

Government as an executive power

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The objectives of the study:

The objective of the study was to make a comparative analyses 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 the following domains:

- The competence of the Govern/ Governmental competence;
- The documents of the Govern/ Governmental documents;
- The responsibility of the Govern/ Governmental responsibility .

Governmental responsibility

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.

I. General characteristic and governmental competence

The Govern is the collegiate executive authority, has the general competence for implementing domestic and foreign policy which reflects the leading of the public administration. Nowadays, in many states we can see the expansion of the governmental activity, the increasing role of the Govern concerning state politics. This is the product of many factors. Some of them are: for a long time the Govern was considered the secondary and subordinate political authority even if this authority is the dynamic, driving element of the political system. Govern is the real author and achiever of the domestic policy, invoking:

1. Technical argument (counts a limited number of members, who are hierarchically subordinated);
2. Political argument (counts people from the majority parliamentary party or the parliamentary majority is deprived of political independence and votes according to the decision of the political leaders who in parliamentary regimes lead the Executive

authority¹ „theoretically and practically the Parliament and the Govern has the same legitimacy and affinity source and especially the majority electorate that pronounced for the political platform of the same party²);

3. Juridical argument (has enough constitutional mechanisms to influence parliamentary activity);

4. Institutional argument (benefits by administrative, financial indispensable possibilities and by public force)³. In this case its role is not secondary, not subordinate, it is even primordial⁴, not taking into consideration the name of this executive authority in different states depending on governmental, law system or other factors (Govern – in Republic of Moldova, Spain, Georgia, Armenia; Cabinet – in Argentina, Mexico, Belarus; Council of Ministers – in Italy, Estonia, Serbia and Montenegro, India, Azerbaijan; Federal Govern – in Germany, Belgium, Austria; Federal Council – in Switzerland; Federal Executive Council – in Australia, Nigeria; Federal Ministers Council – in Arabs Unite Emirates etc.).

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* (Switzerland, Spain, Ukraine, Serbia and Montenegro, Estonia, Belarus, Georgia, Kazakhstan);

2. *Exerts public administration leading*(Republic of Moldova, Switzerland, Ukraine, Lithuania, Serbia and Montenegro, Estonia, Belarus, Azerbaijan, Kazakhstan, Kirgizstan, Turkmenistan);

3. *Organize the execution of laws* (Switzerland, Serbia and Montenegro, Ukraine, Estonia, Lithuania, Belarus, Kazakhstan, Kirgizstan, Uzbekistan, Turkmenistan, Tajikistan);

¹ To look at: *Правительство, министерства и ведомства в зарубежных странах*, Москва, Юрид. лит., 1994, p. 5.

² Muraru Ioan, Tănăsescu Simina, *Drept constituțional și instituții politice*, ediția a IX-a, revăzută și completată, București, Lumina Lex, 2001, p. 544.

³ A se vedea: Gicquel Jean, *Droit constitutionnel et institutions politiques*, 17-e édition, Paris, Montchrestien, 2001, p. 699; Iorgovan Antonie, *Tratat de drept administrativ*, ediția a III-a, restructurată, revăzută și adăugită, vol. I, București, All Beck, 2001, p. 39; Favoreu Louis, Gaïa Patrick, Chevontian Richard, Mestre Jean-Louis, Pfersmann Otto, Roux André, Scoffoni Guy, *Droit constitutionnel*, 4-e édition, Paris, Dalloz, 2001, p. 531.

⁴ Pactet Pierre, *Institution politiques. Droit constitutionnel*, 9-e édition, Paris, Milan, Barcelone, Mexico, MASSON, 1989., p. 116.

