

STENOGRAPH

Of the round table from 10 of October 2004 on theme „Executive power ”

Mr. CREANGĂ – Hello, dear colleagues. At our meeting we shall discuss the following topic: „Executive power of the state”. There were two reports prepared for today’s meeting: “Presidential institute in Republic of Moldova: juridical nature, evolution and cotidian experience”, prepared by Professor Mr. Andrei Smochină and the second one is called “Government as an executive authority”, prepared by Mr. Sergiu Țurcan. In order to make some conclusions or explications on these reports we will propose to the authors to have a speech, afterwards we will have a coffee break and later will discuss questions, proposals and arguments. Thank you very much for attention...

Please, Mr. A. Smochină, present your report prepared for our today’s round table discussion.

Mr. A. SMOCHINĂ – Dear colleagues, if you permit me – I’ll talk in Russian language. I have prepared this report in Romanian language, the principal problems, which I decided to raise today and of course I have used the scientific literature in it. First of all, I have studied with the last works of Professor Arbakian, Chirkin from Moscow and from other centers of Russian Federation, Ukraine and, of course, Moldova. Everybody knows, that the Presidential institute during the last 10-15 years, have widened its constitutional geography, mainly with the help of former Soviet republics, where there are several considerable changes of the public-state arrangement take place. And the well-known difficulties, connected with this institute have transferred the recent constitutional practice in a laboratory for experiences and it’s evidently that the experiments are continuing. There are different models and conceptions of presidential power, including in Moldova. I won't tell you today about every step of appearance in our republic of the institute of presidential power, and what did it pass on its way, at what step are we now I have stressed already in my report. As a result, analyze of the scientific literature, first of all, in the practice of the former Soviet republics, because in order to reach the level of the developed countries of Europe and United States of America, we have to study our laboratory and what can we carry out from these works, First of all it's hard to find some objective features of the development of presidential power... is directed

first of all on formation of the strong institute of president, strong presidential authority for the last time, even a yesterday's referendum in Byelorussia, something speaks about it, yes? Othewise, this tendency prevail in the majority of the constitutional systems and though precisely to differentiate, spread out concepts of presidential authority existing today, is rather difficult and some of them are attributed conditionally enough to any classical model, it is possible to ascertain, that in many states, including Moldova, have developed half presidential, half parliamentarian or the mixed models of presidential authority. Moreover, in some constitutions including in our Republic, the preferrance is given to presidential model of authority, simultaneously using some institutes and mechanisms peculiar to parliamentary model. It is remarkable, that in modern universal constitutional practice is traced a tendency of formation of the mixed forms of board and corresponding to them the concepts of presidential authority. All this causes heightened interest to the problems connected to the mixed model of presidential authority. Probably today we will need to open brackets and to continue disscussion concerning this model of the mixed presidential authority for our republic. Meanwhile, as you know presidential authority in Moldova directs and develops in essence on all directions of the government power. Well, today I shall not call all the articles of our Constitution, but we admit that in the questions and in spheres of formation, resignation, definition of structures and in activity of the government, realization of its own executive authority, normative activity, the relation with Parliament, formations of judicial system, the organization and formation of machinery of state etc. It doesn't depends on our wish but practice proves, that our President has enough extensive competence to affect all these moments of formation of the structure of authority and activity and the Government and judicial system. So, on the one hand not reference of presidential authority to the certain heading, triads of authority in a combination with not clearance and elasticity of statute formulations about what I have spoken here in my report, in our Constitution is not determined the place of our President or presidential authority in triads of authorities. If you have paid attention, I shall not repeat, I have brought here concrete examples from activity of institute of the President in Republic Moldova, but investment of the President of Republic Moldova with extensive, various powers causes many disputes about the role of the President in Republic Moldova and most unpleasant or on the other hand may be pleasant today various interpretations of questions on the nature of presidential authority in the system of our authorities in Republic Moldova. I call you today, and would like, to bring you as an example that in the legal literature today, in the work of Chirkin, in the work of Arbakian, where the institute of presidential authority is analyzed from the theoretical point of view, not

concrete in Russia, there is a specificity in other countries, but all this from the scientific point of view and are made the corresponding conclusions. The matter is that now in the legal literature the circuit designing of the mixed concept of presidential authority inevitably generates different interpretations and in the legal nature different understanding and a substantiation of functional - legal purpose of this institute in the system of division of authorities, it is possible to tell that today this principle of division of authorities exists, and in turn it is possible to find a practical resonance of the state imperious activity in our republic. Various examples, concepts are resulted here, for example professor Chirkin, professor Arbakjan name both France and Romania and Moldova and Armenia and Russia, have various approaches, and, eventually conclude that in each country this institute of presidential authority, the institute of the President has various interpretation and if to analyze from the point of view of power, it coincides powers in all these states where last 15 years the institute of presidential authority has appeared.

Further, presidential authority. I have stopped in a context on two pages about presidential authority in a half presidential republic; in our country we had a half presidential republic before changes of the Constitution in 2000. I have brought some examples and then have analysed very detailed a role of presidential authority in parliamentary republic where ... there are some remarks and offers which has puzzled all of us in today's situation after 2000 - about a place and a role of the President in presidential authority, among others in a triad of authorities and have proposed various examples, and can be even on prospect in a case if the party that now is in power will not collect 50 + 1 or the majority of voices or places in Parliament, it will be very difficult to solve a problem of institute of presidential authority. Because there can appear a crisis and there is enough frequently we have such crises and I think, today is important to continue discussion of this question concerning a role of presidential authority in parliamentary republic. The science knows, and not only a science, but also practice knows both all figurative models and so-called symmetry and balances of authorities of discussed model of board of presidential authority. The president in the legal attitude acts as the subject, the carrier of authority, it is well known fact for all of us, acting, but his special status – the status of the head of the state and ordering to him functional various roles is quite stacked in some countries within the framework of traditional division of authorities and corresponds to his legal status, as a subject of executive authority, as President. In our republic these problems are not solved completely. In my opinion, at the moment of transition to parliamentary republic these questions have remained without attention and were not solved during

that moment and that's why today these problems cause various discussions in jurisprudence.

Further, certainly the following question is one of the most complicated questions in achievement of viability of presidential authority, in my opinion, are the questions of understanding of the legal nature of presidential authority and as I have emphasized, arbitraj-integrative role of the President. From the very beginning I suggest here and in my statement I shall speak that the presidential authority proceeds from people, that's why the President should be selected by the population of Republic and after that the institute of presidential authority should take its worthy place in the Constitution. I consider that at present transitional period, the presidential authority should serve and as the intermediary between other authorities of the given stage. After 2000 this prerogative of the President has cleaned from our Constitution, there isn't it, yes? In my opinion, it would not be bad, if the President would keep this prerogative of the President as the arbitrator. But all you know, a role of presidential authority in some republics which carry out a function of arbitration.

Further, hence, one of priority problems of the constitutional transformations there should be a line on strengthening of independence and responsibility of the Governments, and from here it is necessary to start our discussion. It is very difficult to explain not only to us, but also to students because all of us teach at universities, but certainly both to people a role and a place ... Therefore, I think that these priority problems, in view of these complexities, fields of activity of the President and the Government it is necessary to differentiate spheres of management, to result a division of labour between them and to create conditions for their interaction and to coordinate functioning at a horizontal level, the President, the Government etc., I think first of all. But I want you to understand me correctly, that it is difficult enough to explain. In our country the President has all the decision functions, in essence supervising, while de facto, the Government has only regulating questions. Actually, and de facto, once again, for the President are opened all spheres and directions of the organization and realization of executive authority. And the Government functions on the rights of presidential administration. Therefore I call all of you, if there are some questions, please; I specially have not stopped on all questions. Thanks for attention.

DI Ion CREANGĂ – Thank you very much for the brief presentation of your report.

Dear colleagues, what will we do further, I mean questions - answers of the reporter, or shall we listen to the second report and will discuss later?

The members of the round table have accepted the first variant – to discuss and give the questions after the presentation of the report..

Mr. S.COBĂNEANU – Which are, in your opinion, the modalities of creation of the institution de iure and de facto, of if we are talking about the Parliamentary republic – do we need the presidential institute? So this was the first question and now is the second one... if we would be in the Constitutional Committee..., if we would like to appreciate the place of the President in the system of powers, concerning the Government-shall we come back or create the cabinet of ministers, put in a head the President and then in this case we can talk correctly and concretely about him, that he is a part of the executive power, he assumes the responsibility and juridical policy, he choose the stuff and can answer consecutively. What about this idea that is flying now above the Republic of Moldova?

Mr. A. SMOCHINĂ – If you permit Mr. Proffesor, I want to say that there are more situations that we have to take into consideration, in order when we raise a following problem. First of all, I would ask in the following way – does the chief of the state need any additional atributies or no.

