

THE PRINCIPLE OF EQUILIBRIUM AND SEPARATION OF POWERS UNDER THE ROMANIAN CONSTITUTION

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Abstract:

The separation of powers, this reality which dominates the constitutional order beginning with the modern era, conveys through structures, institutions and methods, the relations that exist and should exist between the power and those commissioned to exercise the power; with the aim of establishing reasonable correlations between the governed and the governance according to the public liberties.

The separation of powers principle gained ground in people's mind only when they felt the constitutional regime should be installed. It was so important on the European and American continents, that creating democratic societies without it would have been out of discussion. And when along with the constitutional regime, they reached to the idea of a state of law, the separation of powers principle was considered the only method able to form it.

Key words: constitution, state of law, the separation of powers principle

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INTRODUCTION

There are varied definitions of the term “constitution”, but the majority of those used by compared law starts from the premises that a constitution refers to “the limitation of the executive power” (Sajó, 1999); for example, an author considers that a constitution is “a plan or a base for the government” (Sartori, 1997). The rules regarding the limitation of the executive power, generally refer to how this power is controlled by the legislative and the judicial powers.

The Romanian doctrine prefers to define the constitution in a formal way and does not feature the limitation of the power, but the exertion of it; therefore, according to the doctrine, the constitution is defined as “a political-judicial act (...) adopted to establish the way the powers of the state are organized and exerted and the relations between them.” (Ionescu, 2008), or “the supreme normative judicial act, which encompasses the norms that have as a regulation the institutionalization and the exertion of power” (Deleanu, 2006) and which establishes the way the public authorities function and how they are organized, their competences and their relations with the citizens seen as a whole, their rights and liberties.” (Vrabie, 2004).

In broad terms, according to the doctrine, constitution was defined as the fundamental, judicial and political ground which regulates the basic social relations in the process of installing, organizing and exercising the political power as a state power, establishing the political and socioeconomic structures, as well as the citizens' fundamental rights and duties, drawing the essential paths of the future evolution of the society. (Iorgovan, 2005)

Therefore, to approach the constitution as a guiding institution has conceptual advantages, speeding, on one hand, the institutional adjustment, and especially highlighting the constitutive basic role of the principle of legality, on the other hand.

THE CONTENTS OF THE CLASSIC THEORY OF THE SEPARATION AND EQUILIBRIUM OF STATE POWERS

The classic chart of this principle is very simple: the state performs three basic functions: 1. the legislative function- it proclaims the general rules; 2. the executive function- it brings into effect or implements these rules and 3. the jurisdictional function-it settles the litigations which appear

when applying the law. Each function has a correspondent power- legislative, executive and legal- and each power is allocated to a distinct body: the legislative power- to the constitutive assembly; the executive power- to the President and to the Government; the legislative power- to the judicial body. "To balance these three powers through a judicious division of the responsibilities and to provide each with efficient controlling methods for one another, stopping in this way the immanent human tendency of seizing the power and of making abuse of it, is the condition of social harmony and the warranty of human liberty." (Deleanu, 2006)

According to the principle of the separation of the three state specialized powers, these are exerted by independent authorities, who hold approximately equal parts of power. Each power/public authority holds and exerts a series of own responsibilities, through which it accomplishes specific duties and counterbalances the reciprocal relations between them. None of these powers prevails on the other one, subordinates to the other one or assumes the prerogatives specific to the other one.

Actually, this principle has never taken into account a rigid separation of the three powers, being rather a matter of establishing some relations, some reciprocal forms of control and cooperation between the three powers. Practically, it is not about a proper, pure separation of powers in their highest level, but a delimitation of the basic functions of any state power. All these three powers strike in right balance, none of them dominates the other one, but cooperates and interferes with. A net separation between the state powers would lead to an institutional blockage, whereas the equilibrium of the powers of state is achieved by establishing some measures and methods of reciprocal control, able to prevent the public authorities from abusing the responsibilities they were invested with.

THE ACTUALITY OF THE CLASSIC THEORY OF THE SEPARATION AND EQUILIBRIUM OF STATE POWERS

The evolution of the separation of powers theory refers to the way powers function in a state. To consider the question referring to the evolution of the separation of powers theory in all its aspects, a theory and a constitutional reality, means in fact to analyze the degree a balance and an effective cooperation of state powers are achieved.

