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Post-Communist Romania

A Peculiar Case of Divided Government

CRISTINA MANOLACHE

If for the most part of its post-communist history, Romania experienced a form of unified government based on political coalitions and alliances which resulted in conflictual relations between the executive and the legislative and even among the dualist executive itself, it should come as no surprise that the periods of divided government are marked by strong confrontations which have culminated with two failed suspension attempts.

The main form of divided government in Romania is that of cohabitation, and it has been experienced only twice, for a brief period of time: in 2007-2008 under Prime-Minister Călin Popescu Țăriceanu of the National Liberal Party and again, starting May 2012, under Prime Minister Victor Ponta of the Social Democratic Party. It is important to note that, on both occasions, the President in office has been Traian Băsescu of the Democratic Liberal Party, and that none of these cohabitations are the result of any type of elections. Even though these two periods of cohabitation are quite similar, the consequences they determined are far more dramatic than those experienced by any other European country with a semi-presidential regime.

This study is dedicated to a theoretical and empirical examination of divided government, as it has manifested itself on the Romanian political arena. Employed to characterize several central governments in the history of post-World War II United States of America, the concept of divided government has managed to expand to such an extent that it is now widely used in scrutinizing semi-presidential regimes throughout Europe, proving that it is not specific to presidential regimes. Throughout the first part of my paper, I will present an extensive theoretical explanation of what "divided government" and "cohabitation" mean, focusing on a significant correlation between cohabitation and semi-presidentialism, which is the source of the peculiarity of Romanian government.

Furthermore, an analysis of the Romanian case represents the central section of my paper, in which I embark on an empirical assessment of the degree and the respective manner in which divided government has occurred in our country. I find that the theoretical models and explanations on the emergence of divided government in semi-presidential regimes are not applicable to the Romanian case, thus rendering it as an exception, by contrast with other cases throughout Europe.

Finally, the last part is dedicated to an explanation of the consequences divided government is most likely to produce and I contend that the Romanian post-communist instances provide for the most dramatic such effects of divided government.

THEORETICAL FRAMEWORK

The literature on divided government has emerged in the late 1980s and is mainly represented by the seminal works of scholars such as Morris Fiorina, Gary Cox, Kernell Samuel and Gary Jacobson in which they analyze the concept of "divided government" as it is illustrated by the American example, some focusing on revealing the conditions which lead to the emergence of this phenomenon, while others are dedicated to measuring its effects and establishing whether they are positive or negative. However, a decade later and after numerous research on the causes and consequences of divided government, this concept has expanded its significance and is now considered to be applicable not only to presidential regimes, but to parliamentary and semi-presidential regimes as well, with all of their respective varieties. In this section of my paper, I explore the conceptual delimitations that have been suggested throughout time by the scholars on this topic.

The studies on divided government first began with James Sundquist's article in *Political Science Quarterly*¹, in 1988, and the election of George Bush as President against a Democratic-dominated Congress, when it became apparent that the phenomenon of divided government was a recurrent theme in American politics and even "a legitimate form of party control"². Contextually put, divided government clearly referred to the situation in which the executive represented by the American President was not supported by a majority in the Congress — or as Michael Laver and Kenneth Shepsle wrote in 1991 "the meaning of divided government is straightforward in the U.S."³ especially given its consistent experience with it.

According to Bingham Powell, a possible definition would basically imply that "different political parties control different branches of government"⁴. Similarly, Peterson and Greene asserted that divided government meant "power-sharing by two separately elected branches of government, each often controlled by a different party"⁵. The emphasis in these two definitions rests on the divided party control, which often a times results in difficulties in implementing any governing program and in ambiguity over the accountability for failed policies.

Another political scientist, James Pfiffner contains that divided government refers to that situation in which "one political party does not control both houses of Congress along with the Presidency"⁶. He further completed his definition by emphasizing its specificity to the US-system and by adding that it represents "the

¹ James L. SUNDQUIST, "Needed: A Political Theory for the New Era of Coalition Government in the United States", *Political Science Quarterly*, vol. 103, no. 4, 1988, pp. 613-635/p. 619.

² Mark JONES, *Electoral Laws and the Survival of Presidential Democracies*, University of Notre Dame Press, Notre Dame, 1995, p. 84.

³ Michael LAVER, Kenneth SHEPSLE, "Divided Government: America is Not 'Exceptional'", *Governance*, vol. 4, no. 3, 1991, pp. 250-269/p. 252.

⁴ Powell BINGHAM, "Divided Government as a Pattern of Governance", *Governance*, vol. 4, no. 3, 1991, pp. 231-235/p. 231.

