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THEORETICAL AND POLITICAL FEATURES OF THE PARLIAMENTARY CONTROL. A COMPARATIVE LAW STUDY

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Motto

"Under the parliamentary regime, the Parliament's control is constantly exercised due to the relations established between the legislative power and the executive one and due to the principle according to which the executive power cannot rule but with the deliberative power confidence."

Maurice Hauriou,
Handbook of Constitutional Law, Paris, 1923, pp. 579-580

Abstract: *In this study, the author intends to make an analysis of the control function of the Parliament exercised over the authorities of the executive branch. Also, the author presents the general features of the parliamentary control. The study is divided into six features: the conceptual boundaries of the used notions; the theoretical framework of the parliamentary control; the political foundations of the control; the relationships between the parliamentary majority and the opposition; the theory of separation of powers as an institutional foundation of the control; the perception of citizens, of the civil society on the effectiveness of parliamentary control. The study is conducted from the perspective of comparative law.*

Key words: parliamentary control, simple motion, interpretation, ministerial responsibility, motion of censure, parliamentary majority, parliamentary opposition, constitutional democracy.

1. Conceptual delimitations

Putting together in an analytical approach the "theoretical basis" and "political basis" notions of the parliamentary control seems, apparently, a contradiction in terms. The analysis of the theoretical bases of the parliamentary control is, in itself, a scientific research, supported by categories of the political science, by norms and legal instruments, by parliamentary procedures, all of them having a scientific feature. Contrary to this approach, the political bases approach of the parliamentary control is less precise if based exclusively on the subjective element, issued from programs and private political interests of the parties represented in representative assemblies being, as the case may be, in power or in opposition. When the political bases of the parliamentary control are involved, we envisage the principle of the national sovereignty and the relations between the political power, the people being its incontestable titular, and the state power,

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which is a temporary delegated power by the electorate to certain representatives elected at national level. According to the special relationships existing between the nation and the representative assemblies, these latter ones exercise the control over the executive power in the people's name, not in the own name. From this perspective we speak of political bases of the parliamentary control. Beyond this meaning of the term, which is a correct one, scientific, in the usual language, the political control exercised by the Parliament over the Executive, generally speaking, and over the Government, in particular, is often interpreted according to the interests and the objectives of the parliamentary parties.

The motions presented in the Parliament of Romania, unfortunately proves that either the parliamentary opposition or the parties from the coalition in power have made of the exercise of the national sovereignty their own problem, leading a private war one against the other, but with the instruments of the constitutional democracy. In our opinion, such parliamentary behaviour contravenes to the spirit of the Art.2, par. 2 from the Constitution of Romania, according to which "no group or person may exercise sovereignty in one's own name".

Nevertheless, the theoretical bases can't be separated from the political ones of the control exercised by the legislative for over the public executive authorities. And this because the political element is always interrelated to the scientific one issued from what the academic environment usually understands by "science" and, within our debate, by political science.

In the governing art there is a fundamental principle, unfortunately misunderstood by certain Romanian politicians, namely: "Science without politics can come forward by means of the theoretical rational arguments force; politics without science lead to nowhere, or rather leads to power loss".

I hardly mentioned this problem because I attentively followed and examined, from inside the Parliament of Romania, the parliamentary control activities, drawing the conclusion that most of the motions, interpellations and questions presented by senators and deputies to the members of Government, the budgetary debates were marked by private interests of the parliamentary groups involved, namely the political parties rather than of the electors'. I don't know cases when the answers given by the members of Government to the questions presented to them or the answers to the interpellations satisfied those who formulated them. No motion was passed. No minister against whom a motion was initiated has recognised in his / her speech from the Chamber of Deputies or the Senate rostrum, that at least a small part of the content of the motion can be backed. The arguments presented by the signers of the motions in order to back their action were rejected by the political vote of the parliamentary majority and, sometimes, ridiculed even by its very representatives.

To be objective, I have to add that the presented situation concerning the parliamentary control exercise in Romania is not, essentially, particular compared

to other representative assemblies, due to the golden law of democracy: "the majority decides".

That is, therefore, the reason why in my exposition I'll try to interweave the theoretical analysis of the constitutional and regulatory instruments concerning the parliamentary control with the political analysis of their exercise referring, on a more general level, to the relations between Parliament and Governments[2].

2. Original and doctrinaire sources of the parliamentary control

As for the theoretical and political bases, strictly speaking, of the parliamentary control these have their original sources in constitutional documents and in classical works of political philosophy, some of them with a significant age, others adopted or published during the evolution of European and North-American constitutionalism process. We don't consider, in the present exposition, making an exhaustive presentation of the doctrinaire and institutional sources of the parliamentary control, nor do we consider drawing a history of these ones, although this theme is inciting.

We find in the Declaration of the Rights of Men and of the Citizen, adopted in August 1789, the principle of the rulers responsibility towards the people, so that the acts of the legislative power and of the executive one may be, at any moment, compared with the aim of any political institution. Here is an essential reference to the relations between political and theoretical, the acts of the legislative power and those of the executive one reflecting the political interest – as conceived by the majority in power – and "the aim of every political institution" being specified with scientific rigour within the Constitution.

Two distinct texts of the Declaration substantiate the natural right of the citizen to control the Ruler.

Art. 14 of the Declaration stipulates that "the citizens are entitled to ascertain by themselves or by means of their representatives the necessity of the public contribution and freely accept it, to follow up the given destination, to establish the quantum, the bases, the perception and the duration of this contribution".

Next to this text of principle, Art. 15 of the Declaration specifies that "the society is entitled to question any civil servant for the way he fulfils his / her duty"[3].