Mr S.COBĂNEANU – Which are the principal atributies?

Mr. A. SMOCHINĂ – In order to answer concretely, I consider the following... it's necessary the President and the Parliament to result from the elections and the Government from the parliamentary majority.

Mr. S.COBĂNEANU – and remain in the same situation...

Mr. A. SMOCHINĂ – we are not in the same situation now, to result from the elections... Further it is proposed the procedure of the elections of the President to be the following: the same electoral ways when the people choose the Parliament and the President, simultainiously through the universal election and equaly, simultainiously but not to choose from the start.

Mr. Ion CREANGĂ – at the same day to carry out the elections of the President and of the Parliament.

Mr. A. SMOCHINĂ – and remain the same situation that we have now... look at the article 77 the head of the state, the definition that is not clear for me, and then look at the article 78 „and other competencies”, but where are the other competencies?

Mr. V. POPA – let come back to that idea, one have tried and we all know what did happen to him, let come back again. May be we will destroy completely the presidential institute?

Mr. A. SMOCHINĂ – I want to say that for that time the idea wasn't clear, Mr. Cobanescu remember..., somebody have said „Misters, we came here to make a policy not a science, do you remember what was the answer? Now its clear what do we have, which are the problems, we are all worrying about what can happen at the next elections... somebody isn't indiferent about such kind of institute... This is a problem... and I don't want to open the brackets because i have opened them rather detailed here and I have said if we have a Parliament multicolored that our next elections, which take place in 2005 and in these conditions where shall we come? In case if we have a multiparties Parliament and nobody will be in a majority, for example in the Parliament, how will be the situation with the Presidential elections? There is a danger, I would say, but this danger have appeared in 2000, the anticipative elections of the Parliament? This is the problem.

Mr. Ion CREANGĂ – Mr. Proffesor, if you can talk about the following position – the Constitutional Court have expressed in one of its decisions that the President is the head of executive power. So, what is your attitude regarding to this decision or how do you comment this idea and after the modification? Will he remain the head of the executive power or not?

Mr. A. SMOCHINĂ – de facto, the institute of President of the Republic of Moldova is the part of the executive power...

Mr. S. COBĂNEANU – I am not agree with this...

Mr. A. SMOCHINĂ – today, Mr. Cobăneanu...

Mr. S. COBĂNEANU – we are not talking about a person, Mr. Proffesor, we are talking about the presidential institute X, Y is not important who will become a President.

Mr. A. SMOCHINĂ – it's not important who will become a President, but concerning the decision of the Constitutional Court...

Mr. V.POPA – if you put the question let us clarify firstly, there are some elementary things, if you want I will give you a lesson, but... And when we were in the Committee do you remember, the deputies from the Parliament came and have said it wouldn't be written in the Constitution-he wouldn't be the head of the executive power. But it's not important if it is written or now and I will give you an example in order to be clear – the division of the powers in the Republic of Moldova stipulated in the article 6, let us delete art.6. Does it mean that the second power in Republic of Moldova will be separate? No, because the separation is stipulated not in the art.6 we find it in the other place – in attributes, in competencies, there we see it. In that case is the same situation-if it isn't written that he is the head of the executive power it doesn't mean that he is not, because I see him from the other side, how I can appreciate? Who does select the candidature of Prime-Minister? The President. Who propose it to the Parliament? He does. Has he any competencies in formation of the list? He has. Who has the right to resign the ministers and who has prove them in function by his Decree? The head of state? So, isn't he a head of the executive power, Ministers? What do we want? Let us see... Who did resign recently the Minister of Defence Mr.Gaiciuc? Who? The head of state by his Decree. And can you talk that he isn't the head of the executive power?

Mr. S.COBĂNEANU – The suprem comandant of the army forces...

Mr. V.POPA – with accordance of the Prime-Minister it's his prerogative as of the head of state... So, we see from this example too, we don't need to discuss here if the head of state - is the head of the executive power...

Mr. S.COBĂNEANU – He approves the laws too, so we can tell that he is the head of the judicial power too? He proves the laws... it means that he is...

Mr. A.VOLENTIR – in fact the executive power is what we understand-the cabinet of ministers and not the whole executive power...

DI V.POPA - executive power means an activity...

Mr. B. NEGRU – there is no doubt that the President is a part of the executive power. In case of republic of Moldova we are talking about the executive power bicentral. This is a reality, because we are talking about the two heads –Government and President that are carrying out the executive power. But I would have some comments regarding the affirmation that the President is in the head of the executive power. The President isn't in the head of the executive power in the Republic of Moldova and he can't be in front when we are talking about the Parliamentary Republic or half presidential. The other thing, in conditions of our country, in the conditions of the presidential regime the president is the head of the executive power. For example, USA, honestly to say, the prime-minister is not necessary there because the President is responsible for the activity of the ministries, departments and in general he is responsible for the executive power. That's why I would say if we are going to move further, it depends in what direction, for example, if we are talking about the function of the president, then it's clear that it's necessary to determine what kind of government will be. If we are talking about the presidential regime, but again, some of the colleagues have said that once there was a project, but excuse me..., at that time we wanted to make a presidential republic, that doesn't exist in the world. What I am talking about? President is in the head of the executive power but at the same time he isn't responsible for the power of the executive. It's prime-minister's responsibility and the prime-minister in practice responds for everything and everybody. Secondly, when we are talking about the presidential republic as it was tried, but the President doesn't coordinate for example the appointment of the government by the parliament, excuse me, then, if it is not passing through the parliament we can say that it is in a way...we wanted to make a kind of dictatorship. A monarchy, yes... But the modern monarchies, always a modern monarch, I mean he asks the permission of the parliament for a vote of belief. So, it remains to determine for example the presidential institute, where is its place, I am sure it can divide the executive power... It is right that some authors consider that the president doesn't make part of it, but I think that if we look more detailed at the real situation, the president, presidential institute makes part from the executive power. That's all.

Mr. COBĂNEANU – excuse me for interruption but I want to remind you about the principle of dissociation, I mean the functions of the President, of the presidential institute of the Government. In our Constitution this problem is not clear, is he dissociated or everybody in a range – both the President and the government. The problem is that today it is necessary to think for the future about it... I remind you that the constitutional dispositions from the presidential statute are concentrated in

a separate Volume V from the Constitution that makes part from Title III named „Public authorities”, situated among the Volume „Parliament” and „Government”. And after Constitution, again it’s not clear, dispositions in a separate volume and among the public authorities and the Parliament. It’s not clear. Again the same problem, return if he is separate from...

Mr. CREANGĂ – delimitation...

Mr. COBĂNEANU – yes, delimitation.

Mr. CREANGĂ – the public institution of the signing of the president’s degrees exists, i mean the transmitting of the responsibility exists, and it helps the president’s configuration not to be so evident from one side, so...

Mr. B.NEGRU – excuse me, I want to make a remark, there is point i) from art.88 from Constitution. Honestly to be, nobody knows from where did this point come, because principally, it wasn’t adopted by the Parliament. I refer to suspending, there we are talking about... there this article is named „other attributions” and among the attributions it is written that the President suspend the Government’s acts, in case of not constitutionality... This point wasn’t and it is not legal, who did introduce it... but why I am talking about-because the Parliament didn’t vote and it’s evidently that through this the President is not in the best position. The President isn’t in the head of the executive power and he can’t suspend the Government’s acts, more over in the constitutional framework.

Mr. MOCREAC – but was it voted the article 75 (2)?

Mr. NEGRU – I am talking also about it ... and the art.75, because you have mentioned, point (2) also wasn’t voted. Point e) from art.88 also wasn’t voted.

Mr. CREANGĂ – Mister Professor, excuse me please, there is a situation when the Constitutional Court have examined the following situation and have determined that they exist and were adopted by the Parliament and were placed in the Constitution. So, we are not discussing the necessary subject.

Mr. B.NEGRU – But they were voted not correctly...

Mr. CREANGĂ – this is the other thing, these problems we will leave to the Parliament, that have probably voted...

Mr. A.SMOCHINĂ – Mr.Negru, here is the point i) suspend the government acts that are contradict to the legislation till the definite decision is adopted by the Constitutional Court. But for that time we didn't have a Constitutional Court.

Mr. CREANGĂ – this is a topic that is in favour of the head of the executive...

Mr.COBĂNEANU – how to speak about him as about the head of the executive power in case if we have the Prime-minister. Who is the prime-minister? What functions does he fulfill?

Mr.MOCREAC – for example, the Chech Constitution, did you look through it? In Title III, that is called „Executive power”, volume is begining with President, then with the Government. Title „Executive power” and volume I – President, Volume II – Government. Please look...

