

**CONSTITUTIONAL FOUNDATIONS OF THE PROCEDURE FOR
THE ESTABLISHMENT OF THE ROMANIAN GOVERNMENT –
BETWEEN THEORY AND PRACTICE.
STUDY ON ARTICLE 103 OF THE CONSTITUTION
OF ROMANIA**

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ABSTRACT: *Any aspect of the government of a state is based on a provision of the Constitution, which is invoked regardless of whether this aspect is the subject of analysis, proceedings, debate or even controversy. Both in the situation of the regular organization of parliamentary elections, and when a Government appointed to office loses its mandate or his term of office ends, the constitutional procedure for the establishment and appointment of a new Government is initiated, having as constitutional basis Article 103 of the Constitution of Romania republished. This is also the case for the current (May-June 2026) political situation in Romania – namely a crisis caused by the dismissal of the Government led by Mr. Ilie Bolojan by the motion of censure adopted by the Romanian Parliament on May 5, 2026. And the current political situation in Romania has provided the opportunity to analyze the provisions of Article 103 and the way its provisions are implemented in the constitutional system in Romania.*

Within the present study, an analysis of the provisions of Article 103 of the Romanian Constitution is made, both from a theoretical perspective, as well as practice in relation to the way this constitutional text is implemented in a concrete situation of political crisis, the aspects related to the role of the President of Romania and the Parliament in the procedure of establishing a new Government are analyzed: the powers of each institution, the relations between the President of Romania and the Parliament; the nature and consequences of the consultations; the role of political parties.

KEYWORDS: *The constitution of the Government; political consultations; the appointment of the candidate to the office of the Prim Minister; vote of confidence; representativeness; popular legitimacy.*

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1. INTRODUCTION

The leadership of a state, although essentially a political act, must respect the constitutional and legal framework established by the constitutional system outlined¹. Within it the various components - national governing bodies (Parliament, Head of State, Government), governance mechanisms (instruments of interference and collaboration between the components of the system) and constitutional norms and principles that have an organic connection with the process of government - must exist and function according to established rules. Specifically, this normative framework, consisting of a set of legal norms, establishes and enshrines the role, duties and position of each political-state body, as well as the relations between the various state institutions involved in the governance process. And at the forefront of this set of rules of law, in generic and systematized form, we find the *constitution, the fundamental law of the state concerned, that is, the law with legal force superior to all other laws and which systematically regulates both the main socio-economic structures- necessary for the organization and functioning of the state, it guarantees the fundamental rights and freedoms of citizens and sets out the duties corresponding to those rights*². But more importantly, *the constitution can be an effective weapon of fighting abuse and a safeguard against the absolutization of public power, when properly applied.*

2. THE ROMANIAN GOVERNMENT AND ITS ROLE

According to Article 102 paragraph (1) of the Constitution of Romania, republished³, the Government of Romania, according to its governing program accepted by the Parliament, ensures the implementation of the country's internal and external policy and exercises the general management of the public administration.

In addition, Article 14 paragraph (1) of Government Emergency Ordinance (O.U.G) no. 57 of 3 July 2019 on the Romanian Administrative Code⁴ (which repeals Law no. 90/2001 on the organization and functioning of the Romanian Government and ministries⁵) states that 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 governing program*” and which “*ensures the implementation of the country's internal and external policy and exercises the general leadership of the public administration*”. To fulfill the above-mentioned role, the Administrative Code provides that the Government “*ensures the balanced functioning and development of the national economic and social system*”.

The constitutional and legislative regulation of the Romanian Government shows its double role: *administrative and political*⁶ and the position of this institution in the organizational structure of the state: component part of the Executive (even exercising the

¹ See Cristian Ionescu, *Regimuri politice contemporane*, ed. All Beck, București, 2004, pp. 1160-.

² See at length Tudor Drăganu, *Drept constituțional și instituții politice-tratat elementar*, vol. I, Ed. Lumina Lex, București, 2000, pp. 7-31; Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, vol. I, ed. 12th, Ed. All Beck, București, 2005, p. 43.

³ Ioan Santai, *Drept administrativ și știința administrației*, Ed. Risoprint, Cluj Napoca, 2002, vol. I, p. 289.

⁴ Published in M.Of. no. 555 of July 5, 2019, as amended and supplemented.

⁵ Published in M.Of. no. 164 of april 2, 2001, as amended and supplemented.

⁶ Dana Apostol-Tofan, *Drept administrativ*, vol. I, Ed. All Beck, București, 2003, p. 149, as well as in Dana Apostol-Tofan in Ioan Muraru and Elena Simina Tanasescu (coord.), *Constituția României. Comentariu pe articole*, Ed. C.H. Beck, București, 2003, p. 941.

leadership of the public administration) and functioning only based on the vote of confidence granted by the Parliament⁷.

The Government of Romania performs *a significant political role* by ensuring the country's internal and external political implementation based on the governing program accepted by the Parliament⁸, both in the stage of establishing the public policy and in the stage of its material, effective implementation, in all fields and branches of activity, in order to ensure the balanced functioning and development of the national economic and social system and its connection to the world economic system, while promoting national interests. But the delimitation of the political function from the administrative function of the Government is quite difficult to do, because the very foundation of the administrative function is found in its political function⁹.

