

Government Investiture in the Current European Legislation

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ABSTRACT: The issue of Government formation is of general interest and captures the attention not only of those involved but also of citizens who need to know all the details of this legal mechanism. Periodically, all states are faced with this reality of choosing, through constitutional mechanisms, their central authorities. The present study investigates how, according to the Constitution, the public authority that runs the public administration in the state is formed, also trying to capture European trends on this subject. In order to achieve this scope, the paper work was structured into two plans, the national and the European, by following the analysis of the wording of the Fundamental Law. In this respect, the study will take national legislation as a starting point and then investigate several European countries, randomly chosen, to understand how the Fundamental Law relates to the procedure of the investiture of the Government, a central public authority. Thus, a documentary analysis of ten Constitutions of European countries, was carried out. From this point of view, in our opinion the topic is interesting for the scientific community who will find in this paper information about the investiture of the Government from the perspective of comparative law.

KEYWORDS: Constitution, Prime Minister, public authority, procedure of government investiture, political party

1. Introduction

In accordance with the provisions of art. 102 para. (1) of the revised Constitution of Romania: “*The Government shall, in accordance with its government program accepted by Parliament, ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration*”. The Government, a multi-person public authority, in order to be formed, must go through a certain procedure, which we will analyze below as the procedure for the investiture or formation of the Government.

From this point of view, the proposed scope of this study is to analyze, from the perspective of the comparative law, the status of the normative regulation in the Fundamental Law of the European states of the procedure for the investiture of the Government, this being a mixed procedure that combines the legal and the political sectors, several subjects of law being involved. According to the doctrine “it is of the essence of any community to establish by normative means certain criteria of conduct, certain requirements which the community intends to formulate with regard to the conduct of people, in such a way that the community preserves itself, that its very existence is not called into question by arbitrary conduct” (Popa 2008, 36).

In this respect, the research methodology we use involves the analysis of the provisions of the Fundamental Law in several randomly chosen European countries,

regardless of political regime but with a republican form of government. "National law cannot be self-sufficient, as it is obliged to continually adapt to international trends and developments in society as a whole" (Ștefan 2023b, 573).

In this paper, we do not analyze the European Union as subject of law (2017, 61) or the implementation of the EU legal order (Popescu 2014, 34-41). The bibliography used combined doctrinal and legislative sources, in print (Deaconu et al. 2015, 23-748) or online (Codex Constitutional, n.d. <https://codex.just.ro/Tari/IT>).

2. Normative references on the Government investiture procedure – national plan

The national normative references on the Government, a component of the executive power, include on the one hand the Constitution of Romania, as revised, as well as a succession of laws, which we will name in this section, all of which start from the imperative sentence: "*In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory*" (art. 1 para. 5 of the Constitution).

The central public authority, the Government is regulated in the Constitution in Title III -*Public Authorities*, Chapter III – *The Government* (art. 102-110) and Chapter IV – *Relations between Parliament and the Government* (art. 111-115). It is worth recalling that: "The Revolution of December 1989 brought the first regulation of the institution of Government, respectively Law Decree no. 10 of 31 December 1989 on the formation, organization and operation of the Government of Romania, and subsequently Law no. 37 of 7 December 1990 on the organization and operation of the Government of Romania was adopted" (Ștefan 2023a, 199). Chronologically speaking, the next normative act to regulate the Government was Law no. 90/2001 on the organization and operation of the Government of Romania and of the ministries, repealed by the Administrative Code in 2019 (GEO no. 57/2019, published in Official Journal no. 555 of 5 July 2019).

Nowadays, the Government is regulated by the Administrative Code in Part II – *Central Public Authorities*, in Title I – *The Government* (art. 14 - 50). By analyzing the provisions of the Administrative Code, we note that a single article is relevant to our topic, namely the one regarding the role of the Government: "*The Government is the public authority of the executive power which operates under the vote of confidence granted by the Parliament on the basis of the government program. The government ensures the implementation of the country's domestic and foreign policy and exercises overall direction of public administration*" (GEO no. 57/2019, art. 14). Therefore, in order to find out what is the procedure for the investiture of the Government, we will refer to the constitutional text. Regarding this legal mechanism, we learn that two articles of the Romanian Constitution are applicable: art. 85 – *Appointment of the Government* and 103 - *Investiture*.