Mr. GUCEAC – somebody appreciate the president's work and others don't – it depends on atributies. It's a doctrinal aspect.

Mr.CREANGĂ – Mr.proffesor, I'd like to know your opinion and in the contexzt of a federal state. I mean what are the prerogatives of the president – shall he has his representatives in the teritory, in order to influence federal authorities, subjects of federation... to suspend them in the case of unconstitutionality or in the other cases, situations..., here are very important the relations between the president and the respective subjects, or we can say the regional, federal... in this aspect.

Mr.SMOCHINĂ – If you remember, once we were talking about the existance of nearly 32 models or 33 models of the federal states, yes? And if we look for such kind of model, if it will be necessary to look for, because now as I have understood there is another initiative was launched, may be we won't have a luck, or happiniess in order to look for a model, but if we have a task to look for a model – the institute of President in a federal state again we will have an exotic federation to our regret, with some subjects, but we don't know which subjects and what kind of the subjects. It's not necessary to surpose today concretely which will be the atributies of the president of a federal state because today we haven't any base for it else. If we know the subjects, in dependance of them it will be possible in the future to stipulate the atributies of the

president. But there are different models and when the time come they will be discussed, today I don't want to speak about it, not because i can't do this but I can't express my opinion concerning the president of a federal state in Republic of Moldova, nowadays.

Mr. OSOIANU – I have a question, if the control above the constitutionality of the decisions of the Government must be a responsibility of the Constitutional Court? May be it's better to modificate in such a way that in case when a citizen is harmed in some rights through a decision of the Government, to be able for him to atack this decision of the Government in justice.

Mr. SMOCHINĂ – there is a rule, if we come back to a situation when all the citizens will be able to address to the Constitutional Court...

Mr.MOCREAC – but it is not so...

Mr. GUCEAC – it is, but it is on a level of a project...

Mr.COBĂNEANU – we have accepted this project

Mr.POPA – it's very bad... look what is happening in Izrail. First of all, if the decisions of the Constitutional Court are definite, yes, it is the only instance. They are irrevocable and you can't address in the other instance. If a poor citezen addresses in the Constitutional Court... there is a right to make a mistake... and the next instance is the European Court. Try to go from the first instance with an appeal... and look for a truth. In Izrail for example the law doesn't act untill the Constitutional Court doesn't pronounce because there is always a situation when this law can be attacked. And in this case the acting of a law, its publication and conclusion of the Constitutional Court are always conditional.

Mr. CREANGĂ - the procedure that is offered is the following: to address with some concrete cases. To address in the first instance, in the second, in the third, after using all the possibilities, it has a right...

Mr. V.POPA – there is a report appeared prepared by me and by Mr.Susarenco regarding the activity of the Constitutional Court. We have proposed some proposals and models. I don't think that it is necessary to discuss it today but it is a mechanism of exceptions from neconstitutionality. It is necessary to be reviewed and simplified, and after that the citizens will be able to address to the Court..., by simplification of an exception...

Mr.CREANGĂ – in a way this is proposed... Please, Mr. Protsyk...

Mr.PROTSYK – there are two general comments, as I understand there are two main problems concerning the presidentialism, the first is - method of electing and as I have understood you support the election of the President by all the population. Any constitutional decision, there are always some problems and shortcomings and the shortcomings of the election by the whole population is in the increasing of the negative attitude and claims to the executive power. How this problem can be solved? It seemed to me that Mr.Creanga has mentioned the Romanian model. Romanians-brothers, it seems are the only who found one of the elements of the elective system – the possibility to reduce this conflict. Because while Mr.Luchinskii was the President of Moldova, the reason of the conflict was the lack of the political base in the Parliament and it caused a lot of problems. What did the Romanians do? They have organized the simultaneous elections for the President and for the Parliament. The political literature theoretically proves that in the case of simultaneous elections of the President and of the Parliament increases a possibility of their common political orientation and it reduces the opportunity of appearing of a conflict between the President and the Parliament. And if you look in Romania in the case of changing of the President the majority in the Parliament also changed and it helped to reduce conflict between the President and the Parliament. It seems to be a very important moment. If we change the method of electing of the President and come back to the elections by all the population it is necessary to reduce the chances of appearance of a conflict between the President and the Parliament in case when there is the other majority created.

And the second problem is the problem of the mandate of President, if he is a member of the executive power in real or not. It seems to me that here is not a juridical problem but mostly analytical, of concept, political, so we have to look at this from an analytical point of view, as the main role has the executive power and it is really that the President fulfill some functions of the executive power. And again it means that there is an opportunity of appearing of a conflict between the President and the Prime Minister, because in case if they both are pretending on the same mandate, the other kind of conflict is possible in the constitutional system. And can be solved such a problem? A decision that we can find often in the literature is the clear division of the mandates. This is the first. It isn't necessary to be stipulated in the Constitution, it can be in the law about Cabinet in which clearly stipulated where the presidential mandate finishes and the mandate of

Prime Minister begins. The existence of uncertainty in definitions leads to a conflict. In the acceptance of a presidential system or half-presidential system, it would be correct to give to the President less of power, mandate. A classical variant that frightens everybody is Weimar Republic that was in Germany. President had a lot of power, he could resign ministers when he wanted and at the same time Parliament could also resign ministers. A strong President and a strong Cabinet, a strong Parliament, which controls the Cabinet that is necessary for stabilization. That's why as an acceptable variant is the strengthening of the executive power, strengthening by giving mandate to the Cabinet and by reducing of the power of President, because it hides inside a structural conflict if two of these figures receive a big volume of power.

Mr. CREANGĂ – Thank you. Please, Mr. Chiseev.

Mr. CHISEEV – in our Constitution, as well as in Constitution of France, President hasn't any right to resign a Government. But our President has the right to resign ministers. According to part 6 art.89, it is necessary to have a proposal. If there aren't any proposals, there is a Constitutional Court that has expressed its opinion regarding to exminister of defence. And what shall we do, because this problem was solved no in Constitution, neither in the law about Government. What shall we do, if the President by his initiative signs a candidature, in spite that there was another proposal for this vacancy? How to escape a conflict in this situation?

Mr. POPA – according to the proposal of a Prime Minister...

Mr. CHISEEV – there is a proposal for one candidature and in reality he appoints another one. What is possible to do in such a situation? According to the Constitution it is necessary to have a proposal and we have it. What do you want? Do you propose to deprive President of this right?

Mr. POPA – The President is responsible for the program that was approved by the Parliament at his appointment.

Mr. CHISEEV – In the Constitution is stipulated-the proposal of the Prime Minister and not of the Government. Here is a big difference.

Mr. CREANGĂ – You are right, Mr. Chiseev... I would like to offer you two opposite comments of the Constitutional Court. The first one is concerning the appointment of the Government and the

Constitutional Court explains the constitutional norms and says that at appointment of the Government, President proposes a list. The Prime Minister together with the Parliament can change this list, then to receive a vote of trust and after that President can't refuse to appoint the Government. So, in this case the President has a formal right. And now let's go back to judges, who are also a power, the third power in the state. So, the Constitutional Court interprets the proposal of the Supreme Council of Magistrature, President can choose - he is not obliged to appoint. If he is not agreeing the next candidature again is proposed by the Supreme Council of Magistrature. In this case it is necessary to interpret that Prime Minister propose one candidature – President decline it, after that Prime Minister proposes the second, third, fourth candidature until President finds the one that is respective.

Mr. CHISEEV – If there is a proposal for one person and the President isn't agreeing with it, in my opinion he have to decline it and then receive the next one, but he can't change the candidature by his own. This is my position.

Mr. POPA - we support it...

Mr. COBĂNEANU – it is right...

Mr. NEGRU – excuse me please, but if we are talking about the judges for example, the President is obliged to accept because the appointment of the judges is formal, it's exclusively in the competence of the Supreme Council of Magistrature, it decides about appointment. I can give you an example, for the first time when it was formed the Supreme Court of Justice, the Parliament of the Republic of Moldova accepted everybody, but when the candidatures appeared at Mr. Iuga – he didn't accept them twice. And in this case there is a problem appears – what has to be done? And the interpretation, if we make an interpretation, President is obliged and in this case Parliament is also obliged because the appointment by the Parliament is formal – the judges can't be appointed by themselves. It seems that Parliament has the right and the President has the right not to accept the proposal only with one condition – in case when from the moment of decision of the Supreme Council of Magistrature till the moment of appointments can appear some circumstances that can justify such a gest of President. But we are infringing the Constitution by the fact that the Supreme Council of Magistrature doesn't fulfill its constitutional dutes, problems of appointment in function belong to the Supreme Council of Magistrature, they have to organize an examination-competition and from 10 persons it

is necessary to appoint the one. In this case Suprem Council of Magistrature infringes the Constitution.