The *administrative dimension of* the Romanian Government is a reality confirmed by the role of the Government in the general management of the public administration in Romania. On the basis of his competence, he has the capacity to stand, in his own name, as an autonomous subject, in the legal relations related to the exercise of his fundamental constitutional role, and the ability to adopt normative acts (ordinances and decisions) of an administrative nature, by which the exercise of the general management of the public administration is legally feasible. The legal acts of the Government issued in the exercise of the general management duties of the public administration subordinate, in terms of their legal force, the administrative acts of all other authorities or structures that compose the institutional, organizational, and public administration system¹⁰.

3. PROCEDURE FOR THE ESTABLISHMENT OF THE GOVERNMENT

The procedure for establishing¹¹ the Government includes the following steps (considering the provisions of Articles 85, 103 and 104 of the Romanian Constitution republish)¹² and Article 16 of the Government Emergency Ordinance no. 57/2019:

1. The appointment to a candidate for the office of Prime Minister by the President of Romania, after consulting the party or political party that holds the absolute majority in Parliament or, if there is no such majority, after consulting the political parties or parties represented in Parliament. If no political party or party has obtained an absolute parliamentary majority, the possible options are either a parliamentary coalition that will support the new Government and that involves recruiting the future Premier from it, or a minority government¹³, it is also possible that the party that obtained the most seats in

⁷ About the relations in Parliament and Government and the value and effects of the investment vote – see, at length, in Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, Ed. Universul Juridic, București, 2013, pp. 223-234.

⁸ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 43.

⁹ Daiana Vesmas, *Drept administrativ*, course for students in electronic format, "Lucian Blaga" University, Sibiu, 2007, www.dreptsibiu.ro; Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 47.

¹⁰ Daiana Vesmas, *Drept administrativ*, course for students in electronic format, "Lucian Blaga" University, Sibiu, 2007, www.dreptsibiu.ro.

¹¹ Also called investiture procedure - Dana Apostol-Tofan in Ioan Muraru and Elena Simina Tanasescu (coord.), *Constituția României. Comentariu pe articole*, p. 958.

¹² Ioan Santai, *Drept administrativ și știința administrației*, p. 289.

¹³ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 69.

Parliament should Romanian outside such an agreement¹⁴. In the event of a parliamentary coalition in view of the Government's support, we believe that the future prime minister should be recruited from among the party or political party that obtained the highest score in the parliamentary elections, thus respecting the political configuration of the Parliament and the will of the electorate expressed in the elections¹⁵. This is quite difficult to implement given that the achievement of such a coalition is a rather fragile process due to the diversity of political and doctrinal platforms and especially in the situation where the scores obtained by parliamentary political parties or parties are quite close to each other. As it turned out, most of the time such coalitions are the result of political negotiations and most of the time they do not pass the test of time and responsibility.

2. The composition and presentation by the candidate designated for the office of Prime Minister *of the list of the Executive and the National Governance Program and the request for the vote of confidence by the Parliament*, within 10 days from the announcement of the President of Romania on the nomination. The 10 day deadline must be considered as a recommendation period if there is no penalty for non-compliance.

3. Debate and vote them in Parliament *for the vote of confidence*¹⁶. It is made in the joint sitting of the two Chambers, and the vote of confidence is granted by decision of the Parliament, adopted by an absolute majority (the vote of the majority of deputies and senators is required and the secret ballot with balls will be used). In the event of a no-confidence vote, the decision shall be communicated to the President with a view to appointing a new candidate¹⁷, by re-starting¹⁸ the consultation procedure. Regarding the composition of the list of the future Government, the candidates for the position of minister registered on the list of the Government, proposed by the candidate for the position of Prime Minister, are heard by the specialized standing committees of the Chambers of Parliament, competent according to the object of activity of the office of the candidate of minister and, based on the findings made, they jointly issue *favorable opinions or rejection opinions*; in the case of rejection opinions, the candidate for the office of Prime Minister may propose another candidate for the office of minister (although these opinions are qualified as advisory opinions¹⁹). In parliamentary practice several cases have been recorded of negative opinions, and which were followed by new proposals²⁰.

¹⁴ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 68. But the author considers such a situation to be abnormal in a democratic state because the solution ignores the will of the electorate.

¹⁵ Although, there is a risk that this option of the electorate will be later hijacked due to the changes in the initial parliamentary majority due to the phenomenon of the migration of parliamentarians from one parliamentary group to another or the changes in the strategy of the parliamentary parties – see at length Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, pp. 64-69.

¹⁶ By granting the vote of confidence, the Government receives a mandate of confidence from the Parliament which thus substantiates the relations between the two institutions- -, see Dana Apostol-Tofan in Ioan Muraru and Elena Simina Tanasescu (coord.), *Constituția României. Comentariu pe articole*, p. 964.