According to the doctrine: "there are four stages in the Government investiture procedure:

- 1) the nomination made by the President for the candidate to the office of Prime Minister, following political consultation;
- 2) the set-up of the government team and the government program;
- 3) the request made by the candidate for the office of Prime Minister for the vote of confidence of the Parliament;
- 4) the appointment of the Government by the President of Romania and the taking of the oath of allegiance" (Vedinaș 2023, 147-149).

In short, the Government investiture procedure begins with the President of Romania calling for consultations with the political party that has an absolute majority in Parliament, or, if there is no such majority, with the parties represented in Parliament. Following the consultations, a candidate is nominated and, within 10 days, the

respective candidate draws up the political program of government and the list of ministers, then goes to Parliament to obtain the vote of investiture, the procedure ending with the oath of allegiance taken by the entire cabinet before the President. We note that the wording of the oath of allegiance is the following: *“I solemnly swear that I will dedicate all my strength and the best of my ability for the spiritual and material welfare of the Romanian people, to abide by the Constitution and laws of the country, to defend democracy, the fundamental rights and freedoms of my fellow-citizens, Romania's sovereignty, independence, unity and territorial integrity. So, help me God!”*

Specialized literature pointed out that: *“in the view of the constituent legislator, even from the constitutional stage when he/she was only a candidate for the office of Prime Minister, the person appointed had the task of leading the future Government by building it from scratch, all the more so, the whole constitutional and later legal edifice has at its centre the Prime Minister, who coordinates the work of the ministries and leads the central public administration”*(Barbu and Ștefan 2022, 10).

3. Comparative law references on the investiture of the Government - brief considerations

3.1. Constitution of the Republic of Austria

This country has a Federal Government under the coordination of a Federal Chancellor. Art. 70 of the Fundamental Law holds our attention: *“The Federal Chancellor and, on his proposal, the other members of the Federal Government are appointed by the Federal President”*. Furthermore, the following are provided: *“Only persons who are eligible for the National Council can be appointed Federal Chancellor, Vice Chancellor or Federal Minister (...)”*. Art. 72 regarding the oath is also interesting: *“The members of the Federal Government, before the assumption of their office, shall be sworn in by the Federal President. The addition of a religious affirmation is admissible. Furthermore, “the documents of appointment of the Federal Chancellor, the Vice Chancellor and other Federal Ministers, shall be executed by the Federal President on the day of their swearing in and countersigned by the newly appointed Federal Chancellor”*.

3.2. Constitution of the Republic of Bulgaria

The Government formation procedure is described in art. 99: *“Following consultations with the parliamentary groups, the President shall appoint the Prime Minister-designate nominated by the party holding the highest number of seats in the National Assembly to form a government”*. Furthermore, *“should the Prime Minister-designate fail to form a government within seven days, the President shall entrust this task to a Prime Minister-designate nominated by the second largest parliamentary group. Should the new Prime Minister-designate also fail to form a government within the period established by the preceding paragraph, the President shall entrust the task to a Prime Minister-designate nominated by one of the minor parliamentary groups. Should the consultations prove successful, the President shall ask the National Assembly to elect the Prime Minister-designate (...)”*. Furthermore, the Constitution provides that the Government team is sworn in by the Parliament: *“I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and in all my actions to be guided by the interests of the people. I have sworn.”* (art. 109 in connection with art. 76 para. 2).

3.3. Constitution of the Czech Republic

According to art. 68: *“The Prime Minister shall be appointed by the President of the Republic (...). Within thirty days after its appointment, the Government shall present*

itself to the Chamber of Deputies and shall ask it for a vote of confidence. If the Government fails to win the confidence of the Chamber of Deputies, the procedure shall be repeated. If a thus appointed Government again fails to win the confidence of the Chamber of Deputies, the President of the Republic shall appoint a Prime Minister on the proposal of the Chairman of the Chamber of Deputies.