⁵ Paul PETERSON, Jay GREENE, "Why Executive-Legislative Conflict in the United States is Dwindling", *British Journal of Political Science*, no. 24, 1993, pp. 33-55/p. 33.

⁶ James PFIFFNER, "The President and the Post-Reform Congress", in Roger DAVIDSON (ed), *The Post-Reform Congress*, St. Martin's Press, New York, 1994, p. 167.

control of the presidency by one party, accompanied by the control of one or both houses of Congress by another party"¹.

On the other hand, *unified government* is simply and unequivocally defined by Paul Quirk to be "the situation in which the President and majorities of the House and Senate belong to the same party"², which he considered to be an ideal formula in order to avoid the gridlock effects of divided government. Four years later, Matthew Shugart and John Carey articulated the differences between unified government, divided government and no-majority government, stating that "divided government refers only to those situations in which a legislative majority is held by a party or pre-election coalition which is different from the President"³, whereas "no-majority points to a situation in which no party holds a majority in one or both houses of the Congress"⁴. This precise differentiation introduced the idea that this concept was not exclusive to the presidential system of the United States of America and, quite contrarily, that it was applicable to parliamentary and semi-presidential regimes as well.

On this note, as Laver and Shepsle underlined, these differences "must derive from divided parties, not divided government"⁵, thus emphasizing that the arithmetical context from which divided government emerges is actually predetermined by the political context. Hence, it is not only the constitutional architecture that provides for a certain type of separation of powers that eventually favours the emergence of divided government, but it is mainly the fact that those institutions established by the Constitution are not controlled by the same political party or, by extension, by the same governing coalition which forms the majority in the legislature.

In perhaps one of the most useful materials I found on this topic, Robert Elgie explains in his *Divided Government in a Comparative Perspective* that

"despite these constitutional differences, the arithmetical definition of divided government does have its logical equivalent in non presidential regimes. In the case of parliamentary regimes, it corresponds to minority governments. In the case of semi-presidential regimes, it corresponds to periods of 'cohabitation' or split-executive government, as well"⁶.

Last but not least, a quite interesting understanding of divided government pertains to the *behavioral school* of thought and it implies, irregardless of any political or arithmetical pre-conditions that "there is conflict between the executive and legislative branches of government, whatever the support for the executive in the

¹ *Ibidem*, p. 226.

² Paul QUIRK, "Domestic Policy: Divided Government and Cooperative Presidential Leadership", in Colin CAMPBELL, Bert ROCKMAN (eds), *The Bush Presidency: First Appraisals*, Chatham House, New Jersey, 1991, pp. 69-91/p. 70.

³ Matthew Soberg SHUGART, John CAREY, "The Electoral Cycle and Institutional Sources of Divided Presidential Government", *American Political Science Review*, vol. 89, no. 2, 1995, pp. 327-343/p. 327.

⁴ Robert ELGIE, *Divided Government in Comparative Perspective*, Oxford University Press, New York, 2001, p. 7.

⁵ Michael LAVER, Kenneth SHEPSLE, "Divided Government...cit.", p. 266.

⁶ Robert ELGIE, *Divided Government...cit.*

legislature"¹. Indeed, conflictual situations are quite likely to occur during periods of divided government in any given political regime, yet they are generally believed to be the consequences of this particular situation in which the executive does not enjoy majority support in the legislature.

Still, conflictual relations may arise even within the same governing coalition or even within the same political formation. An example in point is precisely that of the Romanian President Ion Iliescu who, during his first mandate, experienced conflictual relations with his designated Prime-Minister – Petre Roman (1990-1991), even though they were members of the same political party – the National Salvation Front and enjoyed the support of a comfortable majority in both houses of the Parliament. Another example is that of the Romanian President Emil Constantinescu and his Prime-Minister from within the same governing coalition, Radu Vasile (1998-1999), both part of the same Democratic Convention and supported by a safe coalition in Parliament. The behavioral definition of divided government is definitely applicable to their cases.

Although the literature on the behavioral form of divided government is rather limited to this point, I believe that the Romanian political context demands an analysis that would not limit itself to the arithmetical exploration of the situations of divided government – the best examples are those of the cohabitation period of President Traian Băsescu and Prime-Minister Călin Popescu Tăriceanu (2007-2008) and the more recent case during the second mandate of President Traian Băsescu and Prime-Minister Victor Ponta (May 2012-present) – but one which would also take into account the cases in which coalitions formed in order to win the presidential elections or the legislative elections result in confrontational relations between the heads of the public authorities.