¹⁷ If the Parliament refuses at least twice within 60 days, the granting of the investment, it may be dissolved by the President – Article 89 of the Romanian Constitution, republished.

¹⁸ Dana Apostol-Tofan in Ioan Muraru și Elena Simina Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, p. 963.

¹⁹ Ioan Santai, *Drept administrativ și știința administrației*, vol. I, p. 177; Dana Apostol-Tofan in Ioan Muraru și Elena Simina Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, p. 962.

²⁰ Decision of the Constitutional Court of Romania no. 356 of 5 April 2007, published in M. Of. no. 322 of 14 april 2007.

4. *The appointment of the Cabinet* by the President – is made by presidential decree, nominally for each member of the Government who received the vote of confidence from the Parliament, based on the decision of the Parliament communicated. The appointment decree shall be published in the Official Gazette of Romania (M.Of.) and communicated to the person concerned. If the proposed candidate and the government team obtained the vote of confidence from the Parliament, the President of Romania can no longer refuse the appointment²¹. This constitutional obligation of the President of Romania is based on the decision of the Parliament and, in its execution, the President issues the decrees appointing the members of the Government, followed by the oath of allegiance required by law.

5. *Taking the oath of allegiance* – following the issuance of the decree of appointment in office. It shall be submitted individually by each member of the Government before the President of Romania (Article 104 paragraph (1) of the Constitution). The refusal to take the oath is equivalent to the loss of membership of the Government (dismissal from law²²), considering- that he did not acquire the legal investiture from the Parliament²³.

The procedure for the constitution of the Government enshrined in the Constitution of Romania republished reflects the option of the Constituent Assembly of Romania of 1991 for a Government with a political-administrative role²⁴, part of a semi-presidential political regime in which the head of state, although elected by the entire electoral body by universal, direct, secret, equal and freely expressed vote (thus benefiting from a popular and therefore democratic legitimacy), it is accountable to the Parliament (the model envisaged being that of the French Republic), and the Parliament has a decision-making role in the constitution of the Government and, consequently, the Government is politically accountable to it. Although he is as representative as the Parliament by election, by the powers conferred on him, the President of Romania does not have an equal position with the Parliament, much less superior, which allowed the doctrine (at least of one part) to conclude that Romania is a semi-presidential republic.

Regarding the type of Republic, depending on the actual political regime existing at different times, several points of view were elaborated in the Romanian doctrine that could be systematized in several major options: semi-presidential regime²⁵; parliamentary political

²¹ Dana Apostol-Tofan în Ioan Muraru și Elena Simina Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, p. 963. Refusal may be considered a serious act of violation of the Constitution.

²² Ioan Santai, *Drept administrativ și știința administrației*, vol. I, p. 298.

²³ Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *Constituția României revizuită – comentarii și explicații*, Ed. All Beck, București, 2003, p. 171.

²⁴ Although, given the constitutional and political regime specific to post-Decembrie Romania, there is a diversity of views on the type of characterization of the political regime, as well as proposals for turning toward a parliamentary regime - Genoveva Vrabie, *O posibilă revizuire a Constituției. Regim politic parlamentar în România postdecembristă?*, in the „Revista de Drept Public” Journal no. 2/2007, pp. 95-103. For a characterization of the political regime in Romania, see also Florin Vasilescu, *Consideration sur le régime politique actuel de la Roumanie*, în *Revue Française de Droit constitutionnel* nr. 23/1995, pp. 151-181. On the other hand, it is evident that a orientation toward a presidential regime during the 2008-2012 term of President Traian Basescu (self-titled president-player) is evident.

²⁵ Stefan Deaconu *Instituții politice*, ed. 4th, Ed. C.H. Beck, București, 2020, p. 253; Ioan Alexandru, Claudia Gilia, Iva-Vasile Ivanoff *Sisteme politico-administrative europene*, Ed. Hamangiu, București, 2008, p. 47.

regime with presidential accents²⁶; a strong semi-presidential system²⁷; semi-presidential regime with presidential tendencies or presidential vocation²⁸; attenuated or parliamentary semi-presidential political regime²⁹.

Beyond the diversity of points of view expressed or the names used, it is essential that any political regime, any government fall within the parameters of the democracy enshrined in the 1991 Constitution: rule of law, respect for and guarantee of fundamental rights and freedoms, political pluralism, the principle of separation of powers in the state, the supremacy of the Constitution and the law, the popular will embodied in the exercise of national sovereignty, the principle of representativeness, periodic free elections, equality of rights. They are more than just “sweet words”, they are powerful and sound landmarks that can inspire, animate, mobilize, encourage or even cause reactions, attitudes or actions of an individual or a nation. These are essential values, conditions of a constitutional democracy and are supreme values expressly enshrined in the fundamental law of the Romanian State.