The principle of separation of powers is in many people's opinion in contradiction with the sovereignty's indivisible and unitary character, whose only owner is the people. Admitting this way the principle of separation of powers, its opponents claim that sovereignty separates as powers do, but this statement is absurd, has no basis. Indeed they tried to replace the term "power" with "functions", but this solution didn't solve the situation either, because the term "function" means "aspects of activity" and cannot replace in our opinion the term "powers". This results in using concomitantly in phrases the terms "powers", "public authorities" or "state bodies".

Some authors such as Charles Eisenmann, consider that the doctrine of state powers separation is not very stringent and coherent. For instance he affirms the following: it is not clear enough if by "power" someone understands "state body" or a function, and it is not stated clearly if an etatic function should be allocated to an authority or to a group of distinct authorities, because no body performs integrally a function, therefore the etatic bodies are not functionally separated.

Regarding the content and the meanings of separation of powers, it has been said more and more frequently that it is less about separation than about the equilibrium of the powers. In state organizations, important is the state authorities independence, which cannot be complete, but should be very wide. The state authorities should depend on each other only for how long it is necessary to form them or to designate them and to some extent, to exert some of the duties.

The criticism of the separation of powers classic theory is in accordance with the evolution of the society, being reached a point where it is stated that the classic theory doesn't reflect anymore the political reality because it has been removed by the totalitarian regimes and it seems to be overtaken by the pluralist ones. Although it was confirmed, the separation of powers is contradicted even by regimes known as democratic ones, where a sort of power concentration is displayed. For

example in the English parliamentary system, a great part of the power is concentrated within the cabinet, because it has mainly the great majority in the House of Commons (actually the real power is held by the leading committee of elections winner party). According to this, Pierre Pactet considers that "being one of the most liberal regimes of the world, we should admit that its liberalism has other causes than the separation of powers." Similar systems can be found in other democratic constitutional systems either.

"The idea of separation of powers, borne in a regime that has not applied it, is overtaken by the evolution which has led to the substitution of the legislative-executive pair with majority-opposition one". Professor Michel Troper considers that the separation of powers principle has not inspired neither of the constitutions, and the classification of the constitutions based on different ways of separation "has no logical and scientific value and not even pedagogic one".

The evolution that has occurred over time in the realities and the dimensions of the political regimes reflected in doctrine and in practice, resulted in the appearance of other elements which make from this classic theory an equation. Some purely social elements of this equilibrium and separation of powers area cannot be omitted, nor other purely political. The crucial role of the political parties in defining the state powers should be taken into account nowadays in any consideration regarding the state organization of the national sovereignty.

In our opinion, one of the causes which lead to the obsolescence of the separation of powers theory consists in that it was elaborated in a period when political parties had not been founded yet, and when the main problems raised by the power had an institutional character. The formation of the political parties, their special role in defining the judicial and political institutions, makes that the separation or the equilibrium nowadays, not to occur between the parliament or the government, but between a majority formed of a party or a coalition of elections winner parties, who at the same time are in command of the parliament and of the government, and a strong opposition who expect the next elections to pay back.

The traditional confrontations between the executive and legislative powers lose more and more ground to that between the power and the opposition. In France like in Great Britain or in other European parliamentary systems, the constitutional regime is actually characterized by a well defined separation between two opposed parts: the one of the executive, backed by a majority of The National Assembly or of The House of Commons, and that of the minority represented in the Parliament, which is the opposition. This modern separation of powers substitutes thereby, the executive-legislative classic dualism with the confrontation between a "the ruling bloc" and "the opposition bloc", the adjustment of the system being ensured by the jurisdictional power and by the constitutional mechanisms of control. Of this process, should not be forgotten "the influence of powers", exerted not only by the political parties but by the syndicates and non-governmental organizations either, who sometimes exert their will upon the powers, determining them to perform or not some governmental actions.

A qualified aspect of the doctrine which represents a true practical distortion of the separation of powers principle is constituted by the legislative delegation, which consists in conferring by the parliament to the executive power of one of its legislative prerogatives. In this way, the executive obtains its own regulation power which consists in the right of emitting, with some conditions, general obligatory norms which have the judicial force of law. The legislative delegation has its own supporters and enemies, asserting itself both through the efficient way in which the Government responds do daily requirements and through the strict specialization of the delegated questions, as opposed to the endless debates in the Parliament over a bill. This is the reason why the legislative delegation is used in the majority of countries.