In fact, in a study published in 1997, Guys Peters argued that the European concept of coalition governments is, in fact, "a form of divided government [...] because it entails a need for representatives of the executive to bargain, cajole and propose side payments for legislators"². If the leaders of the political parties which form the coalition no longer agree on the direction of their governance, they may break the coalition and, even if they remain in their offices as heads of the public authorities, they produce gridlocks or even institutional blockages. One of the first such examples is that of President Traian Băsescu and Prime-Minister Călin Popescu Tăriceanu, who broke the "Justice and Truth" coalition in 2007, after a period of tense relations and subsequently remained in office, but with many cases of juridical conflicts of a constitutional nature brought to the Romanian Constitutional Court, with a total of six censorship motions which were eventually dismissed in Parliament and even with an impeachment attempt (2007) that failed. However, the degree of conflict during both the period of unified government under the Truth and Justice coalition (2004-2007) and the period of divided government under cohabitation/split-executive (2007-2008) was very high, denoting little if any difference between the behavioral and the arithmetical definition of divided government in our country.

¹ *Ibidem*, p. 7.

² Guys PETERS, "The Separation of Powers in Parliamentary Systems", in Kurt von METTENHEIM (ed), *Presidential Institutions and Democratic Politics: Comparing Regional and National Contexts*, The Johns Hopkins University Press, Baltimore, 1997, pp. 69-70.

Finally, the same theoretical explanations hold true with regard to umbrella political formations, such as the National Salvation Front, which eventually fragmented itself into several political parties and the Romanian Democratic Convention, which was already fragmented from within between the diverse political parties that formed it. In these situations, the potential for conflict and divided government within the same political coalition has proven to be, in the Romanian case, quite significant, and may only be attributed to the behavioral understanding of divided government.

Cohabitation as a Form of Divided Government in Semi-Presidential Regimes

A particular form of divided government is that of cohabitation, a term coined and generated by the French experience of the President François Mitterrand in 1986-1988, of the socialist party, who cohabitated with Prime-Minister Jacques Chirac, of the right wing. In fact, it has been argued that cohabitation is "a country-specific manifestation of a more general political phenomenon"¹.

In his "Divided Government in Comparative Perspective" Robert Elgie maintains that cohabitation

"occurs in the context of a system in which both the President and the prime minister are significant political actors and is brought about when the President is faced with an opposition majority in the National Assembly and thus is obliged to appoint a prime minister who has the support of that majority"².

On this note, a Prime-Minister is usually nominated by the President and then requires the vote of confidence of a parliamentary majority in many cases of semi-presidential constitutional frameworks. And, in some cases, there is the possibility that the parliamentary majority may not be the same as the party / coalition supporting the President and consequently, may not agree with the President's nominated Prime-Minister and only grant the vote of confidence to their preferred candidate. Therefore, the French case – albeit exemplary, is not singular.

As such, it appears that cohabitation is rather a phenomenon specific to semi-presidential regimes, as it implies that "there is a President from one party and a prime minister from an opposing party [and also that] the President's party is not represented in the cabinet"³. Needless to say, such a representation would inevitably lead to intra-branch conflict between the dualist executive structure, as numerous accounts throughout European semi-presidential regimes have proven⁴.

¹ Robert ELGIE, *Divided Government...cit.*, p. 106.

² *Ibidem*.

³ Robert ELGIE, Iain MCMENAMIN, "Explaining the Onset of Cohabitation Under Semi-Presidentialism", *Political Studies*, vol. 58, no. 3, 2011, pp. 616-635/p. 616.

⁴ For further reference, see Oleh PROTSYK, "Intra-Executive Competition Between President and Prime-Minister: Patterns of Institutional Conflict and Cooperation Under Semi-Presidentialism", *Political Studies*, vol. 54, no. 2, 2006, pp. 219-224.

Theories on Cohabitation and Semi-Presidentialism

When analyzing the concept of cohabitation, it appears that a proper definition of semi-presidentialism is required, particularly in light of a coherent and thorough analysis of the consequences this phenomenon is likely to produce. On this note, the three criteria advanced by Maurice Duverger's definition are crucial: a) the President of the republic is elected by universal suffrage; b) the President's powers are quite considerable; c) the Prime-Minister and his/her cabinet of ministers possess executive and governmental powers and require the vote of confidence of the legislature in order to remain in office¹. Nevertheless, from the perspective of political science, it has been argued that the second criteria is the most difficult to measure and the most subjective and therefore, prone to inaccuracies and interpretations.