Therefore, in the procedure for establishing the Government, an essential role lies with the President of Romania (as Head of State, Head of the Executive and mediator with popular legitimacy) and with the Parliament (as the supreme representative body of the Romanian people). The 1991 Constituent Assembly’s option for such a mechanism of constitution of the Government, the emphasis placed on the role of the President and Parliament in the procedure of constitution of the Government had as a precondition the need to confer popular legitimacy to the Government, thus obtained indirectly by popular vote³⁰: the President of Romania appoints a candidate for the position of Prime Minister and the Parliament is the one that gives legitimacy to the Government by granting the vote of confidence to the team and the governing program, the appointment of the Government being made exclusively following the obtaining of the inauguration vote from the Parliament. As stated in the specialized literature, the main one is the will of the Romanian Parliament expressed by granting the vote of confidence and not that of the President of Romania because the majority will of the Parliament reflects the sovereign majority will of the electoral body as expressed in the parliamentary elections³¹.

4. POLITICAL CONTEXT FROM MAY TO JUNE 2026

Thus, according to the results of the parliamentary elections in Romania on December 1, 2024, the party that obtained the largest number of mandates in relation to the percentage of valid votes cast was the Social Democratic Party of Romania (PSD) - 22.30% for the Senate representing 36 seats and 21.96% for the Chamber of Deputies representing 91 by mandates, followed by the Alliance for the Union of Romanians (AUR) – 18.30% for the Senate representing 28 seats and 18.01% for the Chamber of Deputies representing 62 seats, the

²⁶ Alexandru Radu, *Sisteme politice contemporane. Forme de guvernare în 29 de state*, Ed. C.H. Beck, București, 2010, p. 162.

²⁷ Bogdan Dima, *Raporturile dintre șeful statului și primul-ministru din România. O abordare comparativă*, în “Revista de Drept Public” Journal no. 3/2006, p. 97.

²⁸ Cristian Ionescu *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 356.

²⁹ Mihai Constantinescu, Ioan Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Vasilescu, Ioan Vida, *Constituția României – comentată și adnotată*, R.A. “Monitorul Oficial”, București, 1992, p. 184.

³⁰ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 66.

³¹ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 68.

National Liberal Party (PNL) – 14.28% for the Senate representing 22 seats and 13.20% for the Chamber of Deputies representing 45 seats, save Romania Union (USR) – 12.26% for the Senate representing 19 seats and 12.40% for the Chamber of Deputies representing 45 seats, the S.O.S. Romania Party (SOS) – 7.76% for the Senate and 7.36% for the Chamber of Deputies, the young people's Party (POT) – 6.39% for the Senate and 6.46% for the Chamber of Deputies and the Democratic Union of Hungarians in Romania (UDMR) – 6.38% for the Senate and 6.33% for the Chamber of Deputies³².

Following the establishment of the new Parliament in December 2024³³, in order to obtain a parliamentary majority, the Social Democratic Party, the National Liberal Party, the Democratic Union of Hungarians in Romania and the Parliamentary Group of National Minorities in the Chamber of Deputies formed a governmental coalition³⁴ proposing a joint national governance program³⁵. According to the Political Agreement concluded on December 23, 2024 in Bucharest, the alliance supports the President of the Social Democratic Party, Mr. Marcel Ciolacu for the appointment as Prime Minister, and the distribution of the functions of a member of the Government proportionally among the political parties forming the coalition was established³⁶.

On December 23, 2024, the President of Romania appointed Mr. Marcel Ciolacu as a candidate for the position of Prime Minister. By the joint Decision of the two Chambers of Parliament no. 33 of December 23, 2024, the vote of confidence was granted to the Government led by Mr. Marcel Ciolacu. But on May 5, 2025, Marcel Ciolacu announced his resignation as Prime Minister following the poor results obtained by the Coalition candidate in the 2025 presidential elections. His resignation was received by the acting President from that date, and the related Decree was issued on 6 May 2025. In this situation, the procedure for setting up the new Government was initiated and Mr. Ilie Bolojan (PNL President) was appointed as candidate for the position of Prime Minister by the President of Romania Mr.

³² According to the press release on the final result of the vote for the election of the Senate and the Chamber of Deputies of December 1, 2024 of the Central Electoral Bureau for the election of the Senate and of the Chamber of Deputies of 2024 (https://parlamentare2024.bec.ro/wp-content/uploads/2024/12/CP_50.pdf, viewed on 26.06.2026) and according to the political configuration of the parliamentary chambers after the constitution of the parliamentary groups (for the Chamber of Deputies - <https://www.cdep.ro/ords/pls/parlam/structura.gp?idg&leg=2024&idg=93212>, viewed on 24.06.2026; For the Senate - <https://www.cdep.ro/ords/pls/parlam/structura.gp?idg&leg=2024&idg=93212>, viewed on 24.06.2026).