4. *Settles the state budget project and assures its execution* (Switzerland, Russian Federation, Lithuania, Estonia, Armenia, Azerbaijan, Belarus, Kazakhstan);
5. *Assures the implementation of the economical, financial-creditary, monetary and fiscal policy*(Russian Federation, Ukraine, Armenia, Azerbaijan, Belarus, Kazakhstan, Turkmenistan, Kîrgîzstan);
6. *Assures the defense, national security and implementation of the state foreign policy* (Switzerland, Russian Federation, Ukraine, Armenia, Kazakhstan, Kîrgîzstan);
7. *Assures the implementation of the state policy in science, culture, health, social assurance, environment* (Russian Federation, Ukraine, Armenia, Kîrgîzstan Belarus);
8. *Acts and provides guarantying of the legacy, public order, human rights and liberties protection* (Russian Federation, Ukraine, Armenia, Belarus, Kîrgîzstan, Turkmenistan);
9. *Administrates state property* (Russian Federation, Ukraine, Armenia, Belarus, Kazakhstan, Kîrgîzstan);
10. *Assures the economical sovereignty and independence of the state* (Ukraine);
11. *Establishes Diplomatic relations and maintains cooperation with other states and international organizations* (Lithuania, Estonia);
12. *Assures implementation of the state social programs* (Azerbaijan);
13. *Assures the co-operation with civil society* (Kîrgîzstan).

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.

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**, 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(art 77 line1 of the Constitution from 12 of December 1993) state authority system of the federative subjects is

established by this subjects in accordance with the constitutional bases of the Russian Federation and the general principals of organization for representative and executive bodies. In Argentina (sect. 122 of the Constitution from 11 November 1975) 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 (chapter XVII from the Constitution of Uzbekistan from 8 December 1991);

- *The pattern of constitution is established by the federal constitution or by the Constitution of the integrated state.* For example in Austria (art. 101 of the Constitutional Law from 1 of October 1920) 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 (art. 121, 122 of the Constitution from 7 of February 1831) 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 (art. 136 line 1 of the Ukrainian Constitution from 28 June 1996) 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 (art. 134 line 1 of the Azerbaijan Constitution from 12 of November 1995). The executive body of Nahicevan is the Cabinet of Ministers. The candidature of the Prime Minnister is aproved by Aly Mejlis (Parliament) Members of the Cabinet are appointed by the Aly Mejlis 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:⁵:

⁵ The table is based on the study of Mr. Igor Boţan „The subjects of the federation”, p. 17.

OSCE Agreement from 2002	KOZAK Memorandum	OSCE Recommendation 2004
The bodies of the executive authority of RM and the executive body territorial entities sets up an unique executive power system in RM	The executive power of the federation is exercised by the Federal Government	The executive power is exercised by the Government of the Federal state

There is no reference to competence delimitation between the federal government and the governments 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.*

II. The mode of the Government establishment and its structure

The mode of Government establishment depends on state governmental regime. Generally there can be distinguished two modes: The parliamentary pattern and the extraparliamentary pattern.

1. **The parliamentary pattern.** The establishment of the Government depends on the result of the parliamentary elections. This is considered to be normal because the political parties that got the vote of confidence from the people for their electorate programs will appoint the Government in order to realize those programs. The General formula is: the president of the state (after consulting the parliamentary majority or all the political fractions) appoints a candidate for prime minister. The candidate prepares the program of its activity and the list of members of Government, and will present this to the Parliament in order to get vote of confidence. On the basis of the parliamentary vote of confidence the president of the Republic appoints the Government. So the establishment of the Government is a will of the Parliament because this body approves the main directions of the state domestic and foreign policy, the platform of the parliamentary majority party or coalition and this policy will be extended in the governance program. The Government gets the legitimacy because it is the

indirect expression of the electorate will, and the appointing of the Prime minister by the President is a nominalization appointed by the Parliament.

The parliamentary pattern of Government settling can accept some particularities:

- *The competent authority to appoint the Government.* In many states in which is used the parliamentary model of appointing of the Government, 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 Government* (Azerbaijan, Tajikistan), in other states on the recommendation of the Prime Minister (Germany, Italy, Russian Federation, Ukraine, Armenia, Belarus, Kazakhstan, Uzbekistan, Kîrgîzstan), and in other states appointment of the Government established by the Prime Minister (Republic of Moldova, Latvia, Lithuania, Estonia, Georgia). In Bosnia and Herzegovina, the Collective Presidency⁶ appoints the persistent of the Government 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 Government..

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

Example, in Switzerland (art. 168 in. 1 of Constitution from 18 of April 1999) the Federative Assembly, the legislative authority on its own decides the settlement of the Federal Council(Government);

- *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 Government 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 Government 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 Government members is not presented for the President in 14 days term from the day that

⁶ 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.