From this perspective, Matthew Shugart and John Carey² further developed on Duverger's definition and distinguished between *president-parliamentary systems* – in which a) the President is elected by a popular vote for a fixed term in office; b) the President appoints and dismisses the Prime-Minister and other cabinet ministers; c) the Prime-Minister and the cabinet ministers are subjected to both parliamentary and presidential vote of confidence; d) the President typically has some legislative powers and the power to dissolve the Parliament – and *premier-presidential systems* in which a) the President is elected by a popular vote for a fixed term in office; b) the President has considerable constitutional authority; c) the Prime-Minister and his/her cabinet are subjected to the vote of confidence of the Parliament.

Unlike Duverger's definition, the latter explanation of semi-presidentialism is easier to apply after a study of the constitutional framework that establishes the structure and the respective functions of each public authority. In the Romanian case, Shugart and Carey's classification applies in the form of premier-presidentialism and not in that of president-parliamentarism, as the President cannot dismiss the government, for much as he would be tempted to, because the Prime-Minister and his cabinet are not subjected to the President's vote of confidence.

An interesting study that correlates cohabitation with semi-presidentialism across European electoral democracies is that of Robert Elgie and Iain McMenemy. Starting from the assumption that "cohabitation is more likely to occur in countries with a premier-presidential form of semi-presidentialism"³, the authors identify several factors which may lead to the emergence of cohabitation, such as: 1) the absence of a majority for the President's party in the legislature; 2) after an electoral cycle, but usually not when the elections for President and legislature are synchronized; and 3) in the aftermath of a legislative election.

¹ Maurice DUVERGER, "A New Political System Model: Semi-Presidential Government", *European Journal of Political Research*, no. 8, 1980, pp. 165-187/p. 172.

² For further references, see Matthew Soberg SHUGART, John CAREY, "The Electoral Cycle...cit."

³ Robert ELGIE, Iain McMENAMY, "Explaining the Onset of Cohabitation Under Semi-Presidentialism", in *Political Studies*, vol. 58, no. 3, 2011, pp. 616-635/p. 616.

THE PECULIARITY OF THE ROMANIAN POST-COMMUNIST CASES OF COHABITATION

Taking into account their causal model, the Romanian case appears as an exception. To begin with, because cohabitation first occurred under President Traian Băsescu and Prime-Minister Călin Popescu Țăriceanu in 2007, so it was not a result of the elections which had taken place in 2004. Moreover, the presidential and parliamentary elections were synchronized, contrary to their hypothesis and findings. And finally, it was not the result of a legislative election that generated cohabitation during the last year of Țăriceanu's mandate, but more rather the political context and the conflictual relations that had been constantly deteriorating between the two heads of public authorities. The most recent example of cohabitation also emerges as a deviation from their model, because once again, it is not the result of elections, even if this time they were not synchronized. Quite interestingly, the second period of cohabitation under post-communist Romania is taking place under the same President, although it involves a prime minister from a different party.

On the other hand, it is also interesting to note that both the National Liberal Party and the Social Democratic Party were first part of the governing coalition with the President's party – the Democrat-Liberal Party – and initially had several ministerial portfolios prior to the cohabitation period. Then, in 2007-2008, Prime-Minister Călin Popescu Țăriceanu reshuffled his Cabinet so that it no longer contained any members of the Democrat-Liberal Party, and in 2012, Prime-Minister Victor Ponta reformed his Cabinet so as to exclude members of the Democrat-Liberals. As a result, in a premier-presidential regime, President Traian Băsescu is forced to nominate a Prime-Minister from a different party, who nevertheless enjoys the support of a parliamentary majority and who appoints a Cabinet that further excludes the Democrat-Liberal party from the Government.

Another circumstance expressly identified by Elgie and McMenamain is that in which "cohabitation [...] occurs if the incumbent government was voted down by the legislature and a new government was formed that excluded the President's party"¹. Yet, the authors also maintain that this type of cohabitation is unlikely to be produced, as in semi-presidential systems it is still the President who designates the chosen Prime-Minister – a constitutional prerogative which consequently enables him/her to nominate a Prime-Minister to his liking, preferably from within his own support party – and, should this possibility fail due to the legislature's refusal to invest the designated Government with their vote of confidence since it does not represent the parliamentary majority, the President still has the option of dissolving the Parliament (according to article 89, paragraph 1 of the Fundamental Law)² instead of accepting a Prime-Minister of another political affiliation.

On this basis, the authors conclude that "the President would still be able to avoid cohabitation"³. Once again, the Romanian case stands as an exception, because

¹ *Ibidem*, p. 624.

² "After consultations with presidents of both Chambers and the leaders of the Parliamentary groups, the President of Romania may dissolve the Parliament, if no vote of confidence has been obtained to form a Government within 60 days after the first request was made, and only after rejection of at least two requests for investiture".