It can be stated, with firm belief, that the philosophy of the Declaration of the Rights of Men and of the Citizen substantiate the natural, inalienable and sacred rights of the human being, which ignoring, overlooking or disregard "are the only

[2] We shall not refer in this study to the criminal or civil responsibility of the Government members for the way they exercise their mandate, but only to their political responsibility.
[3] Stéphane Rials, Declaraţia drepturilor omului şi ale cetăţeanului, Ed. Polirom, Iaşi, 2002, p. 16.

causes of public unhappiness and of governments corruption"[4]. The Declaration catches here with a great evoking power the spirit and the ideology of the 1789 French Revolution, namely: the fight against the despotic regime, where neither the people, nor its representatives in the states assemblies disposed of efficient control instruments over the executive power, in particular over the royal Administration. The simple reading of the Declaration shows that its aim consists in outlining a representative governance in which the authority issues from the nation, and the public force should be set up and exercised "in everyone's benefit and not in the personal gain of those to whom it's entrusted"[5]. For this purpose, it was necessary to institute the principle of ministerial responsibility, as well as instruments and procedures of parliamentary control over the Cabinet members.

The 1791 Constitution took from the Declaration of the Rights of Men and of the Citizen the principle of responsibility of the Cabinet members, specifying in Art.5, Title III, Chapter II, Section IV, that "the ministers are responsible for all the offences committed by them against the national security and against the Constitution". In Art.1 of Section I of Chapter III of the same title, it is conferred to the legislative power the competence to bring in front of the High National Court the guilty ministers and the principal agents of the executive power[6].

In order to avoid conceptual confusions we want to specify that ministerial responsibility is distinct from the exercising forms of parliamentary control, although between the two theoretical categories there are some interferences due to another concept, namely that of "Governmental responsibility"[7].

The ministerial responsibility institution is of British origin being formally recognized and institutionalized in solemn procedures in the XVIIth century, according to the principle that the king's ministers "must be accepted by Parliament"[8]. If the legal institution of ministerial responsibility imposed itself in a decisive way in the XVIIth century, it must be mentioned that the first cases of accusation of a member of the British royal Administration originates in the

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[4] Preamble of the Declaration of the rights of men and of the citizen, in Jacques Godechot "Les Constitutions de la France depuis 1789, Flammarion, Paris, 1995, p. 33,

[5] Art. 12 of the Declaration of the rights of men and citizen,

[6] Jacques Godechot op.cit. pp. 50-51,

[7] The political responsibility of the Government implies, in the parliamentary regimes, its obligation to resign if loosing the confidence of the representative Assembly. See also Guy Hermet, Bertrand Badie, Pierre Birnbaum, Philippe Braud: Dictionnaire de la science et des institutions politiques, Ed. Armand Colin. Paris, 2000, p. 255 ; Olivier Duhamel, Yves Mény : Dictionnaire constitutionnel, PUF ; 1992, pp. 927-929 ; Maurice Block : Petit dictionnaire politique et social, Perrin et C^{ie} , Libraires – Editeurs, Paris, 1896, p. 682,

[8] Constantin G. Dissescu, Dreptul constituţional, Editura Librăriei SOCEC & Co., Bucureşti, p. 241, Ernest Glasson. Histoire du droit et des institutions politiques, civiles et judiciaires de l'Angleterre, Vol. 5, A. Durand, Pedone/Lauriel, Editeurs, Paris, 1883, p. 428.

king's Edward the II[nd] time (1327-1377)[9]. As mentioned, with keen observation, in the Romanian administrative doctrine, the political responsibility of the Government appears on "the accomplished evil" field. It implies, therefore, starting a special procedure and materializes, ultimately, in a constitutional sanction[10].

It's in the nature of the parliamentary regime itself that the control methods refer to acts of Government that this one already carried out, or to public policies the Government committed itself for, either by means of the governing program, or through a special declaration[11].

In the Declaration of Independence of the 13 British colonies from North America, signed on July 4, 1776, another originary principle of the parliamentary control is proclaimed: "Governments are instituted among men, deriving their just powers from the consent of the governed"[11]. Virginia Declaration of Rights, adopted in June 1776, is more precise than the Declaration of Independence, as regards the liability towards the people of those exerting public functions. Art. II of the mentioned document stipulates that "all power is vested in, and consequently derived from, the people; that magistrates – general term designating both the elected representatives and the executive power members exerting public functions (our note) - are their trustees and servants, and at all times amenable to them"[12]. The principle of liability towards the people can be also found in the Declaration of the Rights of the Inhabitants of Pennsylvania, where Art. IV stipulates that "all officers of government, whether legislative or executive, are their trustees and servants (our note: of the people) and at all time accountable to them."[13].

The two texts of the Declaration of the Rights of Men and of the Citizen we have referred to, the constitutional principle enunciated in the Declaration of Independence of the United States, as well as the principle of magistrates liability towards the people, stipulated in the former British colonies Declarations of Rights have their sources in the European political philosophy of the XVII[th] and XVIII[th] centuries. They reflect the ideals of the British Commons and of the French illuminism expressed in their fight against the monarchic absolutism and

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[9] Anibal Teodorescu, Tratat de drept administrativ, Vol. 2, Institutul de arte grafice, Editura Marvan, Bucureşti, 1935, pp. 120 – 121,
[10] Antonie Iorgovan, Tratat de drept administrativ, Vol. 2, Editura All Beck, Bucureşti, 2001, p. 413,
[11] See also André Hauriou, Droit constitutionnel et institutions politiques, Montchrestienn, Paris, 1968, p. 798,
[11] Stéphane Rials, Op.cit., p.368,
[12] Idem, p.373,
[13] Idem, p.376.

have been formulated, among others, by thinkers as John Locke, Montesquieu, Jean-Jacques Rousseau and others. John Locke is among the first authors which founded the principle of the executive power liability towards the legislative assembly[14].

Montesquieu substantiates the same principle of the executive power liability towards the legislative power for the way it applies the laws passed by Parliament[15]. One of the fundamental thesis formulated by Rousseau in The Social Contract regards the balance between the government's power (State's power) and the sovereign's power (people's power), this one having the right to control the magistrates and even to dismiss them.