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 the 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 deserves 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. This rules have a double impact/ result: avoids a governmental crisis and of anticipated that require imposing financial spending.

- *Terms and conditions regarding the procedure of appointing the Prime Minister.*
Conditions: Consultation of the parliamentary fractions (Republic of Moldova, Spain, Georgia). The candidate is appointed from the majority parliamentary party or coalition or is appointed the reliable candidate of the Parliamentary majority.

- **Terms:** when Govern finishes its term by any reason. The President appoints the candidate for prime minister in 7 days term (Georgia), *14 days term (2 weeks term)* – in Estonia, Russian federation, Azerbaijan, Kîrgîzstan, in 15 days term – in Lithuania, in *20 days term* (Armenia). In situation when the president is elected will appoint the Prime Minister in 2 weeks term (Russian Federation) or in one month term (Azerbaijan);

- *the term of giving the vote of confidence differs from state to state, one week in Azerbaijan; 14 days term (two weeks term) in Poland, Estonia, Belarus; 15 days term in Republic of Moldova, Lithuania, 20 days term in Armenia.* This term should be reasonable, giving the time needed for preparing the governmental program and the Component list of the Govern.

- *The way of giving vote of confidence for the govern.* In Parliaments with two Houses, the vote of confidence can be given by one House (the Bundestag in Germany,

Deputies Congress in Spain, State Duma Russian Federation, the House of Representatives in Bosnia and Herzegovina), but is possible to get the vote of confidence from the bough Houses of the Parliament (Italy, Kazakhstan, Uzbekistan, Tajikistan). Is obvious that in Parliaments with one House this kind of problem.

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 more easy to refuse giving vote of confidence then to give it with absolute majority.

Vote of confidence can be given :

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

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

- The document that is necessary for giving vote of confidence is an adopted decision with majority vote of the elected deputies (Republic of Moldova, Russian federation, Ukraine, Estonia, Georgia, Kîrgîzstan), in Lithuania, Bosnia and Herzegovina, with the majority vote of the present deputies. In *Germany* vote of confidence is given by decision adopted with majority votes of the Bundestag members. In case of repeated vote, if in 14 days term the federal chancellor is not elected there will be the third poll when will be elected the candidate that will get the majority votes. In *Spain*, if it does not gets the absolute majority in 48 hours term will be organized the second poll and the vote of confidence will be given with simple majority. In *Italy* the House of Deputies and the Senate of the Republic independently gives vote of confidence by motivated motion voted by nominal call.

- ***The effects of not given vote of confidence for the Govern or candidate for prime minister:***

- *Dissolving of the Parliament or of the House that decides on giving the vote of confidence for appointing the prime minister* – Russian federation, Georgia;
- *Dissolving of the Parliament or of the House that decides on giving the vote of confidence for appointing the Prime minister ad Interim* – Belarus;
- *Dissolving of the Parliament or of the House that decides on giving the vote of confidence but without appointing the prime minister* – Republic of Moldova, Spain, Lithuania, Estonia, Serbia and Montenegro, Kazakhstan, Kîrgîzstan. In Germany, if in the third poll none of candidates gets the absolute majority, the federal President appoints as Federal chancellor the candidate who got the majority votes or dissolves the Bundestag;
- *Appointing the Prime minister without the agreement of the Parliament without dissolving of the last* – Azerbaijan.

The conditions of dissolving the Parliament in the case when the Parliament refuses to give vote of confidence to the Govern or to the candidature for Prime Minister. The Parliament can be dissolved in the case when it refuses 2 candidatures (Republic of Moldova, Lithuania, Belarus, Kazakhstan) or 3 candidatures (Russian Federation, Georgia, Kîrgîzstan). The Parliament can be dissolved if they do not give a resolution of their decision on activity program of the Govern in 30 days term (Lithuania); if non of the candidates will get the trust of the Deputies Congress in 2 month term starting with the first vote of investure (Spain); if in 60 days term from appointing the first candidature non of the candidature lists gets vote of confidence of the Serbian and Montenegro assembly.

