

Considerations on the bicameral parliamentary system in Romania

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Abstract

The study approaches the way Romanian bicameralism functions, considering both its strengths and weaknesses. In addition, the unicameral parliamentary system is presented in relation to the bicameral one.

In the doctrine, there are several opinions according to which bicameralism is preferred to unicameralism, because the two Houses provide increased safety, as the concentration of legislative power in one place could be both dangerous and, often, unjustified. But the two Chambers should not be similar, as this would not serve their guaranteeing purpose. Furthermore, bicameralism consolidates the balance and solidity of democratic regimes, providing a better separation of powers.

Keywords: Parliament, bicameralism, unicameralism, competences, representativity, constitutional changes.

JEL Classification: K30

I. Preliminaries

One of the emerging concerns in recent years in our country has centered around the discussions on changing the Romanian parliamentary system. This was caused by the low level of confidence that the citizens have in the supreme legislative body and brought to attention the decrease of MPs number and the introduction of the unicameral parliamentary system. Most of the opinions have reinforced the belief that for now, there should be kept the current bicameral system, but with some minor modifications.

The principle option between *bicameralism* and *unicameralism* depends on how the separation of powers is understood². In the Romanian doctrine and jurisprudence, there has manifested the tendency to reduce the separation of powers whenever including each organ or organ system in the exercise of one of the three basic functions of government - legislative, executive and judicial - without being able to cumulate these functions. They follow Montesquieu's logic: those who have power tend to abuse it, but one power must stop another (*"le pouvoir arrête le pouvoir"*).

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² Dan Claudiu Dănișor, *O dispută între doi clasici: Tudor Drăganu și Antonie Iorgovan despre bicameralism*, in "Revista de Drept Public", no. 3/2010, p. 18.

Studies have shown that *bicameralism* is based on the traditions of political liberalism, on the civilization of western democracy, whereas *unicameralism* corresponds to preferences for political regimes based on totalitarian, radical ideologies, and dictatorial political institutional structures or that are extremely authoritarian³.

Bicameral parliamentary system exists in almost 70 countries worldwide, including 17 in Europe. With some exceptions, bicameralism seems related to *federalism*, and it is a key element of federalism's specificity⁴.

Bicameralism involves a certain type of parliamentary system, based on the coexistence of two independent legislative assemblies⁵. In other words, bicameralism is the institutional system in which two assemblies, distinctly designated, exercise a set of parliamentary functions in certain conditions that are determined by the Constitution⁶.

II. Bases of bicameralism

It can be appreciated that the *structure of parliament* is closely related to that of the state, meaning that unitary states have unicameral parliaments and the federal ones have bicameral parliaments. In federal states, bicameralism is required by the very structure of the state: a Chamber represents the interests of each state, whereas the other represents federation as a whole.

In unitary states, such as Romania, the existence of bicameralism is justified by the need to avoid the concentration of political power in Parliament and to insure, within the legislative parliamentary power, the debate and adoption of the law by each House of Parliament, which is a prerequisite for the validity and social utility of the legal norm, as the final product.⁷ Preference for bicameralism can be also explained by the concepts related to improving the quality of the final political decision and to achieving a balance of power between the two legislative assemblies⁸.

Some of the questions posed by the doctrine were: Why are bicameral structures needed and Are these structures necessary or not?

Bicameralism, as a result of parliamentary practice along a turbulent history or of liberalism's theories, knows at least four variants⁹, namely:

a) the hereditary character of the second Chamber;

³ Emil Gheorghe Moroianu, *Între bicameralism și unicameralism*, in „Studii de Drept Românesc”, no. 2/2009, p. 155 sq.

⁴ Francisc Adrian Helstern, *Opțiuni constituționale pentru România – sistemul parlamentar bicameral*, in „Sfera politicii”, no. 7(149)/2010, p. 17.

⁵ Laurant Trivelli, *Le bicaméralisme*, Lausanne, Imprimerie Pont Frères, 1974, p. 18.

⁶ Emil Gheorghe Moroianu, *op.cit.*, p. 149.

⁷ Mihai Constantinescu, Șerban Nicolae, *Evoluția sistemului bicameral românesc potrivit legii de revizuire a Constituției*, in ”Dreptul” Review, no.7/2004, p. 62.