3. Political bases of the parliamentary control

If we attentively analyse any governing system we can draw the following three main conclusions:

- **a)** government is based on the people freely expressed consent by means of democratic procedures periodically resorted to;
- **b)** parliaments express the people sovereign will, temporary delegated to the representative bodies members;
- **c)** in the parliamentary regimes, the executive power assumes its political responsibility in front of the legislative assemblies.

According to the first conclusion, the people appoints by periodically expressed universal vote its representatives in the legislatives for and, in the parliamentary regimes, the last ones, at their turn, grant the vote of confidence to the Cabinet members. According to the third conclusion, governments are politically liable in front of the legislative assemblies for the modality of exerting the general leadership of the public administration. Both the Government political and administrative activities are under parliamentary control.

The three enunciated conclusions are, in fact, the political bases of the parliamentary control exerted by the representatives assemblies members upon the executive power. From the political point of view, the legislative assemblies parliamentary control legitimacy is founded on the constitutional principle of the

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[14] "When members of Legislative entrusted to others the power of executing the laws they made – says John Locke – they still maintained the possibility of regaining the power, when they have the appropriate ground for this, and of punishing any bad administration of laws". (John Locke, The Second Treatise on Leadership. Letter about tolerance, Nemira Publishing House, Bucharest, 1999, p. 149),

[15] In a free State, says Montesquieu, the legislative power "has the right and must be empowered to examine how the laws it passed have been applied" (Montesquieu, The Spirit of Laws, The Scientific Publishing House, Bucharest, 1964, p. 202).

people sovereignity. Thus, Art.61, par.1 of the Romanian Constitution stipulates that "Parliament is the supreme representative body of the Romanian people…". Another constitutional text, that is Art.69, par.1 develops the mentioned principle, stipulating that "in the exercise of their mandate, deputies and senators shall be in the service of the people".

Other European Constitutions contain similar texts also. For example, Art.1, par.2 of the Spanish Constitution stipulates that "national sovereignity is vested in the Spanish people, from whom emanate the powers of the State". Art.66, par.2 of the same Constitution stipulates, between others, that the Parliament controls the Government activity and Art.108 clearly stipulates that "the Government has a joint liability in front of the Parliament for its political management". Art.49, par.2 of the French Constitution solemnly stipulates that "the National Assembly may challenge the responsibility of the Government by passing the motion of censure". Art.94, par.2 of the Italian Constitution provides that "Confidence is granted or withdrawn by each Chamber through a reasoned motion and using the roll-call vote". According to Art.95, par.2 of the same Constitution, ministers are jointly liable for the Council of Ministers' activity and individually for their own ministers' activity. Art.101 of the Belgian Constitution stipulates that ministers are responsible in front of the House of Representatives. The Portuguese Government is responsible before the President of the Republic and the Parliament (Art.190 of the Constitution). It seems that the Portuguese Constitution establishes two categories of responsibility. Thus, it exists a political responsibility of the Government in front of the Republic Assembly (Art.191, par.2 of the Constitution), to which it is added the responsibility of the Prime minister before the Head of State. Except this responsibility, the whole ministerial team is responsible in front of the Parliament[16].

The constitutional bases of the parliamentary control highlighting its political legitimity can be multiplied by means of references made to other numerous Constitutions. As any parliament is the result of the electors' vote, who give their support, expressed in various percents, to the different political parties participating in the electoral competition, it is natural that, from political point of view, the representative assemblies shall structure in parliamentary majority and opposition. In practice, the use and the efficiency of the parliamentary control instruments and procedures dependent directly on the parliament political configuration reflected in the majority and opposition composition. For the last one, it must be guaranteed the possibility of resorting without any restriction to the instruments of control on Government. Having the parliamentary majority

[16] Cristian Ionescu, Regimuri politice contemporane, Editura All Beck, Bucureşti, 2004, p.304

support, the Government is protected of the opposition statutory attacks, which it rejects through the weight of the power's majority vote.

4. Power distribution between the parliamentary majority and the opposition

The process of a democratic government is taking place at two levels: the parliamentary majority level having, among other functions, the function of supporting the Government and the opposition level. It can be presumed that in all politically organized societies two power cores existed: the one concentrated around the leader and the other one representing interests, aspirations of the groups excluded from the government. Following the governing act modernization, the public opinion formation and expression by means of specific modalities and, later on, the representation in parliament of some minority groups interests which did not have a broad social basis, the majority and the opposition become more obvious and exert a coherent public activity, each of them having a common goal, that of taking over and maintaining the power gained.

The establishment of relations between the two cores/centers of power within the parliament is not a question of strict arithmetic deriving from their number of parliamentarians, but the result of political negociations between the leaders of the two parliamentary shares. Only ultimately, as a final option, the majority resort to the vote – the fundamental rule of democracy – for imposing before the oposition[17].

The parliamentary majority can be defined as the capacity of a group or groups of parliamentarians of imposing by vote their initiatives which are debated in the legislative forums[18]. Generally, the opposition is defined as being the force made up of political parties or groups which disagree with the government or the political regime[19]. In this sense, the opposition's approach can be made at two levels: the parliamentary opposition (having at its disposal legal instruments of expression and being recognised by the governor) and the extra-parliamentary opposition (which in most cases is tolerated by the forces in office)[20].

In a parliamentary regime based on uninominal majority scrutiny the delimitation between the majority and opposition can be easily made. The characteristic of such a regime is the fact that the parliamentary elections

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[17] The word majority derives from latin: "majoritas" means superiority,

[18] Olivier Duhamel, Yves Mény, Dictionnaire constitutionnel, PUF, Paris, 1992, p.617-619,

[19] Regarding the issue of the relation between majority and oposition, see Jean-Louis Quermonne, Le gouvernement de la France sous la V-e République, Dalloz, Paris, 1983, pp.419-420; Ghiţă Ionescu, Isabel de Madariaga, Opoziția, Editura Humanitas, Bucureşti, 1992, pp.20-26,

[20] Cristian Ionescu, Tratat de drept constituţional contemporan, Editura All Beck, Bucureşti, 2003, p.292.

winning party has a comfortable majority within parliament and the government benefits of the legislative forum permanent support.