The Constitution provides the obligation of the members of the Government to be sworn in by the President of the Republic: *“I hereby swear allegiance to the Czech Republic. I swear to uphold its Constitution and laws and to implement them. I swear upon my honor that I shall conscientiously perform my office and shall not misuse my position”* (art. 69 item 2).

3.4. Constitution of the Republic of Croatia

Art. 110 describes the Government formation procedure. Therefore, *“the person to whom the President of the Republic confides the mandate to form the Government shall propose its members. Immediately upon the formation of the Government, but not later than 30 days from the acceptance of the mandate, the mandatary shall present the Government and its program to the Croatian Parliament and demand a vote of confidence to be passed. The Government shall assume its duty if the vote of confidence is passed by a majority vote of all members of the Croatian Parliament”*.

Furthermore, the following are provided: *“The Prime Minister and the members of the Government shall take a solemn oath before the Croatian Parliament. The text of the oath shall be determined by law. Upon the decision of the Croatian Parliament to express confidence to the Government of the Republic of Croatia, the ruling on the appointment of the Prime Minister shall be brought by the President of the Republic, with the countersignature of the President of the Croatian Parliament (...)”*.

3.5. Constitution of the Hellenic Republic

Art. 84 provides the following: *“The Government must enjoy the confidence of the Parliament. The Government shall be obliged to request a vote of confidence by the Parliament within fifteen days of the date the Prime Minister shall have been sworn in, and may also do so at any other time”*.

Unlike our system of law, this Constitution entails the possibility that the Parliament can decide to withdraw its vote of confidence for the Government or for a member of the Government: *“A motion of confidence cannot be adopted unless it is approved by an absolute majority of the present Members of Parliament, which however cannot be less than the two-fifths of the total number of the members”*.

3.6. Constitution of the Italian Republic

Art. 92-94 are relevant to our analysis: *“The President of the Republic appoints the President of the Council of Ministers (...). Before taking office, the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic”*, without mentioning the wording of the oath.

Furthermore, according to art. 94, *“Each House grants or withdraws its confidence through a reasoned motion voted on by roll-call. Within ten days as of its formation, the Government shall come before Parliament to obtain confidence”*.

3.7. Constitution of the Republic of Ireland

According to the Constitution: *“The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution”* (art. 28 para. 1). It is expressly provided that:

“The head of the Government, or Prime Minister, shall be called, and is in this Constitution referred to as, the Taoiseach”.

3.8. Constitution of the French Republic

Title III of the Constitution – *The Government* does not detail the Government investiture procedure, but only describes the role of the Government, acts and duties of the Prime Minister and the incompatibility situation (art. 20-23), although art. 8 expressly provides that: *“The President of the Republic shall appoint the Prime Minister”*. *“It is the French Prime Minister who chooses the members of his Government”* (Tofan 2006, 88).

3.9. Constitution of the Republic of Finland

Art. 61 – *Formation of the Government provides as follows: “The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister. Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political program and composition of the Government. On the basis of the outcome of these negotiations, and after having heard the Speaker of the Parliament and the parliamentary groups, the President informs the Parliament of the nominee for Prime Minister”*.

Furthermore, *“The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament. If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected”*. Notwithstanding, the Constitution does not refer to the oath to be taken by the government team at the beginning of its mandate.

3.10. Constitution of the Portuguese Republic

The Constitution dedicates Title III to the Government, of which we draw attention to Article 187 - *Formation*. According to the aforementioned article: *“The President of the Republic appoints the Prime Minister after consulting the parties with seats in Assembly of the Republic and in the light of the electoral results”*. Furthermore: *“The President of the Republic appoints the remaining members of the Government upon a proposal from the Prime Minister”*.

We highlight an interesting article about the analysis of the Government program: *“within no more than 10 days after its appointment, the Government shall submit its program to the Assembly of the Republic for consideration by means of a statement made by the Prime Minister”* (art. 192).

4. Conclusions

Our analysis aimed to find out, by referring to several legal systems, the status of the normative regulation in the Fundamental Law of the European States, of the Government investiture procedure. As a consequence of our analysis, we consider that the objective of this study has been achieved and the following conclusions can be drawn up:

(I). Similar to the national Constitution, all the European Constitutions analyzed refer to the public authority - the Government, detailing or not the procedure for its investiture.