The principle of equilibrium and separation of state powers has not found its place in many constitutions of the countries from various reasons: either there is not a real separation of powers or the separation principle and the mechanism of balancing the state powers is not directly expressed, *expressis verbis*, the mechanism of separation, balancing and cooperation of the state powers coming out from the constitutional dispositions regarding the regulation of the bodies prerogatives,

commissioned to exert the power in state.

To accept this principle, even in the modern countries, with developed democracy, implies certain amendments which diminish its moral values from the beginning. This is the reason why some theoreticians ask for its removal as being obsolete, other advocate for its “modernization”, for its “adaptation” to a “great power”, which would be the executive (Preda, 2006).

The power is seen as a “relation between the governance and the governed- it still remains enigmatic or esoteric, despite the fact that with the help of a simple chart of understanding, it suggests the interesting movement of a boomerang. Having its roots in the expressed or implicit intentional or conjectural willingness of the governance, of those who form it and support it, it returns back to them, always with other consequences, other than those expected. Maybe for this reason, to which one can add more other, especially the fiction of representation, an observation from anthropology seems shocking: “ambiguity is the fundamental characteristic of power” (Deleanu, 2006).

Moreover, other authors consider that” according to the criteria that underlies the separation of powers one can talk about legislative, executive and judicial state bodies. Each category of bodies performs a certain form of activity, based on the competence which is allocated to it by law. The activities of these organs could be performed if necessary under constraint” (Popa, 2008).

It can be observed that “a short theoretic analysis of the theory of equilibrium and separation of state powers, may be interesting and useful for an accurate understanding of the theory as it is, all the more reason when its viability has been very much influenced by the fact that it constitutes more an appreciation of pragmatic evidence than an absolute theory. For that matter, practical transpositions of the separation of powers principle have shown many difficulties in performing of a purely rigid separation model, proving the necessity of cooperation between different state bodies in performing the functions allocated to them.” (Muraru and Tănăsescu, 2009).

From what we have analyzed, we may draw the conclusion that the principle of separation, cooperation and equilibrium of state powers has been the Constitution adepts' central point of analysis. The specialists' opinions are divided: some appraised it unconditionally, some considered it a scientific error (Focșeneanu, 1998).

The fact that today some people have reserves in what concerns the separation of powers classic theory, should not be interpreted as if this thing has lost its importance and that it remains a theory of the past. The great force of this theory resides in its social, political and moral resonance. It has entered in the collective memory where has been perceived as an efficient recipe against tyranny and in favor of liberty and democracy. Synthesizing this apparent paradox, Pierre Pactet states that an important gap is determined between the decline of a theory, which is in a constant loss of its explicative value and which does not correspond anymore to the reality, and its reception by the public who keep believing in it, and by the political class, who persists in evoking and invoking.

THE REFLECTION OF THE PRINCIPLE OF EQUILIBRIUM AND SEPARATION OF POWERS IN ROMANIAN CONSTITUTION FROM 1991

In December 1989, after the rapid fall, for many unexpected, of the communist regime, Romania along with the nearby countries set themselves on a difficult but irreversible path, of institutional democratizing and modernizing, of gradual connection to the values, principles and practices of advanced liberal democracies.

In the first two years of the ex-communism, the political organization of Romania had a provisional judicial-constitutional character. Strictly formal, the 1965 Constitution was still in effect, but the fall of the entire communist platform due to a revolution annulled it de facto. As a matter of fact, in the Announcement to the Country released by the National Salvation Front Council (NSFC) in 22 December 1989 it was stated: ”Starting from this moment all the Ceaușescu family structures of power are dissolved. The Government is removed, The Country Council and its institutions ceases its activity.

The formulation, without making a direct reference to the abrogation of the communist constitution, stated practically the state of facts of the annulment of its politico-institutional consequences. At the same time in the NSFC program, contained within the same document, there was the aim of forming a new committee of elaboration of the new constitution which “will start to function immediately”. The elaboration of the document would be allocated to the constitutional Commission which they formulated under the name of *Theses for the Project Elaboration of Romanian Constitution*, the structures of chapters and the principles which were then debated and adopted by the Constituent Assembly, between 12th February 1991 and 20th June 1991 [1].