In the political regimes based on proportional representation, within the parliament there are represented several parties with similar electoral weights; it is extremely difficult for any of these parties to obtain an absolute majority of mandates. In such a case, the rule is the setting up of parliamentary parties alliances: on the one hand, the majority alliance and, on the other hand, the alliances constituted by the opposition. Certainly, in the enunciated hypothesis, each of the minority parties which do not accept to become components of the majority, may consider itself an opposition party.

The main consequence of a faithful parliamentary majority setting up is the political stability provision, through which the governments can impose without any difficulty their governing programmes. But, the parliamentary majorities have also a virtual negative effect which "spares" the Government to be permanently dependent on the confidence granted by parliament. A government enjoying a faithful parliamentary majority can stimulate itself for exerting a *de facto* domination upon the reprezentative assembly either by a quick voting of the bills sent to its voting machine from the parliament or by minimalizing the idea of parliamentary control. But, it is not less true that such a government can be obliged at its turn to accept certain compromises in favour of some parliamentary majority components linked to or controlled by private economic interests.

But even in normal circumstances, where the political corruption issue doesn't occur, a Government even tied with the parliamentary majority by its common political orientation, is seldom unconditionally supported, and inevitably will occur tendencies and conflicts that might become more frequent and more critical, if it comes to majority coalitions[21].

Therefore, in political real life, political actors adjust their game to concrete circumstances, without breaching the constitutional framework of the power exercise.

These games do not cancel the importance of the majority, nor of the opposition. On the contrary, within modern parliaments, the non-existence of the binomial majority/opposition is unthinkable.[22] While the parliamentary majority has the principal function to legislate, the opposition limits itself to an enduring fight against the government and to designing an alternative governing program, only in order to take the power.

The opposition existence guarantees that the bills and all parliamentary initiatives of the government (programs, declarations, reports etc.) will be

[21] Pierre Pactet, Institutions politiques. Droit constitutionnel, Armand Colin, Paris, 1999, p. 114,
[22] Idem p.293.

thoughtfully scrutinized by the opposition, from a critical and constructive perspective. Such a constitutional mechanism makes possible the strengthening of the democratic quality of the legislative power, as well as of the political system as a whole.

Creating conditions for a genuine and trustworthy opposition to appear itself as a governmental alternative is an important function of any parliament. This function apparently goes up against the majority interests, a majority who wishes that more legislatures maintain political power. Actually, the parliament is the highest representative of the people and therefore it finds itself beyond party interests; the parliament is devoted to citizens' hope of being well governed, regardless of the party that took this responsibility[23].

The relationship between parliamentary majority and opposition is not similar to a denial of the opposition by the majority.

One has to mention that, within democratic societies, the majority, as well as the opposition have a legitimacy derived from the number of votes as an outcome of parliamentary elections.[24] But, while modern constitutions forbid the imperative mandate and consider that the parliamentary mandate is representative, one can say that the voters are represented by both the majority and the opposition. The essential part here is that both the majority and the opposition should act through those legal mechanisms provided by Constitution and parliamentary rules of procedure.

While the majority rationally emerged from an arithmetical equation, the opposition has been the result of an enduring process to which contributed a variety of factors: sociological factors (the development of the public opinion), political factors (the splitting up and the fusion of minority groups within parliament), as well as juridical factors (the creation of a legal framework for the opposition functioning).

In any state of law, the opposition has a special statute and a multitude of methods to act in parliament.[25] The concept of "Opposition Statute" includes a number of written rules and parliamentary practices which define the opposition place and role within parliamentary organization and functioning. This statute is not necessary influenced by the political equation resulted from the weight of each parliamentary group; regardless of the number of parliamentarians, who, during a legislature, join the opposition, the latter should be granted certain rights and incentives to state its own identity, as an alternative to the majority political program. Although some authors assert that the opposition might become, in some

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[23] Ibidem,
[24] Ibidem,
[25] Jean-Louis Quermonne, Op.cit., p.450.

western parliaments, a stylistic device, because the dominant parties are less willing for a dialogue with the opposition, renouncing to those traditional ways of negotiation, to compromises and consensus[26], the binomial majority/opposition is unthinkable when it comes to democratic functioning of parliaments. The democratic functioning of parliaments depends, to a great extent, on the creation and compliance with an opposition statute which should allow to the latter to play an accountable and constructive role by:

a) offering the presidency of some parliamentary committees;
b) having the legal possibility to initiate the creation of some enquiry committees and within these committees the opposition should have more members than the majority;
c) being consulted by the majority, when it comes to very important issues for the adoption of some political decisions, as well as when it comes to dissolution of the parliamentary assembly.[27]

Having in mind these minimal coordinates, one must not perceive the relationship between majority and opposition as a relationship of subordination of the opposition to the majority political parties or as an opposition censure. According to parliamentary general theory, the opposition appears as an efficient instrument by which the citizens and public opinion control the management strategy of the parliamentary majority and Government, as well as an alternative to the government.

In any parliament, the opposition should not have its numerical inferiority complex, but approach the political struggle competitively, meeting the following three principles:

a) the opposition is an institutional factor and an essential element of the parliamentary democracy;
b) the opposition has a formal role to deny officially and in an organized manner the government program;
c) the opposition represents a political alternative to the parliamentary majority.[28]

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[26] See Robert A. Dahl, *Political Opposition in Western Democracies*, Yale, 1996, pp.238,
[27] Hans Helmut, Moser, *Funcţionarea democratică a parlamentelor, proiect de raport prezentat Comisiei pentru relaţii parlamentare şi publice a Adunării parlamentare a Consiliului Europei,* Strasbourg, 19 Septembrie, 1997, p.3,
[28] Cristian Ionescu, Op.cit., p.294.