Mr. CREANGĂ – Mr.professor Negru, we have a decision of the Constitutional Court....

Mr. NEGRU – But here we are analyzing from the scientific point of view. For how many times have been the Constitutional Court mistaken? Even if we take the Law regarding the juridical status of Gagauzia, there are 15 infringements of the Constitution, but the Constitutional Court doesn't notice any with exception of one judge Mr. Susarenco, that hadan opinion apart. This situation is created because we never had in the Constitutional Court the specialists in Constitutional Law.

Mr. CREANGĂ – we are abboting from the subject of our discussion...

Mr. PROTSYK – I think that it is necessary to definite clearly the single opinion about the presidential power in the area of appointment in order to escape the double interpretations. What is your opinion about the Decrees of creative activity of the President, if his Decrees are abboting the limits of his competencies, is it necessary to review the competencies of the President in the sphere of Decrees in creation because it can be a strong destabilizing mechanism when the President can adopt some Decrees and interfere in prerogatives of Cabinet.

Mr.POPA – I can answer you... Last year there was a defence of doctor dissertation about the law technic-I was the scientific leader. What was interesting is that I said to my doctorant to gather all the decrees of the President from the base of dates for some years and we saw a following picture... he enterferes with his decrees in the executive power, completely encroaching art.6 from Constitution. The fact is that it seems to be not so important questions and nobody appeals in the Constitutional Court, because there is not an evident infringement here... but in reality its horouble what is happening...

Mr. CREANGĂ – for what period of time?

Mr.POPA –for the last year, the year before the last one...

Mr. CREANGĂ – except the civil... and decorations, I didn't see anything else...

Mr. MOCREAC –they are old, but from the previous 13 decrees – 7 were recognized as unconstitutional...

Mr. CHISEEV – when Shegur was the President of RM we recognized 7 decrees as unconstitutional, when Luchinscii was – only two, and nowadays I didn't see any decree...

Mr. POPA – it's in the case if the rights were infringed and were complained in the Constitutional Court, but if there was not any complainment?

Mr. CHISEEV – wait a moment, I agree with you that there were some faults, but I want to say that it is your own opinion, personal point of view, individual appreciation of this decree. You have concretely to point in what part ... You can express your thoughts, but regarding to their constitutionality we have to analyze.

Mr. POPA – we can analyze if it is in his competence or not because we always have to take start from... competencies of President are written in the Constitution.

Mr. CHISEEV – I see..., but President's decrees are also the normative acts...

Mr. POPA – analyzing his decrees... if it is in his competencies or not... it's hard to say, I don't remember, but open the base of dates, look at the decrees of President and find an article in Constitution in which you can see his competencies. Be sure, you will find there some decrees that are out of his competencies...

Mr. COBĂNEANU – You are contradicting yourself. At the beginning you have told that in spite if it is written or not in Constitution that the President is in the head of the executive power it doesn't mean that he is not an executive power. Now he adopts decrees ... and you criticize...

Mr. POPA – no... if today we would write in Constitution that he is a head of the executive power... write in Constitution, in an article. Will he become due to the fact that we have written this or not. So, let us look in the other side, it was an example with the division of powers, if we delete art.6 nothing will change... I have said to you that competencies that are given are limited for fulfilling his role, if they are defined for President, what happens if he adopts a decree that isn't in his

competence? Who has these competencies? So, we have to begin from this point.

Mr. CHISEEV – But your question from other side is very interesting. The problem is in the promulgation of laws... now I don't know exactly, I didn't follow, but during the last years there passed 5, 7, 8 till 9, 10 months the laws were not promulgated. This is the one problem. What has to be done in this case or delivering with some objections?

Mr. CREANGĂ – I want to make some comments and want to give you an example with the Constitutional Court. He expressed his opinion and I declared in front of Court that the period is two weeks, I have insisted on this period. Constitutional Court has said that in spite of existing of this period of time President has to promulgate the law. It is an imperative norm and this imperative norm obliges to the existence of promulgation. Without promulgation the law can't be recognized as in force. That's why we have adopted as unconstitutional a decision of the Parliament about the publication of the law about amnesty and one law more that were published without a decree, without promulgation. After this there wasn't a case when the President didn't promulgate a law during a period of two weeks.

Mr. POPA – What is the document that obliges President to promulgate a law in two weeks?

Mr. CREANGĂ – Constitution...

Mr. POPA – where is written in Constitution about this period of time? Read, please...

Mr. CHISEEV – not later than during the period of two weeks a law has to be sent in the Parliament, that's all...

Mr. POPA – read from the beginning, why do you read in the middle?

Mr. CHISEEV – President of the Republic has the right, if he has some objections, not later than within two weeks to send law in the Parliament, that's all...

Mr. POPA – If he has some objections and if he hasn't? Who can obliges him? Interpretation of the Constitutional Court, as a result Parliament had to modify respective article from Constitution. So,

Constitutional Court establishes some norms which the head of the state follows...

Mr. CREANGĂ – it interpretes...

Mr. CHISEEV – interpretation is a part of Constitution...

Mr. POPA – Parliament is the only one legislative authority according to the Constitution...

Mr. CREANGĂ – But who is interpreting a Constitution? The Court...

Mr. POPA – The Constitutional Court interpretes, but it hasn't a juridical power.

Mr. CHISEEV – Interpretation of Constitutional Court is the part of Constitution.

Mr. POPA – When Parliament interpretes, the interpretation is transforming into a norm, because he interpretes through a law. In the rest - Constitutional Court, by interpreting it has a consulting power, and the Parliament has to make modifications of a respective juridical act.

Mr. CREANGĂ – Art.135 from Constitution establishes that Constitutional Court interpretes Constitution... I want to hear opinion of Mr. Negru, as the author of Constitution. Please, Mr. Negru.

Mr. NEGRU – if we are talking about the official interpretation the only one authority has the right to interpret Constitution and it is Constitutional Court. It is evident that its interpretations are obliged for everybody. Other case if Parliament sees that an interpretation causes different doubts, it can make some objections..., but from the moment when the interpretation was made, wish us this or not, we have to accept these stipulations as the normative stipulations obliged for everybody.

Mr. POPA – What are you talking about? I will atac you for the other discussion. What are you talking? In principle, Constitution has to be ratified by population, any modification, a coma that we add to the constitutional text has to pass and be approved by the Parliament for ratification. And you easily say that it is enough the Constitutional Court to interpret and it becomes a norm, do you understand, obligatory... No, my dear, in order to add something to Constitution, even through an

interpretation – it has to be in the constitutional text and not an interpretation.

Mr. NEGRU – we are not talking about the appearance of some new norms, Constitutional Court just explains ...

Mr. POPA – But haven't you said that it is obligatory?

Mr. NEGRU – it's evidently that it is obligatory...

Mr. POPA – As for me the obligatory can be only the constitutional norm, interpretation hasn't any juridical power.

Mr. NEGRU – Act of the official interpretation has the same juridical power as a normative act that was interpreted.

Mr. POPA – of the Parliament...

Mr. NEGRU – exactly the same situation at the Constitutional Court. If we delete it what for a Constitutional Court would interpret it?

Mr. CREANGĂ – last modifications that took place in the aspect of decisions of the Constitutional Court and its attributions, I mean the right to interpret Constitution starts to prevail in profit of Constitutional Court. Now the majority of attributions pass to the Constitutional Court. There is a tendency to pass in the competence of Constitutional Court the interpretation of Constitution. This fact demonstrates us that the authority...

Mr. POPA – here we have to start from other point...let us start from the acts of the Constitutional Court, from its decisions. If we look in the Code of Constitutional Jurisdiction we can see that acts adopted by the Constitutional Court are obligatory and for what period of time. Including and the act of interpretation of Constitution, that is made through the decision of the Constitutional Court, and in this case Parliament have to make some legislative modifications on the base of this decision...the decision of the Constitutional Court is obligatory but only for the Parliament, for nobody else. Even Justice won't take as a base a decision of the Constitutional Court, won't make any references concerning it, because it isn't a norm, it isn't an act.

Mr. CREANGĂ – explication of the Court is the part of the constitutional norm, which is applying directly. Here is a connection of

one with another... Ok, I think we have to give a word to the following reporter, or shall we make a pause and then continue our discussions?

Pause

Mr. CREANGĂ – Now we will listen report of Mr.Sergiu Țurcan, with the following topic “Government as an executive authority”. Please...

Mr. ȚURCAN – At preparing of this report I made a comparative analysis of the constitutional settling in different states, regarding to some important information concerning the institution of Government as executive power, establishing common characteristics and underlining the particularities in order to make some recommendations.