(II). Some Constitutions, like the national one, detail the investiture procedure, such as the Constitutions of the Republic of Bulgaria, the Czech Republic, the Republic of Croatia, the Hellenic Republic, the Republic of Finland or the Portuguese Republic, compared to the more elliptical Constitutions of the French Republic, the Republic of Ireland, the Italian Republic or the Republic of Austria.

(III). With regard to the term used in reference to the person of the future Prime Minister, unlike the Romanian Constitution where there is the specification of “*nomination* of a candidate for the office of Prime Minister”, in other Constitutions the term is “*appoints*” (for example, the Constitution of the Republic of Austria – “*The Federal Chancellor is appointed by the Federal President*”) or “*elected*” (Constitution of the Republic of Finland, “*The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic*”).

(IV). The final stage in the investiture procedure is the taking of the oath. Unlike the Constitution of Romania, Bulgaria and Czech Republic, which expressly provides the wording of the oath, not all Constitutions detail this. If in the national plan the text of the oath includes the religious formula, only in one other case the following is stated: “*The addition of a religious affirmation is admissible*” (Constitution of the Republic of Austria).

(V). In what concerns the procedure of taking the oath, we encountered the following situations:

- the oath is taken before the President of the Republic, similar to the national case. Several states are included here: “*The members of the Federal Government shall be sworn in by the Federal President*” (Constitution of the Republic of Austria), Constitution of Czech Republic or Constitution of the Italian Republic (“*the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic*”);

- the oath is taken before Parliament, for example the Constitution of the Republic of Bulgaria or the Constitution of the Republic of Croatia (“*The Prime Minister and the members of the Government shall take a solemn oath before the Croatian Parliament*”).

(VI). With regard to the deadline for requesting the vote of investiture, we note several situations.

Taking the national plan as a reference, where the constituent legislator set the time limit at 10 days, we note a similarity only with regard to the length of the period for requesting a vote of confidence, in two cases:

- Constitution of the Italian Republic (“*Within ten days as of its formation, the Government shall come before Parliament to obtain confidence*”) and

- Constitution of the Portuguese Republic (“*Within no more than 10 days after its appointment, the Government shall submit its program to the Assembly of the Republic*”).

In contrast to these two cases, differences are noted in other countries. We consider the following:

- the deadline of 7 days (Constitution of the Republic of Bulgaria);
- the deadline of 15 days provided in case of the Constitution of the Hellenic Republic (“*The Government shall be obliged to request a vote of confidence by the Parliament within fifteen days of the date the Prime Minister shall have been sworn in, and may also do so at any other time*”);

- the deadline of 30 days as of its appointment (Constitution of Czech Republic) or 30 days as of the acceptance of the mandate, in case of the Constitution of the Republic of Croatia (“*Immediately upon the formation of the Government, but not later than 30 days from the acceptance of the mandate*”).

(VII). It was also analyzed whether, within the legal mechanism of the investiture procedure, negotiations take place or, on the contrary, the Prime Minister is appointed. From this perspective, we found out interesting things, different from state to state.

Therefore, the term used in the revised Constitution of Romania is “*consultations*”, and there is only one case where we have identified this term, respectively in the Constitution of the Republic of Bulgaria (“*Following consultations with the parliamentary groups*”). On the contrary, in case of the Constitution of the Republic of Finland, the term used is “*negotiations*”: “*Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political program and composition of the Government*”.

(VIII). Concerning the subjects who resort to consultations/negotiations for the formation of the Government, we have noticed a difference from the national plan. While in the Romanian Constitution, the President calls for consultations with the political party that has an absolute majority in Parliament, or, if there is no such majority, with the parties represented in Parliament, there are two cases where it has been noted that this consultation concerns the parliamentary groups, as follows:

- Constitution of the Republic of Bulgaria (“*Following consultations with the parliamentary groups*”);

- Constitution of the Republic of Finland (“*Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political program and composition of the Government*”).

(IX). One last aspect caught our attention, namely the composition of the Government. Unlike the national plan where there is no minimum or maximum number of ministers, in case of the Republic of Ireland, the Constitution states: “*The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution*”.

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