The constituent elected on 20th May 1990, formed approximately of 2/3 of the National Salvation Front members, the state-party which was improvised during the Revolution days on the Communist Party ruins, without a doctrine clearly stated and gathering people who were “the right person at the right moment”, and a less number of representatives of the democratic historical parties (The National Liberal Party and The national Christian Democratic Party), and respectively some representatives of the Hungarian minority (HDUR), opted for building up a party inspired from the French semi-presidentialism.

The reasons of such an option, in a moment when practically could be chosen any other European democratic model, came rather more under the French cult of tradition and under the fact that President Charles de Gaulle had brought it into actuality at the end of the 1960s, than under the reasons of a well grounded political option. Anyway, the time for a national debate was short. The qualified human resources in the Parliament were few, and the gaullian model of the 5th Republic exerted a great influence on a “political class” formed in a big rush of the people of that moment.

In Romania, the attitudes towards the political regime created by the 1991 Constitution are varied, some insisting it is a parliamentary regime, with strong influences of an assembly, others that it is a regime with a presidential tendency, others, the majority, that it is a semi-presidential parliamentarized or subdued regime. The reasons which back up this legal classification could be classified as follows: the way of electing the President of Romania; the way the President exerts his right of dissolving the Parliament; the legal status of the President's political and penal liability; the status of the President's exertion of function, who passes preliminary or subsequent approvals, reports, resolutions, consultations coming from the Parliament or from the Government; the constitutional status of the Government investiture and the countersignature of the great part of President's decrees by the prime-minister (Iorgovan, 2005; Vedinaş, 2011).

In the first observation of the Constitution that appeared in 1992, this is characterized as “a parliamentarized or subdued semi-presidential regime” (Constantinescu *et al.*, 1992).

The character “a bit particular” of the Romanian semi-presidential regime was mentioned in the French doctrine as well (Duhamel, 1995), who considers that Romania is the only East European exception from the general tendency of presidential elections which don't trigger the changing of the government when the president is changed.

The 1991 Constitution did not state clearly – as it had happened in 1866, 1923 and 1938 Constitutions – the separation of powers principle, but this principle is put by the constituent law-maker at the basis of the bodies invested with sovereignty functions, and at the basis of the relations between them. Put it differently, although the fundamental law did not clearly state from the beginning the separation of powers principle, the constituent law-maker organized the public authorities accordingly (Vrabie, 1999).

According to an author, representative of the specialized doctrine (Iorgovan, 2005) it was stated that it was not important the name as it was, but the significance, then the solution which was chosen by the constituent law-maker regarding the role of each “power” became more important, as well as the relations between them. The same author referred to the 1991 Romanian Constitution that regarding the elaboration technique and the legal terms, it was situated at same level with the European constitutions adopted in the last decades.

Therefore, the doctrine shows clearly that by analyzing the dispositions of the Romanian Constitution adopted on 8th December 1991, it could be ascertained the principle of equilibrium and separation of state powers could be found within its modern and scientific contents and significance

(Iorgovan, 2005; Muraru and Tănăsescu, 2009). To that effect several relevant arguments were mentioned:

a) the three classic powers were stipulated by the Constitution: the legislative by the norms referring to the Parliament (art. 58 and the following); the executive, by the norms referring to the President and to the Government (art. 80 and the following); the justice, by the norms referring to the judicial authority (art. 123 and the following);

b) the order of the regulation of powers within the Constitution was a classic and natural one, that is the law-making power, then the executive power and eventually the judicial power.

c) taking into consideration the legitimacy of the Parliament's mandates, its vast and widely represented structure, the Constitution expresses a certain pre-eminence of Parliament to other state authorities. Thus, the Parliament was declared as the only law-making authority of the state (art. 58) empowered to form, elect, designate and invest other state authorities and with control functions.