In many states we can see the expansion of the governmental activity, the increasing role of the Govern concerning state politics.

Taking into consideration that the issue of Governmental Institution is examined in the context of solving the Transnistrian conflict, on preparing the study were analyzed constitutional settling of Govern in ICS states, Baltic States and 24 federative states and in 2 states with developed regionalism. Their practice can be useful for finding an effective pattern of Governmental constitutional settling and to avoid eventual mistakes or settling that will damage the good working of the public authorities in Moldova.

Shortly, I'd like to attract attention at some more essential problems, showing the common features, the particular features that have to be evident and to show the possible solutions, recommendations in this domain.

Firstly, let us talk about the competence of the Government. **The competence of the Govern**, usually is not entirely reflected in Constitution, in the fundamental law are settled just the main directions of activity. So, proceeding from Constitutional settling of the studied states, the Govern:

1. *Realizes the domestic and foreign state policy*
2. *Exerts public administration leading*
3. *Organize the execution of laws*
4. *Settles the state budget project and assures its execution Assures the implementation of the economical, financial-creditary, monetary and fiscal policy*
5. *Assures the defense, national security and implementation of the state foreign policy*
6. *Assures the implementation of the state policy in science, culture, health, social assurance, environment*

7. *Acts and provides guarantying of the legacy, public order, human rights and liberties protection*
8. *Administrates state property*
9. *Assures the economical sovereignty and independence of the state*
10. *Establishes Diplomatic relations and maintains cooperation with other states and international organizations*
11. *Assures implementation of the state social programs*
12. *Assures the co-operation with civil society*

We are considering that it would be rational to settle the governmental attributions not through Constitution but through adoption of an organic law (Law of the Govern). It will reflect the attributions of the Govern in the process of accomplishing of its functions with the principal title – Governmental Function and administrative function and of the function with secondary title – Control function.

The practice demonstrates that there are some countries where responsibilities of the Government are very wide, in other states is the opposite situation – Prime Minister has wide attributions in Constitution more than Government.

Concerning the delimitation of competence between the Federal Govern and the Subjects of the Federation and settlement of the executive authorities in situation of the independent entities from the unitary states, we can notice that Constitution doesn't provide the delimitation of competencies. The accent is put on the general delimitation, first of all in the legislative domain. It's evidently that the executive authority has an aim to organize the fulfillment of law and starting from the delimitation of the competence of the legislative body will be made and the delimitation of the competencies of the executive authorities. Can be underlined some tendencies:

- The mode of their construction is determined by the federative subjects or of the independent entities. For example, in Russian Federation state authority system of the federative subjects is established by these subjects in accordance with the constitutional bases of the Russian Federation and the general principals of organization for representative and executive bodies. In Argentina the independent provinces establish their own leading bodies without involvement of the federal authorities. The sovereign Karakalpakstan Republic is a part of Uzbekistan, the authority system here is established by the Constitution of the republic. So, the subjects of federation through legislation determine which will be the executive authorities, mode of their establishment and their competencies.

- *The pattern of constitution is established by the federal constitution or by the Constitution of the integrated state.* For example in

Austria, Belgium in each land is settled the govern of the land and the members of the land govern are: Governor of the land and other members elected by the Landtag (legislative authority of the land). In Belgium each community, region has a Govern elected by the council of the community. Component part of Ukraine is the Independent Republic of Crimea. The executive authority in this Republic is executed by the Council of Ministers; the president of the Council is appointed and resigned by the Supreme Rada of the Independent Republic of Crimea after consulting the President of Ukraine. Component part of Azerbaijan is the Independent Republic Nahicevan; this republic has an independent status on Azerbaijan territory. The executive body of Nahicevan is the Cabinet of Ministers. The candidature of the Prime Minister is approved Parliament. Members of the Cabinet are appointed by the Parliament on the recommendation of the prime Minister.

Regarding to Republic of Moldova, the recommendations of the mediators involved in the solving of transnistrian dispute regarding the status of the federal executive authority, are limited on Agreement of OSCE from 2002, Memorandum Kozak, Recommendations of OSCE from 2004.

There is no reference to competence delimitation between the federal govern and the governs of the federal subjects. This is natural because this delimitation depends on delimitation of the attributions between the federal center and the federal subjects in the legislative domain. We consider that the way of settling the executive authorities in the frame of the federation subjects could be established through the legislation of the federation subjects, *respecting the general principals of organization of the executive bodies*.

May be the most important problem regarding to the activity of the Government is the mode of Govern establishment depends on state governmental regime. Generally there can be distinguished two modes: The parliamentary pattern and the extraparliamentary pattern.

The parliamentary pattern is when the establishment of the Govern depends on the result of the parliamentary elections. The extraparliamentary pattern will be examined less, as it is more characteristic for monarchy, for the countries from former Great Britain, where there are general governors as the representatives of the queen of Great Britain – Canada, Australia – for example and the presidential republics about which we will talk less. It is more interesting for us the pattern of formatting of the government in the half-presidential and parliamentary republics. There is a general rule or a general formula here that is applied in the Republic of Moldova. The general formula is the following: head of state in the majority of cases after consultations with parliamentary majority appoint a candidate at the function of Prime

Minister. Prime Minister prepares the programme of activity for the Government and the Governmental staff that have to be voted by the Parliament. The President on the basis of this vote signs the government. Parliament by adopting the main directions of internal and external policy of the state, will express in the program of governing the political platform of majority party from the Parliament or of the parties coalition. Government will follow this program in its activity.

The parliamentary pattern of Government settling can accept some particularities:

- *The competent authority to appoint the Govern.* In many states in which is used the parliamentary model of appointing of the Govern, it is appointing in real by the President of the republic on the basis of the Vote of confidence given by the Parliament. In some states *The President by himself appoints the members of the Govern* (Azerbaijan, Tajikistan), in other states on the recommendation of the Prime Minister (Germany, Italy, Russian Federation, Ukraine, Armenia, Belarus, Kazakhstan, Uzbekistan, Kirgizstan), and in other states appointment of the Govern established by the Prime Minister (Republic of Moldova, Latvia, Lithuania, Estonia, Georgia). In Bosnia and Herzegovina, the Collective Presidency¹ appoints the president of the Govern and he names the other members. In Constitutional Monarchies (Spain, Belgium) the King appoints the Prime Minister (in Spain through the Deputies Congress President) and on his recommendation the members of the Govern..

Exception – the settlement of the Govern has place exclusively by the legislative authority, without intervention of the president of the State.

Example, in Switzerland the Federative Assembly, the legislative authority on its own decides the settlement of the Federal Council (Govern);

Mr. POPA – where?

Mr. TURCAN – in Switzerland.

Mr. POPA – Switzerland is the one country that hasn't President.

Mr. TURCAN – it has a President, appointed from the members of the Government in accordance with art. 168 alin. 1 from Constitution of 18 April 1999. Head of the state, appointed from the members of the Government for 6 months.

¹ The presidency is formed from 3 members – a Bosnian, a Croat and a Serb, elected by universal direct vote, two by the a Bosnian -Croat Federation and the third by the Srpska Republic for a 4 years term.

Mr.POPA – Why do they have this rotation? In order not to create an opinion that he is the chief of the state...

Mr.TURCAN – But he is called the President of Sweetzeland, so we can't say that they haven't a President...

Mr.POPA – He is the head of the executive, but rotation is done in order not to create an opinion that he is the chief of the state...

Mr.TURCAN – there is a President and you confirm that there is not any president. There is a President but he has an apart mode of formation.

Regarding to *the authority competent to appoint the candidate for prime minister*. in majority states this authority is the President. In case when it is impossible to settle the Govern there are some exceptions from the main rule: in *Estonia*, in case when in list there are two candidates appointed by the president did not managed to settle the Govern or if the President did not appointed another candidate after rejecting the first, the state assembly(Parliament) will be the authority who will appoint the candidate for Prime Minister. The President of the Republic will dissolve the State Assembly if the list of the Govern members is not presented for the President in 14 days term from the day that the State Council gets the right to recommend the candidature for Prime minister. in *Belgium the King appoints the Prime Minister candidature, in case the candidate does not get vote of confidence or in case a censure motion is voted, the candidate is appointed by the House of Representatives*.

The King has the right to dissolve he House of Representatives, if they do not present to the King the candidature of Prime Minister in 3 days term from accepting, through majority vote of the members, to give vote of confidence to Federal Govern. Dissolving the House of Representatives leads to Dissolving of the Senate. This solution disserves special attention and has a special justification – in order to avoid a possible political crisis, the obligation to appoint the prime minister goes from the President of state to the Parliament and in order to avoid the dissolving of the parliament will compromise an appointing the Prime minister and settling of the govern. These rules have a double impact/result: avoids a governmental crisis and of anticipated that require imposing financial spending.