5. The theory of separation of powers within the state and the parliamentary control extent

If the idea of parliamentary control grounds itself on the sovereignty principle, which grants legitimacy to the government, and on the principle of representation, the material forms of the control and its magnitude depend on another principle, namely the separation of powers in state. Two ideas must be clarified here. The first one aims directly for the very relationship between the three powers.

Montesquieu had the intuition of an absolute and absurd separation of powers that would obstruct the governing process. If these three powers would not cooperate and impede each other in an unproductive and inefficient way, the result would be "a dead end, namely the impossibility to take any kind of action". The remedy for such an impasse is the cooperation of powers. "Thankfully to the nature, said Montesquieu, these powers are forced to cooperate, they have to work in common agreement".[29]

According to the separation of powers principle (legislative, executive and judiciary), the power is exercised by independent authorities with almost equal power shares. Concerning the jurisdictions attributed to them, each power (public authority) has a number of special competences which are the basis for specific activities (legislative, executive and judiciary) and a balance for their mutual relationships. According to the powers separation principle, none of these three powers prevail upon the other, cannot subordinate it or assume its responsibilities. Besides, each power has a legal and material possibility to survey the other one and to sanction it, if the latter tries to share supplementary competencies, either by taking over the competencies belonging to another power, or by adding new powers to those it already has.[30]

When the separation of powers principle has been included in constitutions, they brought it some changes concerning the cooperation of powers. There has been created what the constitutional doctrine calls "Checks and Balances", namely a mutual surveying of these three powers in order to rebalance their relationship.

If we consider abstractly and rigidly the powers separation principle, then we might notice no link between them; the principle so considered, applied to practical government circumstances, might generate chaos and public disorder, because these three powers are likely to act tyrannically. The remedy for such a functional inconvenient is their mutual cooperation.

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[29] Montesquieu, Op.cit., p.204,

[30] Cristian Ionescu, *Principalele forme de interferenţă a instituţiilor în guvernare în statul de drept*, în „Studii de drept românesc" no.2/1995.

The second idea sets the basis for the distinction between the presidential and parliamentary regime. Within presidential regimes the powers are strictly separated, therefore the methods of parliamentary control are limited. On the contrary, within parliamentary regimes one can find diverse forms of parliamentary control, comparing to those applied in presidential regimes.

During two centuries of application, the powers separation theory had different shapes in every political regime. Basically, one cannot find two states with identical types of powers separation or powers distribution. Even within the same state, during a more or less enduring historical evolution, there have been noticed some changes in the relationship between powers, for the benefit of one or another, although constitutional provisions concerning the distribution of powers remained untouched. Within USA constitutional practice, for instance, the relationships between powers, especially that between the executive and legislative, had a different evolution in every legislature and presidential mandate as well.[31] The legislative and executive powers exercise the so called enumerated powers (those powers expressly stipulated by the Constitution) and implied powers (those prerogatives that belong to the quality of legislative or executive function).

Concerning implied powers, the USA Congress or the President exercise different "powers", within the limits of their constitutional competencies, according to which they exert their influence upon other sectors.[32]

Interesting is the fact that the source of implied powers is the interpretation of Constitution's different texts.

Therefore, using an extensive interpretation of some constitutional texts, the US President becomes "more powerful" than the Congress, without damaging the constitutional equilibrium between powers[33]. Of the same power disposes also,

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[31] The distinct aspect of this evolution is, as the case may be, the increase of President's personal powers, by assuming highly governing responsibilities (the theory of "personalization of power"), despite the Congress who tries not to use its constitutional competencies, or the Congress ascendancy upon an administration run by a "weak" president. See Arthur M. Schlesinger Jr., The Imperial Presidency, Houghton Mifflin Co., Boston, 1990, pp.378-392,

[32] See Louis Fisher, Constitutional Conflicts between Congress and the President, Princeton University Press, 1985, pp. 18 - 27,

[33] According to Article 1, Section 8 from the Constitution, the Congress has the right to declare war, but the President is the Commander-in-Chief of the Army and Navy, and of the Militia in several States, as well (Article I, Section 2). The Constitution, not disposing exactly and exhaustively the extend of this Presidential power, different Presidents used it, overruling the Congressional powers and disposing sending the American military in operations against other state, without the formal approval of the Legislative. In this way, it has appeared an uncontested right for the President to dispose, without the approval of the Congress, the sending troops abroad to defend the US national security or to defend the Americans' life. See Louis Fisher, op. cit., pp.

theoretically, the Congress, which, for example, has the right to draft all the bills that might be considered necessary and appropriate for implementing the powers vested by Constitution (Article 1 Section 8 Clause 18). Constitution, without mentioning the laws concerned, the Congress is free to consider in this matter. In practice, nonetheless, the President has used, in most cases, the implied powers.

In the constitutional doctrine it is admitted, even by the possibility recognized for the Government, in parliamentary regimes, of assuming the responsibility in front of the Legislative on a bill or on a political program or on a declaration, the Executive has a preponderance over the Parliament, due to the fact using such a procedure, the Government, having the parliamentary support, imposes such a decision.

After the First World War, in many European countries, the Executive took measures for limiting the legislative power that went, in some instances, to suspend or dissolve the Parliament. After the Second World War, in the European Parliamentary regimes, the multiparty model was widespread; therefore no political party has succeeded to gain a majority of seats. In such a multiparty Parliament, in which no (political) party held the power, the political games took place in the Parliament; the minority Governments didn't succeed to govern without consistent parliamentary support.

The French Constitution of 1946 acknowledged such a political reality, with significant consequences on the governing process: in theory, the powers of the French Parliament were substantial, but the divisions among political forces from it impeded the good governance. Therefore, the Constitutional Legislative from 1958 has sought to find an antidote to the Parliament preeminence, disposing a series of mechanisms to limit it[34].

In the Parliamentary practice, the members of the French Legislative, especially the deputies, has countered the diminishing of the Legislator's role in its reports with the Executive, by de facto amplifying of their right to request information and control over the members of the Government and by increasing their influence on the decision took by the Executive power, as well[35].