³ Robert ELGIE, Iain McMENAMIN, "Explaining the Onset of Cohabitation...cit.", p. 624.

the Romanian President Traian Băsescu did not manage to avoid cohabitation, even though it occurred outside the electoral cycle. Since he does not have the constitutional attributes to dismiss the Prime-Minister, he was forced to cohabit with Prime-Minister Călin Popescu Tăriceanu in 2007-2008 after the Cabinet reshuffle that excluded ministers from the Democrat-Liberal Party, so he could not really do anything about it. However, in 2009, when the first Cabinet of Emil Boc was voted down by the Parliament following a censorship motion, he did try to avoid cohabitation. Against the wishes of a majoritarian opposition, he refused to designate Klaus Johannis as Prime-Minister and instead nominated Lucian Croitoru (an independent) – who failed to receive the Parliament’s vote of confidence – and then Liviu Negoită (member of the Democratic Liberal Party) who was not going to attain the vote of confidence, either. However, President Traian Băsescu did not dissolve the Parliament but, after the 2009 presidential elections, managed to impose his preferred Prime-Minister, Emil Boc, for a second time. His strategy changed in May 2012, after the Mihai Răzvan Ungureanu Government was voted down through a censorship motion by the two Chambers, when Traian Băsescu did have the option of designating a new Prime-Minister from within his support party again. But he did not and, instead, appointed the leader of the opposition, Victor Ponta.

Moreover, the issue of legitimacy could easily be invoked in such circumstances. Specific to any semi-presidential regime, the President is elected directly by the people, thereby his legitimacy originates from the people, as does that of the Parliament, in which both the Chamber of Deputies and the Senate are elected by the people. On the other hand, the Government does not have the same source of legitimacy. According to article 103, paragraph 1 of the Fundamental Law “the President of Romania shall designate a candidate to the office of prime minister, as a result of his consultations with the party which has obtained absolute majority in the Parliament or – unless such majority exists – with the parties represented in Parliament”. Even if it could be argued that, by receiving the vote of confidence from the Parliament, as the most representative authority, the Government is therefore legitimated by the people, albeit indirectly, it would still remain that it does not have the same legitimacy as the other two organs.

Thus, the potential for conflictual relations within the dual structure of the executive is high. And it has been exploited to its fullest in the Romanian case, by any means provided by the Constitution and the mass-media. Of course, the conflictual outcome of cohabitation is not specific to the Romanian political framework and various forms of divided government have generally lead to conflictual relations between the heads of public authorities which often a times produced gridlock in the United States, Finland, Poland, etc. Nevertheless, unlike the Polish model of cohabitation, the frequency with which the Romanian heads of public authorities have found it necessary to involve the authority of the Romanian Constitutional Court under the pretence of institutional blockages is alarming.

On this note, Cristian Preda claimed that “in Romania, post-communism does not articulate itself on cleavages and not even on lasting political tensions”¹. It is a statement that portrays our political system as unstable and lacking in consistency and coherence. Political alliances are made without any ideological consensus,

¹ Cristian PREDA, Sorina SOARE, *Regimul, partidele și sistemul politic din România*, Nemira, București, 2008, p. 159.

coalitions are useful only in so far as they turn out to be successful in the elections, a minority party is willing to become a member of any governing coalition as long as it's majoritarian in the Parliament and represented in the Government, while the opposition seems unable to mobilize its members effectively so as to succeed in its endeavours. Overall, political conflict becomes insignificant and easily forgotten. Against such a background, it may come as no surprise that many of the theories previously presented on divided government and on the successful models of cohabitation do not apply correspondingly. Instead, Romania is recognized as the exception which, supposedly, confirms the theory on cohabitation.

The Romanian democratic experience does not allow for such an extensive evaluation of the presidential and legislative elections as would, for instance, be provided by the French case. Instead, its experience is comparable with that of Poland and the contrast is highly visible: two countries with a similar communist background entail completely different versions of government, in which unified government is the norm in Romania and cohabitation as a form of divided government is specific to the Polish political arena. On this, while in Romania cohabitation is a quite recent phenomenon experienced only once up to the 2008 legislative elections (2007-2008) Poland had a recurrent history of divided government (1991-1993; 1993-1995; 1997-2000; 2000-2001; 2007-2009)¹.