³³ In order to ensure the general representativeness, the Romanian Constitution also provides that the Romanian Parliament will also include the deputies appointed under the terms of the electoral law, from the organizations of citizens belonging to national minorities, who do not obtain in the elections the number of votes to be represented in the Parliament (Article 62(2) of the Constitution of Romania, republished). For national minorities whose representatives have failed to obtain any parliamentary mandate following the elections, the Constitution establishes that they receive a mandate in the Chamber of Deputies, in accordance with the electoral law, respectively, if they managed to obtain a number of votes equal to at least 5% of the average number of valid votes cast per country for the election of a deputy (according to Art. 56 paragraph 1, as referred to Art. 93 paragraph 11 and 12 of Law no. 208/2015). The mandate of MP thus obtained is added to those resulting from the application of the representation rule (according to Art. 56 paragraph 9 of Law no. 208/2015). For example, in the parliamentary term 2024-2028, the Romanian Parliament also includes 17 elected deputies belonging to national minorities (<https://www.cdep.ro/ords/pls/parlam/structura2015.gp?idl=1&idg=8>, viewed on 24.06.2026).

³⁴ Another goal of forming this coalition (called the "Romania forward Electoral Alliance") was also to support a common candidate in the 2025 presidential elections.

³⁵ <https://www.gov.ro/ro/obiective/program-de-guvernare-2025-2028>, viewed on 24.06.2026.

³⁶ Marcel Ciolacu (PSD President) previously held the position of prime minister, being appointed on June 15, 2023, according to the protocol of the ruling coalition PSD-PNL-UDMR on the governmental rotating, taking over the position after the mandate of Nicolae Ciucă (PNL President).

Nicusor Dan. Through the joint Decision of the two Houses of Parliament no. 25 of 23 June 2026, the governmental team proposed by Mr. Ilie Bolojan and the national governing program received a vote of confidence from the Parliament. But on May 5, 2026, the Romanian Parliament voted a motion of censure submitted by Social Democratic Party and others, and the Cabinet led by Mister Ilie Bolojan was dismissed. Basically, the Social Democratic Party withdrew its support for the Government led by Mr. Ilie Bolojan, a liberal, giving rise to one of the worst political crises in post-December Romania. A period of uncertainty followed regarding the formation of the new Government, given that consultations with parliamentary parties and political formations were heavily affected by the breakdown of the governing coalition formed in December 2024 based on the political agreement between the Social Democratic Party, the National Liberal Party, the Democratic Union of Hungarians in Romania and the Parliamentary Group of National Minorities in the Chamber of Deputies. The National Liberal Party withdrew from the alliance because in April 2026 the Social Democratic Party withdrew its support to the Government.

On May 18, 2026, consultations with parliamentary parties and political parties were held at the Presidential Administration headquarters to nominate a candidate for the office of Prime Minister. Following these consultations, Mr. Eugen Tomac was nominated as a candidate. But on June 14, 2026, Mr. Eugen Tomac submitted his mandate motivated by the impossibility of obtaining the parliamentary support necessary for the inauguration. During the same press conference in which he announced this, the President of Romania informed that he is nominating Mr. Adrian Veștea for the office of Premier, entrusting him with the task of constituting the governing team and requesting the vote of confidence from the Parliament. In the joint sitting of the Romanian Parliament on 22 June 2026, the Parliament refused to grant the vote of confidence for a Cabinet led by Mr. Adrian Veștea.

Following the non-granting of the vote of confidence to the Government proposed by Mr. Adrian Veștea on June 22, 2026, the President of Romania convened the parliamentary political parties and formations for a new round of consultations for June 23, 2026, pursuant to Article 103 paragraph 1 of the Romanian Constitution³⁷.

5. APPOINTMENT OF A CANDIDATE FOR THE OFFICE OF PRIME MINISTER – BETWEEN LEGAL THEORY AND POLITICAL PRACTICE

In this political context of crisis, the question has been raised quite often whether or not the President of Romania has acted constitutionally when, on June 14, 2026, he nominated another candidate for the position of Prime Minister after the first person appointed announced that he was submitting his mandate without calling for a new round of consultations with political parties. Does Article 103 of the Romanian Constitution republished oblige new consultations of political parties in situations such as the one presented? Is there any other law regulating such situations?

The procedure for establishing a new Government and the provisions of Article 103 of the Romanian Constitution offer the possibility to formulate other questions: are the consultations purely formal, merely consultative, or does the President oblige him to

³⁷ <https://www.presidency.ro/ro/media/comunicate-de-presa/consultari-cu-partidele-si-formatiunile-politice-parlamentare-in-vederea-desemnarii-candidatului-la-functia-de-prim-ministru1782197668>, viewed on 24.06.2026.

designate only one person on whom the consultations have agreed or at least been proposed by those participating in the consultations? Or what can the President do if there are no options for the consultations?

The President's task is to appoint a candidate for the office of Prime Minister is provided for in Article 85 paragraph (1) of the Constitution, and the obligation to consult is provided for in Article 103 paragraph (1) of the Constitution. The mandatory character was also confirmed by the Constitutional Court of Romania³⁸.

According to Article 85 paragraph 1 of the Constitution of Romania republished:

(1) The President of Romania shall designate a candidate to the office of Prime Minister and appoint the Government based on the vote of confidence of the Parliament”.

According to Article 103 of the Constitution of Romania republished:

(1) The President of Romania shall designate a candidate to the office of Prime Minister, after consultation with the party which has obtained absolute majority in Parliament, or — where no such majority exists — with the parties represented in Parliament.