Of course, to this it might be added the description consecrated in the content of Article 58 under the Constitution, according to which the Parliament was the supreme representative body of the Romanian people, although the using of the term "supreme" could have been spared of many doubts of scientific sort within the context of separation of powers. Last but not least, even the bicameral structure of the Parliament could have been considered a reflection of the equilibrium in exercising the legislative power. Hence, this was the only valid argument of the then quasi-perfect bicameralism towards the fact that Romania was and still is a unitary state.

d) the constitutional relations between the public authorities had reciprocal implications in each other's field of activity, implications which meant equilibrium achieved through cooperation and control.

We can also bring other arguments in favor of this idea by making reference to the Title III of the Constitution, "Public Authorities", from which we can draw the conclusion that the public power was about to be exercised by several categories of authorities. If we carefully analyze the content of the Title III, it is clearly stated that the Government and the President of Romania, through their functions which are allocated with, are executive bodies, representing the executive power even though the President of Romania is not just an executive authority. There is no doubt regarding the organization of the public authorities in our country based on the separation of state powers principle, should we analyze the same regulations in the light of the competences they are allocated with and moreover in the light of the control duties which etatic authorities exercise on one another, with the condition that this title to be corroborated with Title V which comprises rules regarding the Constitutional Court. It is to be noted that the legislative, executive and jurisdictional function of the etatic power are allocated with the "main title" to distinct authorities.

By analyzing the initial constitutional texts, it is concluded that under the Romanian Constitution, authorities organize themselves according to the separation of state powers principle, precisely each authority (legislative, executive and jurisdictional) exercises its control competence function on other authorities. We present only the most important texts: art. 84 provisioned the Parliament's function of accusing the President of Romania of capital treason and art. 95 allocated to it the competence of suspending him from office "if he violates the Constitution by committing grave errors". The President of Romania could dissolve the Parliament under the terms provisioned by the art. 89 and the Constitutional Court could decide if the bills adopted by the Parliament, the decisions which came from the two Chambers and the decrees of the Government were constitutionally, controlling in this way the enactment under the terms stipulated by the Title V of the Constitution and by the *Law no. 47/1992 regarding the organization and activity of the Constitutional Court*. [2]

The separation of state powers principle had been expressed in the Romanian constitutional text even before its revision in 2003. Due to a constant jurisprudence, the Constitutional Court stated that: "although the Constitution does not cover, *expressis verbis*, in any of its texts the separation of powers principle, this principle results in the way the fundamental Law regulates the public authorities and the competences allocated to them", according to *Constitutional Court Decisions no. 27/1993, no. 9/1994 and no. 209/1999* [3]. Thus, "a legal provision by virtue of which

it would be forbidden only temporarily the carrying into action of a court decision, it would represent an interference of the legislative power in the process of applying the law, being opposed to the constitutional principle of separation of state powers”, according to the *Constitutional Court Decisions no.6/1992* and *no.50/2000* [4], and any calling of the judges by a parliamentary commission to give any kind of information is not constitutionally because it violates in an evident way the constitutional provisions which establish albeit implicitly the separation of state powers and of course, the judges independence and their abidance only by law, according to *the Constitutional Court Decisions no.45/1994* and *no.46/1994* [5]

In our opinion, bearing in mind the ideas expressed by the doctrine and the constant jurisprudence of the Constitutional Court, we also agree with the fact that even in the absence of the express confirmation of the separation of state powers principle, it was implicitly consecrated through the way the authorities which exercise the prerogatives of the classic state powers were regulated in the initial form of the Constitution, through the relations between them and through the entire philosophy of their constitutional configuration.

The principle of equilibrium and separation of powers introduced in the Organic Regulation in 1831 and 1832 and existent in the adopted Constitutions from 1866, 1923 and 1938, is substantially limited after 1945 in the governing method. Since our country formation until 1948, the constitutional organization of Romania was achieved according to the separation of state powers principle, having the form envisioned by Montesquieu, apart from the period 1940-1944, when the separation of state powers principle was gravely violated. Along with 1948 Constitution, the separation of powers principle was dropped out being replaced by the uniqueness of the power principle, which is expressed both in the 1952 Constitution and in the one from 1965.