One of the first and most obvious contributing factors to this perpetual unified governance we have experienced may be that the presidential and parliamentary elections have been held simultaneously in Romania until 2004, which meant that the first ballot of the presidential elections was held the same day as the elections for both the Chamber of Deputies and the Senate. Quoting Robert Elgie and Iain McMenamin's study on the onset of cohabitation under semi-presidentialism, in which they found that "cohabitation will not occur when presidential and legislative elections are synchronized"² this appears as a possible explanation. Although, it should be noted that following the 2003 revision of the Romanian Fundamental Law when the President's mandate was increased from 4 years to 5 years precisely so as to avoid this synchronization, the 2008/2009 legislative and presidential elections produced the same outcome as those that preceded them: unified government.

Then again, electoral synchronization is not the only plausible explanation. Another factor resides in the results of the elections themselves, as with the exception of the first post-communist electoral cycle when the National Salvation Front managed to attain a clear and comfortable majority in the 1990 and 1992 legislative elections, all of the other majorities were based on coalitions: the Red Quadrilateral (FDSN/PDSR; PUNR; PRM; PSM) in 1992-1996, the Democratic Convention (PNȚCD; PNL; PNL-CD; PAR; PER; FER) with the Social Democrat Union (PSDR and PD) and UDMR in 1996-2000; the Social Democratic Party³ and PUR (until 2003) during Adrian Năstase's Cabinet in 2000-2004; the "Truth and Justice" Alliance (PNL and PD) with UDMR and PUR/PC from 2004 to 2007 and finally the Democratic Liberal Party and the Social Democratic Party from 2008 until December 2009, followed by another governing coalition formed by the Democratic Liberal Party, UDMR and UNPR. I have

¹ A comparative chart of examples of cohabitation across Europe in 1989-2008 can be found in Robert ELGIE, Iain McMENAMIN, "Explaining the Onset of Cohabitation...cit.", p. 622.

² *Ibidem*.

³ Prior to 2001 known as PDSR and PSDR.

deliberately excluded the second Cabinet of Călin Popescu Tăriceanu in 2007-2008, supported by the National Liberal Party and UDMR, as it is a period of cohabitation.

Until the Cabinet reshuffle of 2007, the President's party was represented in the Government and at the same time was always part of the majority coalition in the Parliament. Consequently and given Quirk's definition which I have previously cited, it is clear that from 1990 until 2007 Romania has only experienced unified government, even if not in the pure form of one-party-unified-government, as would be specific to the American two-party system. In fact, of all the six elections organized in the post-communist aftermath, only the 1990 and 1992 elections were won by a party and not by a coalition or an electoral alliance¹.

Still, aside from the immediate objective of winning the elections, "the ideological orientation of a governing coalition in parliament is the most immediate factor that shapes the intra-executive coexistence"². For that reason, in spite of enjoying the blessings of unified government, the coalitions/the alliances were most of the times formed by completely different political parties, with their own agenda and view on the governing program and process. As such, most of the intra-executive relations were tense, especially those between the President Ion Iliescu and Prime-Minister Petre Roman (1990-1991) and those between President Emil Constantinescu and Prime-Minister Radu Vasile, even though on both accounts the heads of the executive shared the same political affiliation. Yet, a fine distinction is in order: in the former, Iliescu and Roman were actually leaders of two opposing factions within the National Salvation Front, and in the latter case, the Romanian Democratic Convention was merely an umbrella political device that comprised different political parties, with the sole objective of winning the elections even if they were, to a certain extent, different in ideology and program.

Another example in point is that of the incumbent President Traian Băsescu and former Prime-Minister Călin Popescu Tăriceanu. Winners of the 2004 simultaneously held legislative and presidential elections and both members of the "Truth and Justice" Alliance that was comprised of the National Liberal Party and the Democrat Party, they almost immediately disagreed on various issues and confronted each other on numerous occasions at the Romanian Constitutional Court and especially in the mass-media. In fact, the perpetual conflict engaged them both to such an extent that in 2007, Prime-minister Călin Popescu Tăriceanu decided to reshuffle his Cabinet so that it no longer contained any members of the Democrat Party/Democrat-Liberal Party, entered into a different majority coalition that would support him in the Parliament, also by excluding the Democrat Party from it and consequently inaugurate the first period of divided government in the Romanian post-communist experience, from 2007-2008, when new legislative elections were held.

Moreover, during the second mandate of President Traian Băsescu, the first Cabinet of Emil Boc was formed of a coalition that brought together the Democrat-Liberal Party and the Social Democratic Party. However, this coalition was only short-lived, as in 2009, following the office removal of Dan Nica – Minister of Administration and Interior and member of the Social Democratic Party – all of the

¹ Cristian PREDA, Sorina SOARE, *Regimul, partidele...cit.*, p. 85.