⁸ Cynthia Carmen Curt, *Modele bicamerale comparate. România: monocameralism versus bicameralism*, „Transylvanian Review of Administrative Sciences”, no 19/2007, p.22 (pp. 21-33)

⁹ Emil Gheorghe Moroianu, *op.cit.*, p. 155 sq.

b) the appointment of the second chamber's members by the governmental power. It is the case of the following countries: Bahamas, Canada, Fiji, Jordan, Thailand (all members of the Senate are appointed by the head of state); Ireland (part of the senators are elected by universities); Austria, Argentina, Netherlands, France, India, Zimbabwe (all or almost all senators are elected by electoral colleges, composed of members of the First Chamber and local representatives).¹⁰

c) the eligibility of the second Chamber;

d) the representative character of some social and political forces of the second Chamber' members.

In order to make a distinction between the two Houses of Parliament, by obtaining a type of representation other than the political one, national electoral history should be considered. In the doctrine of the constitutional law, there are authors who have stated the idea that in Romania "the tradition of organizing the representative forum in the constitutional history of the Romanian people indicates a unicameral Assembly, the idea of a second chamber being introduced in the 19th century."¹¹ In the very Organic Regulations (1831 in Walachia and 1832 in Moldova), one may identify the existence of the first shades of bicameralism, by the existence of an Ordinary public assembly, with a predominant legislative role, and of the Extraordinary public assembly, which had the task of choosing the ruler.

The 1866 Constitution clearly stipulated in article 32, that the legislative power is exercised collectively by the prince and by the "national representation" which was divided into two assemblies: the Senate and the House of Deputies, a provision iterated both in the 1923 Constitution (in art. 34) and in the one of 1938 (art. 31). Following the entry into force of the Electoral Law of 1926, the second House represented, in addition to the local interests, certain non-political interests of economic, professional and cultural nature. For example, the direct representation of economic interests by one of the Houses of Parliament, could ponder the legislative power in its activity of state intervention in the economy.

The Constitution of 1948 founded the Grand National Assembly, as the only legislative body (Art. 38), aspect maintained by the Constitutions of 1952 and 1965. Bicameralism tradition resumed after 1989 in Romania, the two Houses being similar both in terms of their nature and their composition.

Returning in 1990 to the tradition of a bicameral structure also implied "the need to ensure substance and effectiveness, because in a unitary state bicameralism is justified on considerations others than in a federal state, where it is required by the very federal structure of the state"¹² This formula of the *integral* or *perfect bicameralism* was achieved by the Constituent Assembly amending bicameralism, in some aspects, as established by the Decree-Law no.92/1990 on the election of

¹⁰ Union Interparlementaire, *Les Parlements dans le monde. Recueil de données comparatives* (deuxième édition), volume I (préparé par le Centre international de Documentation Parlementaire de l'Union Interparlementaire), Bruxelles, Bruylant, 1986, p. 15.

¹¹ Cristian Ionescu, *Instituții politice și de drept constituțional*, Economica Publishing House, Bucharest, 2002, p. 330.

¹² Ioan Muraru, Mihai Constantinescu, *Drept parlamentar românesc*, All Beck Publishing House, Bucharest, 2005, p. 72.

the Parliament and of the President of Romania. This legislative document, under which elections were held in May 1990, reintroduced the bicameral parliamentary structure in Romania.

Studies¹³ that analyzed the tradition of the bicameral Parliament in Romania revealed the fact that our country had a unicameral Parliament only during dictatorship (i.e. communist regime), otherwise bicameralism being the result of the state's democratic tradition; The Senate was seen as a moderating body, being the moderator of the Elective Assembly's actions; The House of Deputies represented the nation until 1948 and the Senate represented administrative-territorial units and local authorities; according to the first Romanian Constitutions, the House of Deputies was elected only by the citizens entitled to vote, whereas the Senate was composed of either senators appointed by the Prince and law senators (after 1864, under the Statute of the Paris Convention) or of elected senators and law senators (after 1866).

After the constitutional revision from 2003, they passed to the ***inegalitarian bicameral system*** that presented certain advantages¹⁴ over the previous one:

- it provided a specialization of the Chambers, i.e. their functional differentiation within the legislative process, and the elimination of the mediation process (one Chamber has the decisional role, and the other one - that of reflection);
- it eliminated the conflicting nature of the legislative procedure, in that the first notified Chamber is that of reflection, thus resulting a first reading of the law, the decision-making power being the latter House;
- it accelerated the procedure, as the first notified Chamber must decide within 45 days (60 days for extremely complex laws); exceeding this deadline attracts tacit adoption, being considered that the first notified Chamber agreed with the legislative proposal, as proposed by the initiator.