The uniqueness of the power principle expressed in the socialist doctrine of constitutional law allowed the exercising of power in a tyrannous way, fact which highlighted for the unanimity in general, the role and the importance of the separation of powers theory as an effective device against the political totalitarian systems. The fall of this political regime and of its institutional base - the supreme and local bodies of the state power - in 1989 revolution had as a result, among others, the replacement of the uniqueness of power principle with the separation of powers principle. The political document in which this principle was stated was the Announcement for the country made by the National Salvation Front Council from 22nd December 1989, where among the goals of the N.S.F. Program, there was the separation of legislative, executive and judicial state powers principle. The decree-law no. 2/1989 took this goal conferring it a juridical form. In the new regime installed under the 1991 Constitution, the limitation and the distribution of the state power were subordinate to the main goal of the separation principle that is avoiding the possibility of an excessive power concentration. At the same time they aimed for establishing a system of relations between the public authorities in order to secure the effectiveness, the transparency and the democratic character of the governance process, the priority of the public welfare and of the national interest, of the citizens' rights and liberties and of the idea of justice and equality.

THE CONSECRATION OF THE PRINCIPLE OF EQUILIBRIUM AND SEPARATION OF STATE POWERS UNDER THE ROMANIAN CONSTITUTION, REVISED

To each great historic moment of the modern state history correspond constitutional reforms, because they witnessed and expressed the historic transformations which the Romanian society experienced. Two important requirements were the base of the revision of the Constitution: the fundamental political goals of European integration for which the Romanian citizens opted along with the fact that both the citizens and the public institutions or of public utility had the chance to see that there were incomplete constitutional areas or that some constitutional solutions did not correspond anymore to the society's present or future.

Therefore, in the process of revision of the Constitution, they felt the need of institutionalizing at a juridical level the principle of equilibrium and separation of powers as

follows: Art.1 was added two more paragraphs out of which one is exclusively dedicated to validation of this principle. The paragraph 4 of the art.1 of the revised Romanian Constitution, provisions: "The state organizes according to the principle of equilibrium and separation of powers- legislative, executive and judicial- under the constitutional democracy".

The separation of powers principle is mentioned in a modern way in which referring to the idea of constitutional democracy- keeping in mind as well as it is stated in the present doctrine (Tofan, 2008), a number of public authorities, mainly with the function of control which cannot be introduced in none of the three classic powers - is actually the expression and the consequence of their cooperation.

The reason of adding this paragraph was mainly to contribute to a better delimitation of the relation between the powers, having the advantage which an express norm always has it compared to that resulted from interpretation, that is the certainty in a strict way, the predictability, no doubt (Constantinescu *et al.*, 2004). But this was not the only reason: the fact that this principle could be found in one form or another in the constitutions of other countries in the European Union, and moreover in those which find themselves in a similar process of constitutional transition, such as Bulgaria, Estonia, Slovenia and Poland, was another reason of adding it in the revision Law. There is another aspect which is an important part for the reason of adding this paragraph: the jurisprudence of the Constitutional Court. This body had to judge over time some conflicts between the legislative and judicial powers on one hand and the executive and the legislative powers on the other hand.

A first consequence for introducing the separation of powers principle in the Constitution is represented by the implication of one body or of a system of bodies in exercising of a single function out of three. The Constitutional Court itself states that "the functional specialization and the delimitation of the function allocated to different categories of public authorities constitute a constitutional requirement resulting from the separation of state powers principle," according to the *Constitutional Court decision no. 28/1999 and the Constitutional Court decision no. 463/2003* [6]

A second consequence of the constitutional normative character of the separation of state powers principle in the light of their cooperation, is the imposing of some reciprocal methods of control between the powers. The Constitutional Court decided that "the separation of state powers does not mean the lack of a mechanism of control between the state powers, but on the contrary, it presupposes the existence of a reciprocal control, as well as the achievement of a balance between them", according to *the Constitutional Court decision no.44/2006 and the Constitutional Court decision no. 637/2006* [7].

An author considers that the contemporary reality makes the reciprocal controls between the legislative and executive inefficient, the center of gravity of the control moving towards the judge. This is able to control all the juridical activity (a double control: of constitutionality and of agreement), but also those of the executive and of the administrative (a control of legality). The principle presupposes no body remains uncontrolled and therefore the three powers find themselves on the same in the position of juridical equality. There is not a hierarchy of the state functions and if a body becomes uncontrollable, the separation and cooperation of powers principle is violated (Dănișor, 2009).