The term of giving the vote of confidence differs from state to state. Vote of confidence can be given:

Just by the state president – Germany, Spain, Russian Federation , Estonia, Belarus, Azerbaijan, Kazakhstan, Kîrgîzstan;

The entire govern – Republic of Moldova, Italy, Serbia and Montenegro, Armenia, Georgia, Bosnia and Herzegovina

I consider that it is necessary to give the vote of confidence to entire governmental team but not to the Prime Minister. Government is a collective body that has a collective responsibility for the governmental program concerning which it has received the vote of confidence. In bicameral parliament the vote of confidence can be given by a camera as for example Bundestag in Germany, Congress of Deputies in Spain, State Duma in Russian Federation, Camera of Representatives in Bosnia and Herzegovina, as well as by both cameras of the Parliament, as for example in Italy, Kazakhstan, Uzbekistan, Tadjikistan. It's evidently that in one cameral parliaments such a problem doesn't exist.

An exception in the procedure of giving the vote of confidence for the Govern is in Armenia. In this state (art. 74 of the Constitution from 5 of July 1995) it is not necessary the vote of confidence but is necessary to not be initiated vote of non confidence on the program of the Govern – the activity program will be considered approved and the Govern settled if at list 1/3 of the deputies in 24 hours term will not initiate censure motion. This formula advantages the Govern if the Parliament is politically divided when it is easier to refuse giving vote of confidence then to give it with absolute majority.

These are the basic moments without details. In my research I have shown different conditions that are common for different countries in order to become a member of the Government.

Mr.Chiseev has raisen a problem of governmental reshuffle, in case if some members of the Government after some period of time are dismissed and changed by the others. I have studied the practice of some states regarding governmental reshuffle. It is necessary to differentiate between reshuffle within the executive (when a voluntary dismissal of a minister takes place, for example) and reshuffle that implies the intervention of Parliament. The constitutional practice interprets the following possible variants:

- *Governmental reshuffle takes place on the exclusive decision of the President of the Republic* - USA, Mexico, Brasilia, Azerbaijan, Byelorussia, Kazakhstan, etc...;

- *Governmental reshuffle takes place on the decision of the President of the Republic with the approval of the Parliament* – Serbia and Montenegro, Tajikistan;

- *Governmental reshuffle takes place according to the decision of the chief of the state on the recommendation of the prime-minister* – the Republic of Moldova, Germany, Spain, Austria, the Russian Federation, Lithuania, Estonia, Armenia, and Pakistan.

Governmental reshuffle takes place on the decision of the Prime-minister.

I consider that the governmental reshuffle without participation of the Parliament, especially with a parliamentary model of forming the government, can be dangerous: the chief of the state together with the prime-minister can replace all members of the government that was adopted by the legislative authority. Such a case can lead to a situation when within the same Government some ministers would enjoy the Parliamentary confidence, others would not. That is why some states foresee certain guarantees that would prevent the emergence of such situation. Thus, in *Lithuania* (art. 101 paragraph 2 of the Constitution from October 26, 1992), when more than half of the ministers are replaced in the result of the governmental reshuffle, the Government has to regain the vote of confidence from the side of the Seim. Otherwise, the Government will be dissolved. The Constitution of *Georgia* (art. 81¹) says that after the Parliament approved 1/3 of the members of Government the number of members of Government will be replaced in the result of reshuffles, not less than 5 members. The President of the Republic is obliged within a 5-day period to present a list of the members of Government for Parliamentary confirmation.

We find the introduction of similar provisions in the constitutional practice of the Republic of Moldova useful.

We have to remember the meaning and the aim of creation of the Government, the majority of the Parliament receives the vote of confidence from population during the elections on its electoral programme. This electoral programme has to be implemented in real, including through the programme of governing that is adopted by Government. Government doesn't have the other meaning, it is created by the parliamentary majority for implementing the principles of intern and foreign policy over which this majority, or a party, or a coalition of parties receive a vote of confidence during the elections. Here is the meaning and that's why the parliament has to obtain a decisive vote in this procedure of creating of the Government.

The structure, terms, I think I won't stop here at the structure because it is necessary to discuss the proposals of mediators. Memorandum of Kozak stipulates that:

- the president and the members of the Government are approved by the Senate on the proposal of the President of the Federation;

- the President of the federal Government has deputies, two of them are appointed by the President of the federation on the recommendation of

the President of the government after the adoption by the subjects of the federation.

Mr. SMOCHINĂ – Do you mean here two subjects?

- **Mr. TURCAN** – Memorandum of Kozak stipulates the federal center and two subjects of federation. If we talk about the composition of government, the Government has to be created only not by Senate. Senate, as a rule, defends the interests of federal subjects or of the administrative-territorial units, if we talking about the unitary state, as the Government will be a Government of everybody. So, in this case the camera has to be elected directly by population and not by senate that defends the interests of federal subjects. Regarding the item Prime Minister to have the vice prime ministers from the federal subjects we can find out the states in which the ethnic or linguistic principle is taken into consideration at the formation of the Government. For example, in *Belgium*, half of all members of the government, with the exception of the prime-minister, have to speak French, another half - Flemish (art. 99 of the Constitution). In *Switzerland* (art. 175 paragraph 4 of the Constitution) language communities have to be fairly represented in the Federal Council. In *Bosnia and Herzegovina* (art. V p. 4 of the Constitution from December, 14 1995) representatives of Bosnia – Croatian Federation cannot hold more than 2/3 of the ministerial posts in the Government. Not less than 1/3 of the ministers have to represent the second subject of the federation – Srpska Republic. The vice – ministers cannot be of the same ethnicity with the ministers.

In *Serbia and Montenegro* (art. 35 paragraph 1-3 of the Constitution) the President recommends to the Assembly of Serbia and Montenegro candidates for the posts of the ministers and a candidate to hold the office of the vice-minister of defense and vice – minister of foreign affairs. Two candidates for the function of ministers have to be from the state the President is from, other tree representatives are from the second state. Candidates for the posts of the minister of defense and minister of foreign affairs have to be from different states, the same rules refer to the vice-ministers. After the end of a 2 year-term of the mandate the minister of defense and the minister of foreign affairs are succeeded by their vice – ministers.

So, we must not be frightened that vice chairmen, Prime Minister can have representatives of federation. I am not agreeing with the mode of their appointment, it is not right to appoint them by the members of the subjects of federation, but they have to be appointed by federation in general. At the same time, while forming the government it is very important to take into consideration the factor of political affinity of the

members of Government who have a common goal – to implement internal and external state policy. This policy is based on the governmental program that was adopted by the vote of confidence of the Parliament, and not to pay too much attention to the factor of just territorial representation in the Government.

Now I want to pass to the other point of discussion – to the governmental acts.

As a rule the Government adopts *decisions* to exercise its powers and to enforce laws and *dispositions* to regulate internal issues.

In some states the Governments can adopt the acts that have an effect of laws either through legislative delegation or in the exceptional circumstances

We understand under *legislative delegation* the constitutional power of Parliament that gives a right to the Government for a certain period of time and under certain conditions to pass acts that have an effect of laws in the spheres that are not subjects of organic and/or constitutional laws.

In our opinion, *legislative delegation stipulated in the art. 106² of the Constitution of the Republic of Moldova presents a positive practice that contributes to the quick and adequate settlement of different urgent issues that might appear in the crisis times, it allows avoiding a complex durative law-making process.*

Concerning the second- adoption by the Government of the acts that have an effect of laws under the exceptional conditions. Different exceptional situations might emerge caused by either internal or external factors of the state. Such situations demand some urgent adequate measures including those of legislative character. The convocation of Parliament can be impossible or difficult, that is why decision-making will take a lot of time. In some countries in similar situations the Government is vested with power to adopt temporal measures of the legislative character without *prior* revision of the Parliament.

The practice of passing laws by the executive authorities without prior examination by the Parliament is, in our opinion, unacceptable and contradicts the principles of the national sovereignty, of legality and separation of state powers. We think it is not necessary to introduce in the constitutional practice of our country the institution of urgent laws. The practice of many states demonstrates that the Government often abuses this right. For example in Romania the urgent laws modified the organic laws². Plus the time period when the Government can adopt acts with the

² Astfel, prin ordonanța de urgență nr. 10/1996 a fost modificată Legea nr. 68/1992 pentru alegerea Camerei Deputaților și Senatului, prin ordonanța de urgență nr. 22/1997 a fost modificată și completată Legea administrației publice locale nr. 69/1991, iar prin ordonanța de urgență nr. 36/1997 a fost modificată Legea învățământului nr. 84/1995 ș. a.

effect of laws is not clearly defined. Depending on different circumstances it justifies the approval of the acts that change the organic laws that can lead to the abuse of powers by the Government that would fundamentally substitute the Parliament in law-making.