Nonetheless, even in the present, the French Constitutional doctrine considers that the role of the Executive power is primordial in comparison to that of the Legislative power. The main actor of the national policy is the Government that

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284 – 289 and Johnny H. Killian (Ed.), The Constitution of the United States of America, Analysis and Interpretation, Library of Congress, Washington D.C., 1987, p. 463 sq.

[34] For details, see Cristian Ionescu, Sisteme constitutionale contemporane, Ed. Sansa, Bucharest, 1994, pp. 119 sq.; Jean – Louis Quermonne, Le gouvernement de la France sous la V – eme République, Dalloz, Paris, 1983, pp. 52 – 56,

[35] See Guy Carcassonne, La resistance de l` Assemblee National a l` abaissement de son role, in «Revue française de science politique», No. 4 – 5/1984.

determines and conducts the policy of the nation (article 20(1) of the Constitution of France). From this perspective, the role of the Parliament consists in adopting the bills (in fact in amending and adopting the bills summoned by the Government) and in exerting the Parliamentary control, and that of the Government in effectively exerting the political power according to the Governmental program sanctioned by the Parliament.

The concrete modes of Parliamentary control are different, according to the nature of the political regime. In the Presidential regimes, the legitimacy of the ministerial team is conferred by the President of the Republic, which is elected by universal and direct suffrage. Therefore, in these political regimes the question of the vote of confidence by the Parliament to the Government doesn't occur, and the last one is politically responsible in front of the state chief. On the other hand, the Parliament has the right of control over the manner the budget is drafted and executed, right that is initially exerted by approving it and, later, by controlling its utilization. In a more general manner, the US Congress is directly interested in having an exact representation of the way the bills it adopts are executed and followed by the administration. The Congress materializes this power by its committees.

Another form of parliamentary control in the Presidential regimes consists in the opinion given by the High Chamber in appointing in public offices made by the chief of state[36]. The same Chamber has the power to give an opinion over the international treaties signed by the President[37].

A particular form of control in the American political system is the impeachment procedure mentioned in Article 1, Sections 2 and 3, Clause 5 from Constitution), the House of Representatives shall "have the sole Power of Impeachment". When the President of the United States is tried, the Chief Justice shall preside.

In the House of Representatives, the impeachment decision is taken by simple majority of the members. For a high officer or the US President to be convicted, it is necessary the concurrence of two thirds of the members. The sanction consists in "removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States" (Article 1, Section 2, Clause 7)[38].

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[36] Cristian Ionescu, Regimuri politice contemporane, Ed. All Beck, Bucharest, 2004, p. 455,
[37] Ibidem,
[38] For details see, Fred R. Harris, Paul L. Hain, op. cit., p. 39; Johnny H. Killian (Editor), op. cit., pp. 289 – 296. For the "Watergate" scandal, in which the President Nixon was accused of involvement in a burglary, reason for he resigned, see L` Affaire du Watergate et la chute du President Nixon, in "Problémes Politiques et Sociaux", "La Documentation Française", No. 241 from 4th October 1974.

The impeachment is motivated by committing crimes of treason, bribery, or other high crimes and misdemeanours.

The Congress has the Constitutional right to demand information from any agency of the Administration[39]. Obviously, some information is obtained with difficulty, and sometimes the Congressional power is challenged by the Administration. In such situations, the last resort is held by the judiciary.

In the parliamentary regimes, the reports between the representative Assemblies and the Government are much more diversified, compared with the presidential regimes. The essential character of this political regime consists in the high degree of equilibrium and interference between Parliament and its bodies, on one hand (Assemblies/Chambers; Parliamentary committees) and Government, on the other hand. The modes of interference are different, the Constitutional framework of occurring coming near the violation of the autonomy and independence of the high bodies, implied in this junction fully legal: Parliament and Executive (the chief of state and the Government)[40]. The type of parliamentary political regime might be defined as that form of governance based on the representative regime and the slim separation of powers in which a continuous collaboration between the Legislative power and Executive, employing the Cabinet of Ministers, that shares the burden of governance with the state chief, but that cannot govern without the continuous confidence of the Parliament, and that is politically responsible in front of it, is shared[41].

From this theoretic perspective, consacrated in institutional formula derived from the Constitutions, the modes of parliamentary control are various, starting with the vote of confidence in the Government and ending with its dismissal, as a result of putting and voting of a motion of no confidence against it.

In the parliamentary regimes, the control exerted by the representative Assemblies on the Government might be done in four modes: addressing questions to the members of Government, interpellations, establishing the inquiry committees and putting and voting of a motion of no confidence that questions the initial confidence accorded to the Government[42].

In the United Kingdom, the ministerial responsibility consists in the power of the House of Commons of demanding the members of the Government to report

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[39] A pertinent analysis on the modes of the Congressional access to information held by the Executive power is done by Richard Ehlke, Congressional Access to Information form the Executive: A Legal Analysis, Congressional Research Service, Library of Congress, 10th March 1986, Washington D.C.

[40] Cristian Ionescu, Tratat de drept constitutional, Ed. All Beck, Bucharest, 2003, p. 270,

[41] Maurice Hauriou, Précis de droit constitutionnel, Sirey, Paris, 1923, p. 413,

[42] Bernard Chantebout, Droit constitutionnel et science politique, Armand Colin, Paris, 1999, p. 583.

in front of it on the way they accomplish their tasks. Ministers are politically jointly responsible for the general activity of the Government. They may be individually responsible for committing acts that are incompatible with the function they accomplish. If a minister has lost the confidence of the House of Commons for political reasons or exclusively for personal reasons, he is forced to resign. Supplementary, ministers might receive questions and interpellations[43]. In Germany, the content and the characters of the political responsibility of the Government are determined by the parliamentary nature of the political regime. (…)

At the same time, in order to avoid exaggerate exercise by Parliament of parliamentary control instruments, which might lead to instability of cabinets, in practice there is a certain rationalization of parliamentary control. That is not about, in this case, any resemblance with Parliament rationalization imposed by French Constituent in 1958.