(2) The candidate to the office of Prime Minister shall, within ten days of his designation, seek the vote of confidence of the Parliament on the programme and complete list of the Government.

(3) The programme and list of the Government shall be taken up for debate by the Chamber of Deputies and the 57 Senate, in joint sitting. Parliament shall grant its confidence to the Government by a majority vote of Deputies and Senators”.

Grammatically interpreting the text of Article 85 paragraph 1 of the Constitution, it can be considered that the President can designate whoever he wants, whoever³⁹ he considers to be a suitable person, respectively that he would have exclusive competence in electing the candidate for the office of Premier.

In support of this interpretation, it can also be invoked that there is also the option of a minority Government, possible if the President nominates a candidate not approved by a parliamentary majority but who would still obtain the vote of confidence from the Parliament.

Another solid argument is presented by another attribution of the President of Romania, that of being able to dissolve the Parliament in accordance with Article 89 of the Romanian Constitution, that is, if the Parliament does not grant the confidence vote to the Government within 60 days of the first request in this regard and only after rejecting at least two such requests, after consulting the two presidents of the parliamentary chambers and the leaders of the parliamentary groups. Such a hypothetical situation may have two premises: either during the consultations an agreement was reached on the person whom the President will nominate but subsequently the Parliament changes its mind twice, or the two proposals are the result of the President's exclusive will, the consultations and discussions within them do

³⁸ ‘... The consultation of political parties is not regulated as an obligation of the President except in Article 103 of the Constitution, regarding the consultation of the party which has an absolute majority in the Parliament or, if there is no such majority, of the parties represented in the Parliament, in order to nominate the candidate for the office of Prime Minister” – Consultative opinion no. 1 of 5 April 2007 of the Constitutional Court on the proposal to suspend from office the President of Romania Traian Basescu (among other things, he was accused of violating the Constitution when he did not consult the Government on special matters of general interest), published in M.of. No. 258 of April 18, 2007.

³⁹ According to the Explanatory Dictionary of the Romanian language (DEX online) “*To designate*” means “*To indicate, to appoint a person who considers him most suitable for carrying out an activity, for occupying a dignity or a position*” (<https://dexonline.ro/definitie/desemna>).

not oblige him. It follows that the Constituent Assembly itself has considered the risk that the Parliament will not accept any variant proposed by the President, and the one considered guilty is the Parliament not the President. This means that nothing can condition the President in choosing the person or persons he considers appropriate. Although the President of Romania is obliged, during the procedure for the dissolution of the Parliament, to consult with the Presidents of the parliamentary chambers and with the leaders of the parliamentary groups⁴⁰, he is not obliged to take into account the outcome of these consultations the procedure being rather a political and not an institutional one, since the Parliament is not consulted, the same is true for political parties.

Also, another argument is provided by the grammatical interpretation of the text of Article 103 paragraph 1 of the Constitution. The definition of the verb “consult” (“ask, ask for an opinion, advice; take the opinion of an authorized person”⁴¹) and the term “consultations” (plural for consultation, i.e. “the action to *consult* its outcome; a request for an opinion, a hearing of an opinion⁴²) it follows that these consultations are not binding. Or, in other words, the President is not obliged to nominate someone proposed/agreed by one or the other of the political parties or even by all.

But such an interpretation does not consider the fact that, in the end, the Romanian Parliament will have the last word, by granting the vote of confidence without which there is no Government. Therefore, it is of particular importance that the President’s choice for the candidate for Prime Minister be a viable one (a person on the matter has been reached during the consultations, whether he is a person proposed by the President and agreed by the political party/parties, either it is proposed by them and assumed by the President), respectively the person proposed ***to benefit from the support of the parliamentary majority***. The political life in post-December Romania also offers an example in which the President did not even consult the parliamentary political parties on the nomination of Mr. Calin Popescu-Tariceanu for the position of Prime Minister and, however, the Parliament did not consider that this omission would represent an impediment to granting the vote of confidence to the Tariceanu Government and the proposed governing program, which it did by Joint Decision no. 24 of 28 December 2004, published in the Official Gazette of Romania, part I, no.1.265 of 29 December 2004.

On the President's options for appointing the candidate for the office of Prime Minister, it also expressed the view that it has practically no possibility to ignore the option expressed by the political parties and which is based on an extensive interpretation of the provisions of Article 103 of the Romanian Constitution in conjunction with Article 80 of the Constitution. If, following the elections, there is a political party that holds an absolute majority in the Parliament, the President would be obliged to propose a candidate in the person proposed by that political party. If there is no political party that holds an absolute majority, the President would be obliged to strictly refer to the candidates proposed by the parliamentary parties, remaining at his discretion the election of one of them. Although this obligation is not

⁴⁰ Ștefan Deaconu in Ioan Muraru and Elena Simina Tănăsescu, *Constituția României – Comentariu pe articole*, pp. 830.