Another author considers that the introduction of this principle complicates the things more than clearing them. The Parliament is "the supreme representative body of the Romanian people", so it is not understood how a certain authority which is not "supreme" is in balance with the other authorities. The power equilibrium in their balance presupposes their equality, a hypothesis totally excluded by the function of parliamentary control upon the executive. In professor Antonie Iorgovan's opinion, by including in the "equation" the constitutional democracy, it is achieved the logic consonance between the traditional constants of the principle regarding the "game" of the three powers – legislative, executive and judicial – on one hand, and the modern challenges of the constitution, that is the appearance of the state structures which cannot be included in none of the three powers area, on the other hand.

CONCLUSIONS

The purpose of the process of sociopolitical ruling is to achieve some objectives of general interest and it requires the specialization of the state activities, in other words, establishing some systems with authority, that have, according to some norms, practices or rules, a certain type of activity. The separation of powers refers to the three main functions through which the power of the state is being exercised – the legislative function, the executive function and the judicial function –, that must be fulfilled by different authorities that work together (Molcuț, 2003). Never and nowhere the three powers have been completely separated, as between them there are different ways of collaboration and control that have been growing in time, being dominant nowadays, in the organization and the activities of the public authorities (Tofan, 2008). Talking about the three powers demands taking into account the inter-relationships between them, viewed as a dimension of the state's organization, considering the entire organization of the state stipulated by the Constitution, which contains elements and beyond these powers, that function just as factors that maintain “the separation and the balance” of the three powers.

The formulation consecrated by the Romanian Constitution, revised, is a first in this respect, and when we make this statement we do not refer only to the technical-legislative issue, but to the philosophy of the text, to the meaning and the implications of the editing. This text highlights especially that, between the classical powers – legislative, executive and judicial – there is not only a permanent “fight” so that the “borders” between them be better accentuated, but, therefore, also for the permanent fortification of the separation; on the contrary, separation demands a permanent balance between them as well, a fact that cannot be achieved without cooperation, that is without mutual control and counterbalance, according to the constitutional prerogatives (Iorgovan, 2005).

From the modern evolution of the separation of state powers principle, an aspect stressed in the present doctrine to which we adhere as well, we do not have to exclude some new factors, such as: the participation of the people at the elections by referendum and popular legislative initiatives, thus decreasing the representation principle; institutionalizing in the Constitution some new authorities, like the People's Lawyer; appealing to the constitutional justice made by an independent jurisdictional authority; introducing new auxiliary systems of the various powers, such as the Legislative Council; controlling the civil society by different means, but first of all through mass media, etc.

NOTES

[1] The Romanian Constitution was adopted in the Constituent Assembly meeting of November 21, 1991, published in the Official Monitor of Romania, Section I, no.233 from 21.11.1991 and entered into force after approval by national referendum of December 8, 1991.

[2] Republished in the Official Monitor of Romania, Section I, no.643 from 16.07.2004.

[3] Constitutional Court of Romania, Decision no.27/1993, published in the Official Monitor of Romania, Section I, no.163 from 15.07.1993, Decision no.9/1994, published in the Official Monitor of Romania, Section I, no. 326 from 25.11.1994 and Decision no.209/1999, published in the Official Monitor of Romania, Section I, no.76 from 21.02.2000.

[4] Constitutional Court of Romania, Decision no.6/1992, published in the Official Monitor of Romania, Section I, no.48 from 4.03.1993 and Decision no.50/2000, published in the Official Monitor of Romania, Section I, no.277 from 20.06.2000.

[5] Constitutional Court of Romania, Decision no.45/1994, published in the Official Monitor of Romania, Section I, no.131 from 27.05.1994 and Decision no.46/1994, published in the Official Monitor of Romania, Section I, no.131 from 27.05.1994.

[6] Constitutional Court of Romania, Decision no.28/1999, published in the Official Monitor of Romania, Section I, no.178 from 26.04.1999 and Decision no.463/2003, published in the Official Monitor of Romania, Section I, no.43 from 19.01.2004.

[7] Constitutional Court of Romania, Decision no.44/2006, published in the Official Monitor of Romania, Section I, no.178 from 24.02.2006 and Decision no. 637/2006, published in the Official Monitor of Romania, Section I, no.914 from 9.11.2006.

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