The political responsibility of the federal Government in front of the Parliament may be assumed in two ways. In the first case, the Prime-minister (Chancellor) asks the Bundestag for a confidence vote. Confidence granting should be voted by the deputies majority. In contrary case, the Chancellor has the right to present to the President of the Republic, during 41 days from the vote result, the proposal for dissolving the Bundestag and organizing of anticipated general elections[44] .

It is interesting to mention that the Bundestag, in accordance to the Fundamental Law, may designate, during a period of 41 days from the non-confidence vote, a new Prime-minister, removing the danger of dissolution by a Chancellor who has no longer its confidence. In the case the Federal President does not answer to the Chancellor`s demand to dissolve the Bundestag and this Chamber does not designate a new Chancellor, the Chancellor who has been rejected by vote of non-confidence can ask the President to declare the state of legislative necessity with the Bundesrat`s consent. We have to mention that the declaration of legislative necessity state is a measure against the Bundestag which cannot be disputed.

The constitutional cause of legislative necessity state consists into Government`s right to adopt, in an urgency regime and not only with the approval of the Bundesrat, a law with primary content for determined six months period.

In the second case, the Bundestag may adopt a non-confidence motion against the Government, fact that leads to the removal of Government.

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[43] Questions, House of Commons, London, 1994, p. 3,

[44] Cristian Ionescu, Regimuri politice contemporane, All Beck Publishing House, Bucharest, 2004, p.201

In order to produce the same effects, the motion must be voted by the majority of deputies. In the content of the approved non-confidence motion it will be mentioned the successor of the rejected Chancellor. The appointment through a non-confidence motion of a new Prime-minister instead of rejected predecessor is an interesting and original formula which presents the advantage of avoiding new expensive elections, and also political pressure generated by the proposal of a new candidate for the federal Chancellor position[45].

The parliamentary control is also exercised by means of questions from members of Parliament for Government`s members, as well as by control committees (at the request of ¼ of the Bundestag`s members) or enquire committees.

Within the Italian constitutional system, the parliamentary control of Government activity is regulated by the Constitution in accordance to the parliamentary regime characteristics. Therefore, the Government has political responsibility in front of the two legislative Chambers. The ministers have a collective responsibility for the general activity of the Cabinet and a personal responsibility for their ministries.

Other ways of parliamentary control are questions, interpellations and investigations. The question consists into a written demand which a deputy or a senator presents to the Government or minister, in order to obtain information from Government, respectively that the minister has known about certain facts and measures which he intends to adopt in that matter[46]. The answer may be discussed by the member of Parliament who formulated that question.

The interpellation consists in a question addressed to the Government or to a member of the Cabinet regarding the motives which laid to a political decision taken by the Cabinet on a determinate issue. The answer to the interpellation is considered an official position on behalf of the Government. If a member of Parliament who has sent the interpellation is not satisfied with the given answer, he may start a special procedure to transform his interpellation into a non-confidence motion[47]. That motion will be debated in a session of the Chamber to which the member belongs and will be finalized by vote.

In accordance to article 82 of the Italian Constitution, each Chamber may decide the establishment of parliamentary enquires for public interest issues.
The investigation will be conducted by a committee which composition will show the political configuration of that Chamber. The constitutional text authorizes that the committee may conduct investigations and enquiries and use particular ways

[45] This constitutional formula has taken by the Spanish Constituent in 1978
[46] Pasquale Ciriello,Le regime politique de l`Italie, in Genoveva Vrabie (coord). "Les regimes politiques des pays de l`UE et de la Roumanie", Official Journal, Bucharest, 2002, p.265
[47] Idem. p.266

of judiciary authority. Nothing can stop these two Chambers to decide the establishment of mixed parliamentary committees, composed by deputies and senators. The enquire committees have the right to quote and hear different persons and to analyze that probation evidence. If the enquires which follow conducted by the committee result into committing offences, it may be initiated the criminal procedure. In this case, the Constitutional Court has decided that the enquires files of parliamentary committee should be presented to the competent judiciary authority[48].

The most efficient parliamentary control instrument is the motion of censure, which determines the Government resignation. The motion can be filed by one tenth of the deputies or senators number and must be motivated. Three days after submission, the motion is discussed and subjected to the roll-call vote of the respective Chamber's members. For passing the motion, the vote of this Chamber relative majority is necessary.

The Italian Government can assume on own initiative its responsibility in front of any of the two Chambers for a bill, an amendment or a governmental decision[49]. Art.94, par (4) of the Constitution stipulates that the negative vote of one of the two Chambers for a Government proposal does not have as a compulsory effect its resignation. The Prime-minister and the Government members can be accused by the Parliament, during a joint sitting, for offences committed in the exercise of their functions. The Parliament has also the possibility of overseeing the Executive by means of its competence of ratifying the international treaties signed by the Head of the State; during the state of war the Parliament can confer special powers to the Government.

With regard to the French Parliament control prerogatives on Government, we must take into account the semi-presidential character of the political regime. Therefore, according to the Constitution, the Prime-minister, after deliberation by the Council of Ministers, may commit the Government's responsibility before the National Assembly with regard to its programme or to a statement of general policy (Art.49, par 1 of the Constitution), such a procedure is characteristic for the parliamentary regimes. The Constitution also provides for the Prime-minister the possibility to commit the Government responsibility in front to the National Assambly upon a text (Art.49 par 3 of the Constitution).

The Constitution also stipulates, in Art.49, par. 4 that the Prime-minister has the competence to request the Senate to approve a statement of general policy. It can be noticed that in this last case the problem of Government responsibility

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[48] Philippe Lauvaux, Les grandes democraties contemporaines, France University Press, Paris, 1998, p.698,
[49] O. Duhamel, Droit constitutionnel et politique, Seuil, Paris, 1994, p.579.

commitment cannot be raised, and the Senate refusal does not determine the Government resignation.