² Oleh PROTOSYK, "Intra-Executive Competition Between President and Prime-Minister: Patterns of Institutional Conflict and Cooperation Under Semi-Presidentialism", *Political Studies*, vol. 54, no. 2, 2006, pp. 219-224/p. 223.

Social Democratic ministers (Ilie Sârbu, Ecaterina Andronescu, Cristian Diaconescu, Victor Ponta, Ionuț Bazac, Nicolae Nemirschi, Marian Sârbu and Constantin Niță) resigned in solidarity with their colleague and as a form of protest to the Democratic Liberals' measure. The Cabinet reshuffle did not receive the vote of confidence of the Parliament. Then, in spite of the majority's plea for Klaus Johannis, Mayor of Sibiu, as the new Prime-Minister, the acting President Traian Băsescu still designated a Prime-Minister of his own choice: Lucian Croitoru, a supposedly independent candidate who, nevertheless, included Democratic Liberal ministers in his Cabinet proposal and Liviu Negoită, a member of the Democratic Liberal Party, who was also the Mayor of District 3 in Bucharest and who designated even more Democratic Liberal ministers in his Cabinet formula. Eventually, after the 2009 presidential elections and with a newly-forged parliamentary majority, this time, President Traian Băsescu designated the same Prime-Minister that was removed from office due to the first censorship motion admitted in the post-communist history and who, given these circumstances, finally received the legislature's vote of confidence.

Therefore, in light of these experiences, I would agree with Oleh Protsyk's statement according to which "the fact that the President and the Prime-Minister belong to the same majority coalition does not serve as a sufficient condition for avoiding intra-executive confrontation"¹. In fact, if the coalition or the alliance is comprised of ideologically opposing parties, frictions are certain to arise, even within the same Government, as the 2008-2009 Boc Cabinet example has proven. On the same note, if a political party is highly fragmented, intra-executive confrontation is still likely to occur, even if the acting President and Prime-Ministers are members of the same party, as the Ion Iliescu – Petre Roman (1990-1991) instance illustrated.

Finally, the form of unified government experienced in the Romanian case remains subjected to debate. It seems to still be prone to conflictual relations which are typically specific to forms of divided government. Perhaps that is because it is nothing more than an artificial construct, devised for the sole immediate purpose of winning the elections and lacking a coherent plan about the aftermath of the electoral cycle. Or maybe simply because the Romanian political landscape is not quite articulated from an ideological point of view to such an extent, that it lacks consistency even in its political tensions, as Cristian Preda suggested. Either way, although unified from an arithmetical point of view, a strong case could be made here for the existence of divided government from a behavioural perspective.

CONSEQUENCES

Many of the scholars on divided government have argued that its consequences are negative and that it is very likely to produce gridlock and stalemate. Obviously, the ideological differences and the contrasting programmes and agendas are probably going to determine conflictual relations which will make it difficult for any of them to advance their own vision. It will be difficult for a Democratic Congress to advance their own policy against a Republican President who may veto their legislation, for instance.

¹ *Ibidem*, p. 224.

On the same note, in semi-presidential regimes, where the President does not have the right to veto any legislation, he/she is entitled, nevertheless, to either return the law to the Parliament for reconsideration and/or submit it to the Constitutional Court to confirm its validity¹. Hence, even in semi-presidential regimes, the possibility of gridlock and stalemate still exists as a consequence of divided government. In the Romanian case, for instance, the Constitutional Court has been called by the President to rule on the *a priori* constitutionality of laws only twice from 1991 until 2004. Then, during President Traian Băsescu's two consecutive mandates, this measure has been employed 22 times until now, 8 times of which only during the cohabitation period of 2007-2008².

Moreover, Cox and Kernell argue that "partisan differences magnify the institutional separation of powers"³. The same political adherence usually determines a certain degree of institutional coordination during times of unified government, as the President is prone to designate a Prime-Minister from within his political faction who, in turn, will form a Cabinet with ministers from his party/coalition/alliance which will, finally, receive the vote of confidence from the supporting parliamentary political formation which is, most of the times, the same. The constitutional design for separation of powers is fundamental not only for ensuring that each public authority has its own set of attributions and functions only in so far as those attributions specifically provide for, but it also calls for the need for cooperation. However, during times of divided government, when the political affiliations of the heads of the public authorities differs, they are less likely to cooperate and therefore, it could be argued that the institutional separation of powers becomes exaggerated.

On a contrasting note, a thorough study of the American legislative process comes to a different conclusion. In his *Divided We Govern*⁴ Mayhew contends that divided government does not, in fact, have any relevant consequence on the legislative process or policy and that it does not produce gridlock, contrary to popular belief. His study is, however, restrained to the American context, specific to presidential regimes in which the President holds the veto power and is difficult to apply to other cases.