III. Implications of bicameralism at the national level

In practice, bicameral parliamentary system minimizes the risk of the majority rule, as it favours the dialogue between the majorities in both Houses, as well as that between the parliamentary groups constituting the opposition. In other words, bicameralism creates a dualism between the parliamentary groups of the same party, which largely underpins the critical attitude of the latter Chamber when analyzing the law passed by the former House, as well as the conflict between

¹³ Cătălin-Silviu Săraru, *Scurte considerații asupra menținerii și reformării Parlamentului bicameral în România*, in „Revista de Drept Public”, no. 3/2010, p. 83.

¹⁴ Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *Constituția României revizuită. Comentarii și explicații*, All Beck Publishing House, Bucharest, 2004, p. 135 sq; Mihai Constantinescu, Marius Amzulescu, *Drept parlamentar*, România de Măine Foundation Publishing House, Bucharest, 2004, p.18 sq in Cătălin-Silviu Săraru, *op.cit.*, p. 82 sq.

Chambers when determining the final legislative solution. The dialogue between the two Houses is not direct, but mediated by the parliamentary procedure dedicated to counseling and resolving divergences.¹⁵

Regarding *unicameralism*, it facilitates a relatively quick and simple procedure, avoids parallel debates, concentrates the attention of the public opinion, but it has the disadvantage of not allowing a new parliamentary control of the laws' adoption procedure or of their contents.¹⁶

Unicameralismul is usually accompanied by several successive 'readings' of a text, namely debates and the final vote for its adoption, in order to minimize the risk of hasty solutions adopted under the impulse of passion and emotion of the moment. On the other hand, *bicameralism* provides the opportunity of critical cooperation, of common and collective debate before making a decision. The higher the interest in public life and therefore in politics in a certain state, the greater the need to broaden public representation. The existence of a latter House offers exactly this possibility.¹⁷

In a bicameral parliamentary system, democracy is understood as a deliberative democracy¹⁸, because "it sets as its aim to reach decisions as a result of rational debates between equal subjects that expose their ideas to each other and respect reciprocally".¹⁹ In this sense, a mature deliberation requires a structure to prevent populist or circumstantial impulses; bicameralism encourages moderation, and unicameralism - efficiency. Therefore, in Romania, it is preferable "to temper the legislating process and to encourage a reflexive democracy, based on institutional diversification of the deliberative levels"²⁰.

Professor Tudor Drăganu considers that "the bicameral system stipulated by the Constitution in 1991 is by no means justified since it led to the result that the two Houses of Parliament have gained, in terms of their political composition, an identical configuration, and in terms of competence, both exercise, with minor differences, the same powers."²¹ The author also states that the Review Law from 2003 "is far from appropriating the proposal that a different political structure be ensured, for the two Houses, through different ways of designating their members"²².

The discussions from 2003 on the revision of the Constitution launched another variant of Chambers differentiation, due to the fact that, as Professor

¹⁵ Ioan Muraru, Mihai Constantinescu, *op.cit.*, p. 75.

¹⁶ Claudia Gilia, *Reforma Parlamentului în România – o necesitate? Soluții posibile pentru eficientizarea bicameralismului românesc*, in „Revista de Drept Public” no./2010, p. 62.

¹⁷ Herbert Schambeck, *Reflecții asupra importanței sistemului parlamentar bicameral*, in „Revista de Drept Public”, no.1/2010, p. 8.

¹⁸ Dan Claudiu Dănișor, *O dispută între doi clasici: Tudor Drăganu și Antonie Iorgovan despre bicameralism*, in „Revista de Drept Public”, no. 3/2010, p. 17.

¹⁹ M. Walzer, *Raison et Passion. Pour une critique du libéralisme*, Circé, Paris, 2003, p. 39.

²⁰ Dan Claudiu Dănișor, *op.cit.*, p. 17.

²¹ Tudor Drăganu, *Câteva considerații critice asupra sistemului bicameral instituit de Legea de revizuire a Constituției adoptată de Camera Deputaților și Senat*, in „Revista de Drept Public”, no. 4/2003, p. 55.