⁴¹ <https://dexonline.ro/definitie/consulta>

⁴² <https://dexonline.ro/intrare/consultare/64442>

expressly provided for, the authors make a number of pertinent arguments⁴³: the purpose of the procedure for appointing the candidate through consultations is the need to ensure parliamentary support in granting the vote of confidence; the President of Romania has, in addition to the role of representative of the Romanian state and the role of mediator between the state powers, as well as between the state and society, a sense in which he has the obligation to ensure the observance of the Constitution and the proper functioning of the public authorities (Article 80 of the Romanian Constitution⁴⁴), a sense in which they must always act in good faith and ensure that the risk of institutional bottlenecks or political crises is eliminated; the President cannot ignore the political realities, nor the political parties and their role enshrined in Article 8 of the Romanian Constitution⁴⁵.

We also believe that the President of Romania cannot disregard the options of the parliamentary political parties expressed during the consultations, nor the will of the Parliament. Moreover, by virtue of his role as mediator, the President of Romania is obliged to always act pro-actively and to identify, even negotiate, the most appropriate solutions for completing the procedure of establishing a new Government. Specifically, if there is an absolute parliamentary majority, the only option of the President is the proposal of this majority. In the absence of such a majority, it will appoint a candidate from the list resulting from consultations with political parties. Only such a candidate will enjoy the support of the parliamentary majority. In this regard, the Constitutional Court of Romania also expressed itself: *"The President of Romania, not being a decision-maker in this procedure, but as an arbitrator and mediator between the political forces, has only the power to nominate as candidate the representative proposed by the political alliance or political party holding the absolute majority of parliamentary mandates or, if there is no such majority, the representative proposed by the political alliance or the political party that can ensure the parliamentary support necessary to obtain the vote of confidence of the Parliament"*⁴⁶.

On the obligation of the President of Romania to hold a new round of consultations in the event that a first nominated candidate submits his or her mandate before requesting Parliament to grant a vote of confidence, analyzing and interpreting restrictively the provisions of Article 85 paragraph 1 and Article 103 paragraph 1 of the Romanian Constitution, it can be concluded that such an obligation is not expressly provided for by the Head of State. No other texts of the Constitution or other normative texts provide for it. The constitutional obligation of the President is to hold consultations with the representatives of

⁴³ Dana Apostol-Tofan, *Drept administrativ*, vol. I, ed. a 2-a, Ed. C.H. Beck, București, 2008, p. 167; Virginia Vedinas, *Orgii procedurale*, Ed. Universul Juridic, București, 2011, pp. 35-37; Camelia Rodica Tomescu, *Raporturile dintre Guvern și Parlament*, Ed. C.H. Beck, București, 2012, pp. 47-50.

⁴⁴ Art. 80 of the Constitution of Romania republished: *"(1) The President of Romania shall represent the Romanian state and safeguard the national independence, unity and territorial integrity of the country. (2) The President of Romania shall watch the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the Powers of the State, as well as between the State and society."*

⁴⁵ Art. 8 of the Romanian Constitution republished: *"(1) Pluralism in the Romanian society is a prerequisite and a guarantee of constitutional democracy. (2) Political parties are established and pursue their activities in accordance with the law. They contribute to the definition and expression of the political will of the citizens, while observing national sovereignty, territorial integrity, the legal order and the principles of democracy."*

⁴⁶ Decision of the Constitutional Court of Romania no. 80 of 16 February 2014 on the legislative proposal on the revision of the Romanian Constitution, published in the Official Gazette no. 246 of 7 April 2014.

the parliamentary party or parties and to nominate a candidate following these consultations. The constitutional obligation of the candidate so designated is to request Parliament within 10 days to grant the vote of confidence. A first interpretation suggests that if the first nominated candidate does not even ask for a vote of confidence and submits his mandate, the President could appoint another candidate without further consultation. Or, if during the first round of consultations, besides the name of the first proposed candidate, another person was considered as a viable alternative, the variant in which the President proposed this person without holding political consultations can be accepted.

But an extensive interpretation of Articles 85 and 103 of the Romanian Constitution leads to another conclusion: the President of Romania must take into account the options expressed by the political party that holds the absolute parliamentary majority or the parliamentary political parties expressed during the consultations, so that also the situation in which the first candidate nominated by the President submits his mandate, the President must convene a new round of consultations on the same legal and factual arguments set out above. Another argument for supporting this solution is offered by the Constitutional Court of Romania, which established that in the absence of the Parliament's vote of confidence, the President is forced to hold new consultations for the appointment of another candidate having no relevance because of the lack of obtaining the vote of confidence: the Parliament's vote of blame, the candidate's submission of the mandate, shall not be presented before the Parliament for the vote of confidence within the prescribed period⁴⁷.