And the last subject, which I'd like to mention, is accountability of Government that is manifested in two aspects: political and judicial.

Political responsibility means that the Parliament on the initiative of the deputies can show the vote of non-confidence to the Government (to vote on the censor motion). This way the Government loses legitimacy gained through the vote of investment. The Government through the involvement of its responsibility can provoke the vote on the censor motion over a program, a general political declaration a bill. The Parliament is to choose between the acceptance of the initiative of the Government or its dissolution.

In some states the so-called **vote of constructive non-confidence** is applied – the Government will be dismissed only if the Parliament will give a vote of confidence to the new Government. In *Germany* (art. 67 from the Fundamental Law) Bundestag can give a vote of non-confidence to the federal chancellery only through the elections of a successor with the participation of the majority of its members, the elections take place in 48 hours after the initiative was stated. The Federal President has a function to revoke the minister in function. S/he has to execute this demand. In *Spain* (art. 113 paragraph 2, 114 paragraph 2 of the Constitution) the censor motion that was initiated by the deputies should contain a candidate for the function of the prime-minister. If the Congress of Deputies adopts the censor motion, the Government is dissolved and the candidate is vested with the confidence of the Congress.

In my opinion *the institution of the constructive vote of non-confidence is of great interest in cases when it is necessary to avoid the political crisis. The practice of offering the Parliament a chance to avoid the dissolution through advancing a candidate for the function of the Prime Minister is also very useful.*

Judicial responsibility is known in all regimes. It means penal responsibility of the members of the Government for the committed infringements while implementing their powers. In my report I have presented the practice of many different states, the possibility of rising of the immunity, the institution that attract to the response ministers in case of infringement of a law in time of executing its responsibilities. I expressed my idea regarding the matter that Constitution in RM doesn't stipulate such kind of governmental responsibility in spite of the fact that it's really necessary.

We support the opinion *it is necessary to introduce in the Constitution of the Republic of Moldova of regulations on the declaration*

of the judicial responsibility of members of the Government who infringed the law while exercising their powers not only on the procedure of political responsibility of the Government.

In *Italy* (art. 96 from the Constitution) the infringements committed by the Prime Minister and ministers while exercising their powers are examined and after the end of their mandate are given for consideration to the Senate of the Republic or the House of Deputies.

If you have some questions I would like to answer them.

DI Ion CREANGĂ – Thank you very much and now please the questions. Please, Mr.Osoianu.

Mr. OSOIANU – concerning the governmental reshuffle..., by the way,these days there was dismissed the 17th minister from the day of creation of the Government, and according to the Law of Government we have 16 ministries, what do you think is it a good situation? Or may be it's better to make some modifications not in favour of atributies of the President,for example to accord some rights..., the most important role has the parliament in the governmental reshuffle.

Mr.ȚURCAN – thank you for your question. I am for more active implication of the Parliament in formation and governmental reshuffle, because if..., there is a general rule that is applied practically at all the institutions, except the Government, who appoint in function – that one and dismisses. Concerning the Government – there is an exception, Parliament gives the vote of confidence and after that doesn't take place at the governmental reshuffle. It can happen that Prime Minister will remain, only he at the governmental team that has received the vote of confidence, taking into consideration that the responsibility is solidarial in the governmental responsibility, but the other ministers will be changed and Parliament can not agree with this situation.

Mr. CREANGĂ – if you permit me, Mr.Sergiu, the experience of Georgia and Lithonia. 5 ministers or more than a half with receiving of the vote of confidence,that is logical, rational, and I can say practical, because we had such a practice without respective condition and as the President was elected directly and now we have the same rule. How is situation in these countries – how the President is elected in these conditions?

Mr.ȚURCAN – in Georgia he is elected by population, in Lithuania – by the Parliament.

Mr. CREANGĂ – with other words we have two different practices, the one who is elected by the Parliament has the vote of confidence given to him by the Parliament, and who at his turn makes the governmental reshuffle. But in case of direct election let us analyse the situation. Here we can discuss a lot.

Mr. POPA – in this case we have to understand that from state to state we can group the political necessities and trifles, and sometimes we are leading by our own trifles..., by the way it is a pure theory, the theory of representation when the population can elect the most worth. But according to what modality the population can elect them? Evidently that it is necessary to have a programme – you come with a programme, Parliament comes, the parties, because the sovereignty is stipulated in Constitution in art.2, and is executed by the Parliament though we are used to say that it is executed by its representative bodies, but the legislative framework, stipulation of norms, this is executed directly. And it's clear that they have to realize somewhere the programmes. Prime Minister is responsible for the Government and Prime Minister has to choose a team, because he remains without head... It's enough the Prime Minister to be silly and all Cabinet suffer and can be dismissed, nobody remains, in spite if they were too good and in this case why it is so important by whom they were appointed, how many people have to appoint them, governmental reshuffle and etc. Let admit that Prime Minister made an infringement. Is he changed only in this case? No, all the Government leaves. The principle idea is in the competence. I want you to look what is written in Constitution concerning the competence, it isn't written competence at Government, but what can we read at the art.96 – the role, and Constitution stipulates that Government is responsible for realization of the internal and external policy. In the art.66 p.d) from Constitution we can find that Parliament adopts principle directions of the internal and external policies, and the Government is responsible for its implementing. So, the Governmental competencies are in implementing of this policy that is stipulated in the programme. So, I think at the elaborating of a document we have to take into consideration the political necessities in order not to diminish the role of different authorities.

Mr. SMOCHINĂ – Mr.Popa, you have said very well at the beginning that if we have a luck of a clever Prime Minister... and if we haven't this luck? And we need to change the ministers; I think Parliament must not be indifferent in this case.

Mr.POPA – Parliament can at any moment start a motion with control of Prime Minister... You were chosen by us at this function and we trust you.

Mr. CREANGĂ – It's really a very serious logic..., but they can make modifications with both agreements and it would be logically the Parliament not to interfere. But in situation when the election of the President is outside the Parliament, I don't see any logic to trust, but in this case is necessary a mechanism reciprocal control.

Mr.POPA – Do you know why President has a right to choose the Prime Minister? Why Parliament doesn't have this right? Here is the equilibration of powers; Parliament can stay for one, two, three, four months? But the President has 45 days. Parliament can't work until the executive body isn't elected. The equilibration of powers, that's all.

Mr. VOLENTIR – at the same time the President can propose not the best candidatures in order to act against the Parliament and there are states as Germany, for example, where the Parliament reserves the right for his own proposal at the function of Prime Minister.

Mr. CREANGĂ – but it can result if the President was elected directly or indirectly?

Mr. NEGRU – after some preventive consultation...

Mr. CREANGĂ – Ok, Mr.Sergiu, I'd like to raise one problem more...

Mr.POPA – in Romanian Constitution, if I am right in our Constitution it is written after consultation and in Romanian Constitution, I am not sure, I think at the proposal of parliamentary parties.

Mr.GUCEAC – it would be correct.

Mr.POPA – Surely more correct. If there are four parties, every party proposes, I am as a chief will be a mediator. I have proposed to you

just a candidature, don't vote it, please the second candidature, the third one and now you must assume a responsibility that the Parliament can be dissolved...

Mr. CHISEEV – I'd like to ask... reformulating of art.96, assure the internal etc. of Government. At the same time we can't find where it is written that Government is the highest body of the executive power. We can't find such a stipulation in the law about Government. I want to know your opinion about this question.

Mr. ȚURCAN – I share point of view of Mr.Popa, who has told that no words, no definitions are important, the most important thing is the mechanism and competencies which are given to this bodies, and it defines their status in relation to other bodies. What does the main executive body mean? What does not the main executive body mean? The highest or not? There is no consensus about the role of the President in the executive power. Our Government is responsible directly and politically for realization of external and internal policy. President is not responsible for realization of external and internal policy. That's why our Government is the key chain in the system of bodies of executive power.

Mr. CREANGĂ – But does the Prime Minister sign the Decrees regarding the external policy?

Mr. ȚURCAN – and the external policy, and in domain of defence the Decrees of President are signed by Prime Minister and it demonstrates once again that the Government is responsible for policy and not the President...

Mr. CREANGĂ – the members of the Government from Office is the problem for discussions, the problem connected with the bodies of public local administration, with Bashkan and with mayor of municipality Chișinău. I would like to hear your comments regarding to this problem.

Mr. ȚURCAN – the members from the office are stipulated, there is stuff that is foreseen not only in the Republic of Moldova, for example in Uzbekistan. In framework of the subjects of federation, if it would be a federative state there would be stipulated for assuring of collaboration of the federal center with the subjects of federation..., the representatives from office of the federative subjects, but appointed not by the federative subjects but adopted on proposal.