²² *Idem*, p. 56.

Drăganu asserted, unicameralism had not been discussed, "because it was unlikely that the Senate consent at its own dissolution ", namely the use of uninominal voting for the Senate or, following the German model, of a mixed kind of election. This system did not impose at that moment, but years after, when an original, mixed system was imposed as a result of the amendments on the election law. It should be noted that the idea of uninominal voting had been previously introduced in the proposals related to the Constitution Project of 1991, as a first alternative variant of the indirect vote.²³

It has been stated in the doctrine that bicameralism in Romania has a "hybrid character"²⁴, meaning that it works intermittently as unicameral and bicameral. For bicameralism to be functional, the way members of the two Houses are designated, as well as their functions, should be different. The absence of some fundamental differences between the attributions of the two Chambers makes the effect of moderation to be almost nonexistent²⁵, fact which has led to the opinion that "the Romanian Parliament is a unicameral system in a bicameral coat"²⁶.

The idea of the *functional difference between the two Houses* has generated the concern that, if the system actually works as a unicameral system with two chambers, then one has to be abolished, aspect in favour of which the Romanian electorate voted in 2009. Yet, as Professor Antonie Iorgovan asserted, "the existence of two Houses meant and still means extra warranty regarding the state mechanism, based on the separation of powers principle. As history proves, one House is more easily subject to the executive's influence or to that of different pressure groups outside the Parliament"²⁷.

Bicameralism of the legislative power also influences the efficiency of the executive control, as governmental activity may be subject to the examination of both chambers (eg, ministers may be questioned by both senators and deputies)²⁸. Furthermore, the rigour in passing normative documents represents another advantage of the bicameral system, since the procedure is of major complexity, determined by being subject to a double, subsequent examination, conducted by the two chambers.

²³ Dan Claudiu Dănișor, *op. cit.*, p. 22.

²⁴ Laura Macarovski, Cătălina Năstase, *Argumente pro și contra trecerii de la un sistem parlamentar bicameral la un sistem unicameral în contextul reformei constituționale*, in „Dreptul” magazine – Supplement including the Communications from the Scientific Session „Raporturile între puterile statului în sistemul constituțional românesc – O evaluare în perspectiva revizuirii Constituției”, held at „Dimitrie Cantemir” Christian University, March 2013, p. 111.

²⁵ *Idem*.

²⁶ Ion Deleanu, *Instituții și proceduri constituționale, în dreptul român și în dreptul comparat*, C.H.Beck Publishing House, Bucharest, 2006, p. 188.

²⁷ Antonie Iorgovan, *Filosofia bicameralismului între exigențe doctrinare și nevoi politice reale*, in „Revista de Drept public”, no. 1/2004, p. 18.

²⁸ Gheorghe Iancu, *Drept constituțional și instituții politice*, 4th edition, Lumina Lex Publishing House, Bucharest, 2007, p. 469.

IV. Conclusions

We are convinced that in a bicameral parliamentary system, the two Houses have the ability to prevent themselves from becoming despotic, thus reducing the possibility of subordinating the Parliament to the majority political force or to the head of state²⁹. In addition, a law that is analyzed by more persons, members of different Chambers, represents an extra guarantee of its correctness and accuracy³⁰.

In order to ensure the political balance, the bicameral parliamentary system is preferable to the unicameral system, as well as the open, clear expression of different democratic options within the debates at different levels³¹.

The option for a particular type of parliamentary system - unicameral or bicameral - is the result of historical circumstances that define the historical context of a state. We share the view that a unicameral Parliament consisting of 300 MPs would not be able to ensure the representativeness of all political currents, and on the other hand would provide minimal chances to national minorities³². At the electoral level, major political parties with strong local organizational structures would be in advantage. As a conclusion, a unicameral parliament with a reduced number of MPs and dominated by a political party cannot establish a democratic climate within the state.

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²⁹ Laura Macarovski, Cătălina Năstase, *op. cit.*, p. 112.

³⁰ Bianca Selejan Guțan, *Drept constituțional și instituții politice*, 2nd edition, Hamangiu Publishing House, Bucharest, 2008, p. 205.

³¹ Constanța Călinoiu, Victor Duculescu, *Drept parlamentar*, Lumina Lex Publishing House, Bucharest, 2006, p. 99.

³² Claudia Gilia, *op.cit.*, p. 71.

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