Finally, Cox and Kernell⁵ argue that decision-makers can choose their strategy during periods of divided government so as to meet their goals. They identify three such options: a) to go it alone – meaning that each political player decides to pursue his/her own agenda, "without cooperating with others, and makes extensive usage of the legal and constitutional arguments" they find in support of their game; b) to go public – leaders make "public commitments to particular positions in order to raise the cost of renegeing and thereby strengthen one's bargaining position" while at the same time rendering public opinion as arbiter between them; and finally c) to bargain with the beltway – implying "delay and brinkmanship, careful attention to revision points, and the selling out of junior partners"⁶. Each of these strategies has, of course,

¹ Art 77 of the Fundamental Law, paragraphs (2) and (3).

² Source: the Activity Report of the Romanian Constitutional Court, available at http://www.ccr.ro/statistics/pdf/ro/activ07_12.pdf, accessed on July, 31st 2012.

³ Gary COX, Samuel KERNELL (eds), *The Politics of Divided Government*, Westview Press, Boulder Colorado, 1991, p. 152.

⁴ David MAYHEW, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-1990*, Yale University Press, New Haven, 1991, p. 180.

⁵ Gary COX, Samuel KERNELL (eds), *The Politics...cit.*, p. 243.

⁶ *Ibidem*.

its disadvantages: the first one is destined to provoke institutional conflicts and even blockages, the second one is also quite likely to generate conflictual relations and alter the public perception about the authority of the executive and/or legislative and finally, the third strategy has the potential of determining the authority being bargained with the beltway to take matters into its own hands and even attempt to exceed its constitutional prerogatives.

In this view, the Romanian case provides examples for all of these strategies during just two years of cohabitation: both the President Traian Băsescu and the Prime-Minister Călin Popescu Tăriceanu decided to "go it alone" which ultimately culminated in a series of cases of juridical conflicts of a constitutional nature brought before the Romanian Constitutional Court; both of them became engaged in slanderous accusations against each other (and even against other political parties and authorities) across the mass-media – which also resulted in cases brought to the Constitutional Court and, last but not least, they both bargained with the beltway, exemplary being the President's refusal to designate a new Minister of Foreign Affairs in 2007, which also resulted in a juridical conflict of a constitutional nature, acknowledged as such by the Court in its Decision no. 356/5.04.2007 which was published in the *Official Gazette* no. 322/14.05.2007.

CONCLUSIONS

In the end, it appears that the Romanian experience of divided government should be interpreted from both the arithmetical and the behavioural perspective. Otherwise, it would be difficult to understand how, even during periods of unified government, conflictual relations still arise and sometimes, in a highly aggressive manner – as was the case of former President Emil Constantinescu and Prime-Minister Radu Vasile.

In addition, I would also have to agree with Guys Peters's statement that the concept of coalition governments is the European version of divided government, given our post-communist history. Coalitions/political alliances are lacking in coherence of their agenda and their leaders consequently engage in confrontational relations shortly after winning the election. In fact, it could also be argued that coalitions which put together political parties of significantly different ideologies are likely to eventually produce cohabitation, as was the case of the "Truth and Justice" Alliance.

On the other hand, I believe that an active and aggressive opposition is also instrumental in elevating the conflictual relations, regardless of the form of government (unified or divided). In our case, the Social Democratic Party immediately took advantage of the political context created by Tăriceanu's Cabinet reshuffle in 2007 and orchestrated the first Presidential suspension proceeding, as well as the second suspension. Also, throughout the entire period they have been in the opposition, the Social Democrats have been aggressively trying to bring down the Government by initiating numerous censorship motions and they have been "going to the public" in attempt to win the public opinion on their side.

Finally, it is important to emphasize that the Parliamentary majority is not relevant in the cases of juridical conflicts of a constitutional nature. That is because there is not a prerequisite number of deputies/senators who need to adhere to a notification of the Constitutional Court. Instead, it is only the President of the Chamber of Deputies and

the President of the Senate respectively who are entitled to do so, as representatives of the Chambers they lead. In addition, these two heads of public authorities do not necessarily need to take similar stances in such cases. As I have previously mentioned, such conflicts tend to appear more frequently between opposing political affiliations in power, whereas different branches of power with similar political affiliations tend to ally in political conflicts – an example in point being the recent stance taken by the Chamber of Deputies, which is headed by the Democratic Liberal Roberta Anastase and which never sides with the Senate in these constitutional conflicts, but with the President or with the Government with which it shares the same political affiliation.