It's interesting to notice that the Senate does not exert a political control over the Government[50]. Due to the political regime character, the parliamentary control is more attenuated compared to that exerted in states with parliamentary political regime, limiting itself to the parliamentarians information with various aspects of the Government's activity. The members of the two legislative Chambers exert the right to be informed by means of the oral and written questions addressed to the Government members.

The procedure of written questions is not mentioned in any Constitution nor in the constitutional legislation; it is the result of a parliamentary tradition inaugurated at the beginning of the XXth century, and introduces in the two regulations of the legislative assemblies. According to the Chambers, regulations the written questions upon the Government general policy shall be addressed to the Prime-minister.

The members of the Parliament are totally forbidden to address personal reproaches to the implied persons. The questions are submitted to the Chamber's Speaker, who notify them to the Government. These questions are also published in an official publication. The answers are sent in the same way within a certain period. The ministers can dodge the obligation of answering the questions, declaring in writing that this refusal is meant to defend a public interest.

The oral questions are stipulated by Art. 48 par. 2 of the Constitution. They are included on the Chamber agenda by the Presidents Conference. According to the parliamentary practice, the oral questions can be simple or followed by debates. In the case of oral questions, the minister answers the question and the involved parliamentarian has the right to make references concerning the given answer. In fact, a verbal exchange between the parliamentarian and the Government representative takes place.

According to Art. 156 of the National Assembly Standing Orders, if a deputy wishes to address the Government an interpellation, he will inform the Assembly President about his intention, during a public sitting. At the interpellation request, it must be added the motion of censure. The Assembly Standing Orders stipulates that the interpellation and motion of censure must be presentated to the Assembly's members, by notification and written announcement; after that they are included on the agenda for debate. Although formally provided for, this procedure was very rarely applied since the coming into force of the actual Constitution. For the initiation of a motion of censure, Art. 49 of the Constitution is resorted to.

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[50] This conclusion arise from art.49 par 1 from Constitution.

Another modality of control is the parliamentary inquiry achieved by the inquiry committees. The parliamentary inquiry consists of investigations ordered by the Chambers regarding any problem.

The Constitution has established an essential difference between the parliamentarians right to be informed and to investigate and their right to censure the Government's activity. According to Art. 49 par 1 of the Constitution, the Prime-minister requests practically from the National Assembly a vote of confidence for the Government programme or for a statement of general policy.

The result of the favorable vote is known as simple confidence ("confiance simple"). Confidence is granted by the deputies relative majority vote.

According to Art. 49 paragraph (2) of the Constitution, the National Assembly raises the issue of the Government's responsibility by passing a motion of censure[51]. It should be kept in mind that this motion is submitted on the deputies' initiative. The motion is admitted if it is signed by one tenth of the total number of deputies (50 deputies). The motion's voting takes place within 48 hours after the motion was introduced. For being adopted the motion must be voted by the majority of the deputies. If the motion is rejected, the deputies who signed it cannot initiate another motion during the same session, except the case in which the Prime-minister commits the responsibility of the Government on a text, in front of the National Assembly.

Besides the simple motion, it is known another type of motion, resulting from the correlation of commitment by the Prime-minister of the Government responsibility in front of Deputies Assembly with motion of censure. The legal basis of this procedure is Art. 49 paragraph (3) of the Constitution, according to which the Prime minister, after deliberation by the Council of Ministers, may engage the Government responsibility. In this case, the text is considered adopted, unless the motion of censure, introduced within the subsequent 48 hours after the responsibility commitment, is voted by the deputies majority.

6. The citizen's perception concerning the seriousness and efficiency of the parliamentary control

The constitutional and statutory texts, the parliamentary custom establishing and making possible the representative assemblies action of checking the governmental activity, express the sovereign will of the Constituent Assemblies.

The exertion of the parliamentary control, according to the respective texts and to the parliamentary traditions imposes itself as a condition of honesty and civic morality, as a proof of respect for the confidence granted by the electoral body to the Elective Assemblies. The parliamentarians, as representatives of the

[51] This motion is known under title of "simple motion".

nation, have the right and especially the obligation, by reason of their representative mandate, to control the political affairs which, by their nature, are linked with the ensuring of public welfare and the protection of the national interest[52]. From this statement, it arises the conclusion that for exercising the parliamentary control, the nation's elected persons act for its interest and not for reaching private or partisan interests.

The politicization of the parliamentary control exercise is, in itself, unproductive and undemocratic because it has neither the goal, nor the capacity of answering the constitutional wishes of the control instruments. Such a control will create tensions between the parliamentary groups, will waste the strength of the political parties, turning them away from their functions and intermediating role between Government and society and, at a more general level, will diminish the trust of the citizens in the Parliament institution.

A Parliament within which, at a given moment, the attention of the people's elected persons is absorbed in the unconstitutional competition between the parliamentary groups, between the majority and opposition and in which the parliamentary control instruments are used for solving the organizational or political "difficulties", shall not be able to fulfill, on a short term, other constitutional prerogatives and first of all, its legislative function.

The citizens do not remain insensible to the manner in which the elected persons exercise their mandate and they have the capacity to distinguish between constitutional nature and spirit of the parliamentary control and the interested and undemocratic political game in which their representatives can be attracted, at a given moment, under the pretext of the parliamentary control exertion[53].

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[52] Mihai Constantinescu, Ioan Muraru, Drept parlamentar, Ed. Gramar, Bucureşti, 1994, pp. 248-249.

[53] *"The people who, in order to enjoy the liberty which suites them, resort to the representative system, must exercise an active and constant surveillance over their representatives, and reserve for themselves, on not so long period, the right to discard them if they betray their trust, and to revoke the powers which them might have abused."* Benjamin Constant, Scrieri politice, Ed. Nemira, Bucureşti, 2001, p. 39.