2. **The extra parliamentary Pattern** of settling the Govern has more forms :

- *The Govern is settled by the Monarch.* Specific for Arabs Emirate where the President of the Supreme Council of the Emirs, with the agreement of this force, appoints the Prime Minister and the members of the Council of Ministers (art. 47 lain. 5 of the Constitution from 2 December 1971) and *Malaysia* (art. 43 of the Constitution from 31 August 1957), where the Supreme Monarch⁷ appoints the prime minister and

⁷ The supreme Monarch (art. 32 lain. 3 of the Constitution) is elected on 5 years term by the Monarch assembly (Majlis Raja-Raja) of 9 Subjects of the Monarchy federation , and the other 4 republic subjects, the governors of the republics are not participating to the election, forms The Malaysian Federation.

on his recommendation, the members of the Cabinet. As a Prime Minister is appointed the leader of the majority party in the House of Representatives.

- ***The Govern is appointed exclusively by the President of the republic*** (Austria (the federal president appoints the federal chancellor and on his recommendation the other members of the Federal government. The Chancellor is appointed by the majority party of the National Council), Turkmenistan (The president settles the Ministers Cabinet and leads it, in 30 days from the day of investiture), Brazil, Argentina, Venezuela) ***or with the formal agreement of the Parliament or of one of the Houses*** (in Mexico and Nigeria with the agreement of the Senate). It is remarked that in some states it is not taking in consideration the classic meaning of the word Govern, as an independent distinct public authority and more an authority of presidential power that realizes the attributions specific to Govern. In other states where the executive power is formed from one House, the President of State leads the Cabinet. In this states, theoretically the ministers act as consultants of the President , they have competence in order to influence and impose power in executive domains.

- ***Government nominated by the Governor General – Canada*** (Governor General appoints the prime – minister and approves members of the Cabinet on the recommendation of the prime-minister. The leader of the party or a coalition of parties that has the majority in the House of Commons of the Parliament is appointed the prime minister, *Australia* (Governor General nominates the prime minister. S/he also nominates the members of the Federal Executive Council on the advice of the prime minister. (The leader of the party or a coalition of parties that has a majority in the Parliament is appointed the Prime Minister.)

- ***The Prime Minister is elected by the direct popular vote.*** Thus, in *Israel*, since 1996 the Prime Minister has been elected through the universal, equal, secret and freely expressed vote for a 4-years term.

The qualifications for a member of government are specified in the constitutions of some states:

- *Citizenship* - Switzerland, Belgium, Brasilia, United Arab Emirates, Venezuela. In Mexico (art. 91 of the Constitution from February, 5, 1917) and Malaysia (art. 43

paragraph 7 of the Constitution) only a person who was born in the country and thus became its citizen can be nominated for the post of the minister;

- *Age conditions.* The *Prime – Minister* should be at least 30 years old, (Azerbaijan), the *minister* - at least 21 in Brasilia, 25 in Azerbaijan and Venezuela, or 30 years old in Mexico;

- *Education:* – higher education for the prime-minister – Azerbaijan;

- *Political and judicial conditions* – for federal officials and ministers, the right to be chosen in the National Council, the House of Federal Assembly - Austria (art. 70 paragraph 1 of the Constitutional Law); for members of the Federal Council the right to be chosen in the Federal Assembly - Switzerland (art. 175 paragraph 3 of the Constitution), for prime-minister and ministers - benefits of the election rights and lack of commitments to a foreign state - Azerbaijan (art. 121 paragraph 1 of the Constitution);

- *Ethnic, religious and linguistic conditions:* 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 *Comoros* (art. 16 of the Constitution December 23, 2001) the islands that make up the state⁸ have to be justly represented in the Council of Ministers;

- *Restrictions.* Members of the royal family cannot take the office of the minister (Belgium (art. 98 of the Constitution). In Serbia and Montenegro (art. 41 paragraph 3 of the Constitution from February 4, 2003) and Ethiopia (art. 87 paragraph 2 of the Constitution from December 8, 1994) the minister of defense has to be a civilian.

