electoral laws (also from the point of view of the results of the census conducted in 2011), establishment of regions as a new form of territorial organisation of the Romanian state (political as in Spain or administrative as in France).

The Romanian Parliament must prevent any possible slippages which sometimes are common in practice and avoid becoming a voting machine without amending the texts put forward by the Government. A very dangerous approach, an abuse in the relation between the Parliament and Government is the use of the responsibility assumptions (14 times for 19 laws during the last 3 years) and government ordinances by eluding the legislative debate and thus threatening the democracy rules. Thus, in our opinion, it is necessary to provide in the constitutional text a limitation in time and number regarding these instruments.

Using the sociological method, in our next future papers we intend to conduct a poll/survey among the members of the actual legislature of the Romanian Parliament, from all political parties represented, regarding the efficiency of the parliamentary on the executive by the means presented in our current study. The questionnaire, the sample and the methods for data interpretation will be set in collaboration with experts in sociology.

None of the three powers in the state prevails, there are many cooperation, collaboration areas, traced wider or narrower and despite its critics, Montesquieu's principle remains one of the main values of contemporaneous democratic political regimes.

References

- Bagehot Walter, undertaken by Matti Wiberg, *Parliamentary Questioning: Control by Communication*, in the work *Parliaments and Majority Rule in Western Europe*, edited by Herbert Döring, (St. Martin's Press, New York, 1996),
- Călinoiu Constanța, Duculescu Victor, *Romanian Parliamentary Law*, (CH Beck Publishing House, Bucharest, 2005),
- Constatinescu Mihai, Muraru Ioan, *Parliamentary Law*, (Gramar Publishing House, Bucharest, 1994)
- Dănișor Dan Claudiu, *Constitutional Law and Political Institutions*, (CH Beck Publishing House, Bucharest, 2007).
- Deleanu Ion, *Institutions and Constitutional Procedures*, (CH Beck Publishing House, Bucharest, 2006)
- Enache Marian, *Parliamentary control*, (Polirom Publishing House, Iași, 1998),
- Ionescu Cristian, *Constitutional Law and Political Institutions*, vol.I, (Lumina Lex Publishing House, Bucharest, 1997),

- Institute for Public Policies, *MPs' activity in the February – June 2009 session*, Bucharest, July 2009
- Mény Yves, *France: The Institutionalization of Lordship, in Political Institutions in Europe*(edited by Josep M. Colomer), (Routledge Publishing House, London, 2002),
- Mocearov Andrei, *Scrutiny Procedures in European Affairs*, Conference: *Strengthening the capacity of the Romanian Parliament, the Romanian Senate, 8th of December 2010*,
- Muraru Ioan, Tănăsescu Simina, *Constitutional Law and Political Institutions*, (C.H.Beck Publishing House, Bucharest, 2009),
- Nicolae Popa, *General Law Theory*, (C.H.Beck Publishing House, Bucharest, 2008),
- ProDemocratia Association, *Constitutional Reform in Romania. Thoretical and historical aspects related to constitution evolution*, (Bucharest, 2008),
- Tănase Gh Gheorghe, *Separation of Powers in the State State*, (Editura Științifică, Bucharest, 1994),
- Emil Cernea, Emil Molcuț, *The History of State and Romanian Law*, (Universul Juridic Publishing House, Bucharest, 2006),
- Tudor Draganu, *Constitutional Law*, (Editura Didactica si Pedagogica, Bucharest, 1972),
- Andrei Rădulescu, *The New Constitution, FIVE RADIO CONFERENCES*, Ed.-II-, (Cuvântul Românesc Publishing House, Bucharest, 1939),
- www.cdep.ro
- www.dacoromanica.ro
- <http://foaienationala.ro/carol-si-constitutia-romna-de-la-1866.html>
- <http://www.ioanscurtu.ro/content/view/112/28>
- www.senat.ro
- <http://sourcebook.fsc.edu/history/constitutionof1791.html>.

**Fig 1. Chamber of Deputies
Questions and Interpellations
addressed to the Government**