Mr. COBĂNEANU – But as you see, for our republic as a unitary state the rights are not infringed. There were judets and the administrative-territorial unity with a special statute. Why couldn't judet Bălți, Orhei to have their representatives in the government?

Mr. POPA – I want to say that it was a political trifle – from the office – but why? We have to begin from the idea that the government has a collective responsibility for mistakes that were done. Now what does happen, the people who are in the head of the Government contribute to the rubbishes that were done by the Government, government is dissolved but they are still remain...there is no any logic in this, everybody has to leave...

Mr. CHISEEV – in art. 100 from Constitution... such definitions as demission, dismissal and in art.101- concerning the Prime Minister. Regarding the demission... I would like to know your opinion about the cases when the Prime Minister can be dismissed and the procedure, I'd like you to express your opinion.

Mr. ȚURCAN – it can be only by a decision of the Parliament, by a vote of unconfidence.

Mr. CHISEEV – Do you think that a demission and a dismission are the similar difinitions?

Mr. ȚURCAN – no, a demission is by their will... from executing of dutes...

Mr. CREANGĂ – and the Parliament adopt an act...

Mr. CHISEEV – one more question, when we were reviewing this question in the Constitutional Court, for example in art.103 paragraph 2, I will be brief, the functions of governing the society, hoe do you understand this stipulation in Constitution?

Mr. ȚURCAN – you are right, it's a formula ambigue. In case of interruption of amandate... there are functions of administration of public dutes. It's a formula ambigue, and I wouldn't risk giving a clear explanation.

Mr. NEGRU – How do you think the Governmental acts stipulated in art.102 corespond to the requirements of the international practice?

Mr.ȚURCAN – concerning the governmental acts I didn't analyze them, they are of administrative law, I have analyzed just the governmental ordinances, and I am more interested in them. I have expressed my opinion concerning them...

Mr.NEGRU – Why do I ask this, because in art.102, first of all there are lot of mistakes starting from the first paragraph where is stipulated that Government adopt decisions, ordinances, normally the ordinances are on the first place, at the second one are the decisions. What about the dispositions in general it isn't necessary to tell something, Government doesn't adopt dispositions and it's enough to look through the last paragraph of art.102 and now it is used to say that dispositions are adopted by Prime Minister.

Mr. CREANGĂ – I'd like to come back to the topic of governmental members from office, the critic that was raised by me is concerning to the public local administration, at the first or at the second level, so in this case we have members in office – 2 persons we had, one of them we don't have now, I mean the general mayor of municipality Chișinău and bashcan of Gagauzia. Now, through the recent adopted law here has appeared a new person in the office – the chairman of Academy...

Mr.NEGRU – it's necessary, undoubtedly...

Mr.CREANGĂ – in this aspect, reporting the problem between the central power and local power, how influences or how we can treat the local autonomy through the prism that a member of Government is submitted to Prime Minister? In situation with Gagauzia – Bashcan is a suprem person in the territory, to whom all the territorial authorities are submitted. Are submitted from mayors, starting from the first level, Bashcan automatically is submitted to Prime Minister; wher is the local autonomy in that case? It disappeared completely...there is a difficult situation. In Chișinăul there was the same situation when the general mayor is submitted to Prime Minister because he was the member of the government, and at the same time he was the representative of local autonomy. Didn't you meet making analyses of other governments if there are members of central,federal or other Government?

Mr. ȚURCAN – in other states Prime Minister, vice Prime Ministers and ministers or the chiefs of the departments. Other members don't exist.

Mr. CREANGĂ – there is such a practice with the state secretaries...

Mr.ȚURCAN – but in majority of cases, the structure of Government is established through the organic law...

Mr.POPA – when we want to give a question, the member of the Government from office, it is necessary to know what is the aim, for what reason?

Mr. CREANGĂ – in order to, in case of necessity...

Mr. OSOIANU – in case of General Mayor from Chișinău..., then in case of others, as for example the governor of the territorial unity of Găgăuzia, so the General Mayor from Chișinău – here are some ambacies, take place different...

Mr. CREANGĂ – if it won't be this justification, we would be able through the general state of capital to limit the attributes of General Mayor to administrate on the territory in Chișinău, for example in the place of location of the main state institutions, the mode of stake, of demonstration, of expression or other situations some special procedures stipulated where there are stipulated the attributes of the central organs, resulting from the theory that the central authority doesn't trust completely to local authority and want more severe control in this city of residence...

Mr.POPA – you have given a correct question, now deviate from it. Art.109 from Constitution - the local autonomy in the organization and functioning of public authorities, according to which the mayor doesn't submit to the Government no to the subject of federalism, as a form, yes? Absolutely, because it is autonomy, more over the law of public administration says that nobody can give the power, to define competencies, besides those stipulated in a law. So, this is the principle of autonomy. Now we make the General Mayor the member of the Government and from this moment he is submitted, because the Government can take a decision concerning him not as the General Mayor but as the member of the Government. So, here the principle of autonomy is infringed.

Mr. OSOIANU – from the Soviet period this practice came - appointment of the Chief of the executive...

Mr. CREANGĂ – for that time the local authorities were treated as state structures, as a part of state...

Mr. COBĂNEANU – at that time the principle of democratic centralism acted...

Mr. NEGRU – other members are not necessary...

Mr. CREANGĂ – Isn't this definition taken from Romanian Constitution? Didn't you mean an eventual institute of the state secretariat?

Mr. POPA – this would be possible...

Mr. CREANGĂ – I think it would be a correct interpretation of art.96 from Constitution that defines the structure of Government.

Mr. OSOIANU – Yes, there is a minister without portofolio, but ...

Mr. CREANGĂ – I have analyzed this article from the point of view of public vacation and we find a real situation of division of portofolio at the moment of adoption of the Constitution. This has influenced that article because it was a necessary to approve the function of Prime Minister and of two vice Prime Ministers, ministers and the other members of the Government. And they have to be from the political juncture that was formed at the moment of adoption of Constitution and the portofolio were shared... this, probably, influenced decisively the adoption of this article from Constitution...

Mr. NEGRU – Mr. Creangă was right when he mentioned that this constitutional article repeats the situation, when I would be categorically against, we can't talk about the vice Prime Minister, vice Prime Ministers are not necessary in general, because we have a chief-Prime Minister, who is responsible for Cabinet in the whole and there are ministers who respond for their domains. And it's normally that we don't need a vice Prime Minister, because this function can be carried out by one of the members of the Government in the absence of Prime Minister, and it's evidently that we don't need but we have.

Mr. SMOCHINĂ – if you permit, when I made acquaintance with some works of Mr. Alachian, He mentions that it depends of social and political situation existing in state at the moment of creation of the Government and of the Parliament etc. And mentions in more

scientific works that it depends a lot of this social and political situation...

Mr. CREANGĂ – having a precedent the respective solution permanent have to be. For example in this case, we have to act in the following mode. It is necessary to have an original solution and in our case it is necessary to define more pedantic and more detailed the respective modes in order not to create an unexpected situation and result.

Who has some comments?

Mr.POPA – Let be transformed in a commission of improvement of constitution, to offer some proposals. We are constitutionalists here and have to use this opportunity,because we won't have the other one for joining here...

Mr.NEGRU – I don't know if it will be taken in consideration or not, but in principles...

Mr. CREANGĂ – What are you talking about dear colleagues..?
Please, Mr.Protsyk.

Mr.PROTSYK – I have a remark concerning what have been told by Mr.Popa. Everybody understands that there are lot of political elements that help to solve the Transnistrian problem, but as you have mentioned because here the constitutionalists have gathered, I think it is necessary to make a proposal, an attractive solution for Transnistrians acception. So,we don't need to narrow the problems of emprovement of acting Constitution.

Mr. CREANGĂ – of course, as a solution and we are as the specialists shall contribute when a political solution will be required..., which will help to the official authority to take the right direction, avoiding mistakes from its begining...?

Mr.NEGRU – a small remark, it seems to me if we are talking about the problem of left bank of Nistru, for example I express my own opinion and it is clear that we are talking about the territory occupied by Russian Federation and here is the point of start in solving of the problem with all the consequences. I think it is necessary to adopt a decision about the occupation of this territory by Russian Federation. If we won't start from this point of view, we won't be able to solve this problem.

Mr. CREANGĂ – dear colleagues, I want to thank you for participation at our round table today, for the usefull information presented here, for change of opinions and personal points of view on the problems of executive power, on presidential institute, governmental institute. We are waiting for you at the next meeting with the topic “Justice power”. We will inform you in addition about the date of our next meeting.

Thank you.

Good bye.