⁸ According to article 1 of the Constitution of the Federal Islamic Republic of Comoros the state comprises 4 autonomous islands: Mwali (Mohéli), Maoré (Mayotte), Ndzuwani (Anjouan) și N'gazidja (Grande Comore).

Representation in the Government of the subjects of Federation and territorial autonomous units. 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 three 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. In *Uzbekistan* (art. 98 paragraph 1 of the Constitution) the law member of the Government is the prime – minister of the Republic of Karakalpakstan. In *Nigeria* (art. 14 paragraph 3 of the Constitution Mai 5, 1999) the fact that the state is federal should be taken into consideration while the Executive Federal Council is formed to ensure national integrity and to avoid the concentration of powers in the hands of the representatives of other states, one ethnicity or a certain group of people. Thus, according to art. 147 paragraph 3 of the Constitution, every state (the federation is made up of 36 states) must be represented in the government by at least one original minister of the respective state.

The recommendations of the mediators on the solution of transdnestrian problem and the formation of a federal government⁹:

Agreement of OSCE from 2002	Memorandum KOZAK	Recommendations of OSCE 2004
-	- 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	- The composition of the Government and its powers are stipulated by the Constitution and law of the Federal State

⁹ The table was taken from the work of Igor Boţan „Subiecţii federaţiei”, p. 17.

	subjects of the federation; - the posts of chairmen and their deputies are given in accordance with the principle of proportional representation to the subjects of the federation. The mode the federal subjects are represented in the federal executive body is stipulated by the ordinal and/or organic law.	
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We think the nomination of the prime minister by the President of the state after consultations with the parliamentary fractions and accordance the vote of confidence to all members of the Government, not only the prime-minister is correct. The vote of confidence, in case with the bicameral Parliament, has to be given, in our opinion, not by the Senate, but by the house that represents the interests of the whole federation (or of the unitary decentralized state). The idea that the posts of the vice-prime-ministers have to be given to the representatives of federal subjects is acceptable under the condition that they will be nominated by the federal Parliament, not by the authorities of the federal subjects. 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.

Compatibility of functions of a parliamentarian and a member of the Government. In some states, especially those with the parliamentary regime, the compatibility is permissible. (Italy, Spain, Latvia, Lithuania, etc.). Moreover, to become a member of the Government a person should be a parliamentarian (in Australia (art. 64 paragraph 3 of the Constitution from July 9, 1900) ministers are or have to become parliamentarians in the following 3 months; in India (art. 75 paragraph 5 of the Constitution from January 26, 1950) and Pakistan (art. 91 paragraph 7 of the Constitution from April 10, 1973) the minister who did not become the member of one

of the chambers of Parliament (India) or National Assembly (Pakistan) within the period of 6 consecutive months is dismissed. In other states *compatibility is outlawed*. (USA, Austria, Belgium, Estonia, Azerbaijan, Armenia etc.). The *problem of compatibility of functions of a parliamentarian and a member of the Government* can be interpreted from two perspectives: on the one hand to allow compatibility means to offer possibilities for more efficient collaboration between Parliament and Executive body to implement state powers, on the other hand it means to infringe the rule of specification and separation of state powers¹⁰. In reality to stabilize efficient links between the Legislative and Executive bodies it is necessary, in our opinion, to allow compatibility, because the constitutional practice of the states demonstrates the predominance of the „phenomenon of the majority” that leads to the concentration of powers in the hands of current that simultaneously exercises legislative and executive powers¹¹. In this case, the Government will practically enjoy the support of parliamentary majority – without members of Government being at the same time parliamentarians – while passing laws necessary for the realization of its program of activity. This will reflect the electoral program or electoral block that makes the parliamentary majority – „the Government from political aspect is of majority that vested it with its confidence it means if the majority does not support the government – it opposes itself”¹².

In general, in the majority of states members of the Government cannot combine functions (Germany, Switzerland, Armenia), but some states, with the exception of didactic and scientific activities (Ukraine, Azerbaijan, Georgia, Kazakhstan etc.).