In 2014, within a proposal to revise the Romanian Constitution, the initiators of the revision also proposed the amendment of the Article 103 in terms of mentioning in detail how the President of Romania should appoint the candidate for the position of Prime Minister⁴⁸, a procedure carried out in three stages and based both on the electoral result obtained by the political parties or alliances participating in the elections ranked on the first two positions, and the ability of a parliamentary political alliance to secure the absolute majority of parliamentary mandates. Within the review of constitutionality previously executed by the Constitutional Court of Romania, the proposal was criticized by the constitutional court, arguing that *"the establishment of a rigid order in the candidate's appointment may create serious problems liable to affect the proper functioning of the state, of which the Court notes the situation in which the political party, namely the political alliance participating in elections that obtained the highest number of parliamentary mandates does not have an absolute majority of parliamentary mandates. Often, there are*

⁴⁷Decision of the Constitutional Court of Romania no. 80 of 16 February 2014 on the legislative proposal on the revision of the Romanian Constitution, published in the Official Gazette no. 246 of 7 April 2014

⁴⁸ In Article 103, after paragraph (3), three new paragraphs (3 ^ 1) to (3 ^ 3) are inserted, with the following contents: "(3 ^ 1) If the candidate for the office of Prime Minister submits his mandate, does not appear before the Parliament for the vote of confidence within the prescribed period or does not obtain the vote of confidence, the President of Romania appoints the representative proposed by the political party, namely the political alliance participating in elections that obtained the second largest number of parliamentary mandates, as a candidate for the office of Prime Minister. according to the official result of the elections. (3 ^ 2) If the second candidate for the office of Prime Minister submits his mandate, he does not appear before the Parliament for the vote of confidence within the prescribed period or does not obtain the vote of confidence, the President of Romania designates as candidate for the office of Prime Minister the representative proposed by a coalition of parliamentary political parties that sums up the absolute majority of parliamentary mandates, according to the official result of the elections.(3 ^ 3) If the third candidate for the office of Prime Minister submits his mandate, he does not appear before the Parliament for the vote of confidence within the prescribed period or does not obtain the vote of confidence, the President of Romania dissolves the Parliament.

agreements/agreements between political parties/alliances - which have not obtained the highest number of mandates - on the appointment of a certain person as a candidate for the office of prime minister, especially if two or more parties have obtained a very close number of mandates; in this case, it can lead to the coagulation of an absolute parliamentary majority from the political parties or alliances⁴⁹ that are in the next places.”

Although, as we have seen Article 103 of the Romanian Constitution, the principle of separation and balance of powers in the state (Article 1 paragraph 4 of the Constitution), the principle of legality and the obligation to respect the Constitution and its supremacy, as well as the laws (Article 1 paragraph 5 of the Constitutions), the fundamental obligation to exercise rights in good faith also obliges public institutions to exercise their role and duties in good faith and loyalty. The Constitutional Court of Romania reiterated on various occasions *“the importance, for the proper functioning of the rule of law, of the cooperation between the state powers, which should be manifested in the spirit of the norms of constitutional loyalty, loyal behavior being an extension of the principle of separation and balance of powers in the state”⁵⁰.*

6. CONCLUSIONS

Art. 103 of the Romanian Constitution must be considered as a concrete means of implementing the principle of separation and balance of powers in the state⁵¹. Therefore, the text obliges the two fundamental institutions of the state to work together (not to sabotage each other) having at their disposal the necessary instruments as we have seen, respectively, in the spirit of the Constitution, if not in its letter, to always find the political solution that corresponds to the popular will. Especially in situations of political crisis, cooperation is essential.

In the procedure for appointing a candidate for the office of Prime Minister, the President of Romania cannot disregard the options of the parliamentary political parties expressed during the consultations or the will of the Parliament. Moreover, by virtue of his role as mediator, the President of Romania is obliged to always act pro-actively and to identify, even negotiate, the most appropriate solutions for completing the procedure of establishing a new Government. Specifically, if there is an absolute parliamentary majority, the only option of the President is the proposal of this majority. In the absence of such a majority, it will appoint a candidate from the list resulting from consultations with political parties. Such a solution is in the spirit and letter of the Romanian Constitution, of the role of mediator of the President, of the constitutional loyalty that he must prove. Otherwise, the president's behavior could be considered a violation of the Constitution.

Is it necessary to amend the text of Article 103 of the Constitution of Romania? Not necessarily, but in the name of accuracy, a proposal for amendment may be considered in

⁴⁹Decision of the Constitutional Court Of Romania no. 80 of 16 February 2014 on the legislative proposal on the revision of the Romanian Constitution, published in the Official Gazette no. 246 of 7 April 2014.

⁵⁰Decision of the Constitutional Court no. 799 of 17 June 2011 on the draft law on the revision of the Romanian Constitution, published in M.of. No. 440 of 23 June 2011; Decision of the Constitutional Court no. 1 of 4 January 2011, published in M.Of. No. 135 of 23 February 2011; Decision of the Constitutional Court no. 1431 of 3 November 2010, published in M.Of. No. 758 of 12 November 2010.

⁵¹ Cristian Ionescu, *Raporturile Parlamentului cu Guvernul și Președintele. Comentarii constituționale*, p. 68.

the sense that the text of Article 103 paragraph 1 of the Romanian Constitution also provides for the President's obligation to refer to the candidates' proposals resulting from the relevant consultations being to obtain the support of the parliamentary majority.

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