The mandate’s duration. You can rarely meet a Constitution that stipulates for a fixed mandate of the Government. It is natural because the duration of a mandate of the Government depends on the political support of the Government by the parliamentary majority (in states with parliamentarian regime) or by the chief of the state (in presidential republics). When the Government fails to gain the support, it will be dismissed. In *Switzerland*, taking into account the mode the government is formed, the

¹⁰ See: Burdeau Georges, Hamon Francis, Troper Michel, *Droit constitutionnel*, 25-e édition, Paris, LGDJ, 1997, p. 104.

¹¹ See: Pactet Pierre, *op. cit.*, p. 112; Hamon Francis, Troper Michel, Burdeau Georges, *Droit constitutionnel*, 27-e édition, Paris, LGDJ, 2001, p. 579.

duration of the mandate of the Federal Council (government) is stipulated in art. 145 of the Constitution and it coincides with the mandate in the National Council (the House of Federal Assembly) making 4 years. The ministers are appointed for a 4-year term in *Serbia and Montenegro* (art. 38 of the Constitution).

The termination of the Government's mandate can take place in the following situations:

a) *in case the dismissal is presented* – the Russian Federation, Ukraine, Lithuania, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan (in these countries the dismissal is approved by the President of the Republic), the Republic of Moldova, Austria, Serbia and Montenegro;

b) *in case of dismissal of* –

- *the chief of the state* – the Russian Federation, Ukraine, Byelorussia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan.

- *the chief of the state with the further approval of the Parliament* – Lithuania, Tajikistan;

- *through the Parliament's vote on cenzor motion* – the Republic of Moldova, Germany, Spain, Austria, Belgium, the Russian Federation, Serbia and Montenegro, Ukraine, Lithuania, Estonia, Armenia, Byelorussia, Georgia, Bosnia and Herzegovina, Kazakhstan;

c) *in case a new Parliament or a chamber of the Parliament is elected* - Bundestag in Germany, National Council in Switzerland, the Congress of Deputies in Spain, the Parliament in the Republic of Moldova, Serbia and Montenegro, Lithuania, Estonia, Armenia, Uzbekistan;

d) *in case the new President is elected* – the Russian Federation, Ukraine, Lithuania, Azerbaijan, Byelorussia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan;

e) *in case of Prime-minister's decease* - Spain, Lithuania, Estonia.

Ministerial structure, as a rule, is not determined by the Constitution, it is defined by the Government to meet the demands of the governmental programs.

¹² Constantinescu Mihai, Muraru Ioan, Drept parlamentar, București, Gramar, 1994, p. 177.

The analyzed Constitutions stipulate, in general, for the following structure of the Government:

- prime-minister and ministers - Italy, Latvia, Lithuania, Estonia, Armenia, Georgia;
- prime – minister, vice-prime-ministers, federal ministers – the Russian Federation;
- federal officials and federal ministers - Germany, Austria;
- prime-minister, vice-prim-minister, ministers and other members of government - Spain;
- prime-minister, prime-vice-prime-minister, three vice-prime-ministers and ministers - Ukraine;
- prime-minister, deputies of the prime-minister, ministers and presidents of state committees - Azerbaijan, Byelorussia, Uzbekistan, Kyrgyzstan, Tajikistan.

The number of ministers and their activities are many and varied and usually not determined by the Constitution, with a rare exception:

5 ministries in Serbia and Montenegro (art. 35, 40, 41, 43-45 of the Constitution) – of foreign affairs, defense, economic international relations, economic internal relations, human rights and minority rights.

7 ministries in Switzerland (art. 175 paragraph 1 of the Constitution) – of foreign affairs, internal affairs, justice and police, defense, finances, economy, transportation and energy;

12 ministers in the United Arab Emirates (art. 58 of the Constitution) – of foreign affairs; internal affairs; defense; economy; finances; economy and industry; justice; education; health; public work and agriculture; communications; labor and social protection; information; planning;

not more than 15 ministers in Belgium (art. 99 of the Constitution).

Governmental reshuffle represents an institution through which one or some members of the Government are replaced. 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 with the approval of the President of the Republic* - Georgia (with the exception of the minister of internal affairs, minister of defense and minister of state security, the reshuffle in these departments is decided upon by the President of the Republic (art. 73 paragraph 1), art. 79 paragraph 5 of the Constitution from August 28, 1994, in edition of the constitutional law from February 6, 2004)).

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.

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