

PROTECTION AND PROMOTION OF HUMAN RIGHTS BY THE EXECUTIVE AUTHORITY

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Abstract

In the Romanian constitutional system, the President of Romania belongs to the executive power, along with the Government, institutionalizing thus the dualist model of organizing the executive power. Therefore, it results that the two state authorities that are responsible, according to the Constitution, for the executive power in a balanced manner, are the President of Romania and the Government. However, unlike the government, the President's executive role is more attenuated, the other dimensions of its constitutional status being more important. In our scientific approach, we have analyzed only the institution of the head of the State as part of the executive power and we have emphasized the need to adopt a law that would give more freedom of action and several prerogatives to the President, even the right of legislative initiative. In this normative document, we consider that we should change the conditions that must be fulfilled by a candidate for the position of President of Romania, meaning the introduction of the condition that he should have a degree in law, taking into consideration that, by virtue of his prerogatives, he participates in the legislative process through the promulgation of the laws received from the Parliament.

We have analyzed the institution of the President of Romania, highlighting its dependence on the Prime Minister, but also that in all he undertakes, the President is supervised or collaborates with other institutions.

Keywords: *President, Status, Government, human rights.*

The present study analyzes the institution of the President of Romania in order to identify the levers and mechanisms through which the head of the state is given the opportunity to make a substantial contribution to the protection and promotion of the rights of the citizens who elected him.

In this approach we have elaborated several suggestions of *lex ferenda* designed to bring extra value to the presidential institution but also to put in order the existing legislation in this area.

Presently, the Law no. 47/1994 regarding the organization and functioning of the Romanian Presidency republished in the Official Monitor no. 210 of April 25, 2001 regulates the presidential administration, a public institution with legal personality made available to the President of Romania for its task. The law does not establish the

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rights and obligations the President of Romania during and after his mandate. Article 101 of the Constitution establishes that “the allowance and the other entitlements of the President of Romania shall be established by law”, for which Law No. 406/2001 was drafted on granting of rights to persons who acted as head of state, but his obligations after this period are no set in this document either.

Therefore we propose as *lex ferenda*, the elaboration of a statute of the President of Romania, a consistent normative act showing, among other things, his concrete rights and obligations, during and after his term (as most often they are mistaken for attributions) specific terms, a confidentiality clause to take effect after the termination of the mandate, rules of protocol, etc. The confusion of rights and duties may have adverse effects on the entire policy of government, because, as you know, a right is left to every individual’s choice whether he exercises it or not, when a duty is required to be fulfilled. Therefore, for the coherence of exercising this position in the future and the President’s obligations during and after his mandate, we consider important the elaboration of this *Statute*.

I. Attributions of the President of Romania

In the Romanian constitutional system, the President of Romania is part of the executive power, along with the Government, therefore the dualist model for organizing the executive power, being institutionalized. It results therefore that the two state authorities that perform, according to the Constitution, the executive power in a balanced manner are the President of Romania and the Government¹. Unlike the government, however, the executive role of the President is more attenuated, excelling the other dimensions of its constitutional status².

The President’s responsibilities in relation to the Parliament

In relation to the Parliament, the President fulfills the task of promulgating laws, a specific task to each head of state regardless the form of government. The available term is 20 days after receiving the law. As an exception, the period may be reduced to half, or 10 days, when the President, before the promulgation of the law, seeks to defeat this term, opposing the promulgation, by relying on one of the constitutional procedures at his disposal: notification of the Constitutional Court or the request to review the law³.

Another task of the President in relation to the Parliament is to address messages to the Parliament on the main problems of the nation. Therefore, the message is an act of the President, a possibility of communication with the legislative authority, and in terms of the scope of these problems of the nation, the Constitution does not expressly provide which they may be, therefore, the President is the one who appreciates when

¹ Cristian Ionescu, *Contemporary Constitutional Law Treaty*, Second edition, CH Beck, Bucharest, 2008, p 819.

² VerginiaVedinaş, *Administrative Law*, Third Edition revised and updated, Universul Juridic, Bucharest, 2007, p. 283.

³ VerginiaVedinaş, *Administrative Law*, seventh edition revised and updated, Universul Juridic, Bucharest, 2012, p. 338.

to refer these messages. The only consequence of these messages is that there is a meeting of the Chambers in joint session to receive it, but according to Decision no. 87/1994⁴, it is not mandatory to debate the message.

But if we talk about messages through which the President announces the Parliament about the actions taken to reject an armed aggression, the Chambers have the obligation not only to meet to receive the message, but also to debate it, and the President will participate at the debate. This way, the message takes the form of a decree which is countersigned by the Prime Minister.

The President may summon the Parliament no later than 20 days from the date of election, but may also request a meeting during extraordinary sessions of the Parliament.

The President's responsibilities in relation to the government

By virtue of his duties that derive as part of the executive, the Romanian Constitution provides that the President shall nominate a candidate for Prime Minister and appoints the government depending on the vote of confidence given by the Parliament, in case of governmental reshuffle or vacancy of office, revokes and appoints by the Prime Minister's proposal, some members of the Government (Article 85), he may consult the Government about urgent matters and of particular importance (Article 86), he may participate in meetings of the Government in which are being debated issues of national interest regarding the foreign policy, defense, ensuring public order and at the request of the Prime Minister, in other situations (Article 87).

As we have said before, the Constitution stipulates that the President shall act as a mediator between the functions of the state as well as between the state and society. We find that the constituent legislator is linking the function of mediation between the state powers and between the state and society to the exercise of another attribute of his, by which the President shall ensure the proper functioning of the public authorities. To achieve this mission, he carries the role of mediation. We are not dealing with two distinct functions, but with one, two attributes to be precise of the same function⁵.

Also, as the representative of the executive in foreign relations, the President of Romania concludes international treaties (Article 91), by the proposal of the Government, accredits and recalls diplomatic envoys of Romania and approve the establishment, cancellation or changing of the rank of diplomatic missions (Article 91, Paragraph (2) and in internal relations, appoints in public functions (Article 94);

In the field of defense, he is the Commander of the Armed Forces and Chairman of the Supreme Council of National Defense and the Prime Minister shall act as Vice-President, in this capacity he countersigns the acts of the President.

Also in his capacity as a representative of the executive, the President of Romania issues decrees, and the decrees are legal documents of administrative nature which may be subject to judicial review by an action at the administrative court in the conditions of Law 554/2004. The countersign of some of the decrees by the Prime

⁴ Published in the Official Gazette. No. 292 of 14 October 1994.

⁵ VerginiaVedinaş, op. cit., 2012, pp. 336-337.

Minister sets up the possibility of a review by the head of the Government and its accountability to the legal consequences of presidential decrees⁶.

The President's responsibilities in relation to the judicial authority

The President appoints judges and prosecutors, the judges appointed by him enjoy immovability, meaning that they cannot be suspended or revoked except for disciplinary reasons. Also, the President, by decree, may grant individual pardons and clemency in this case the act must be countersigned by the Prime Minister. According to Law no. 546/2002⁷ on the procedure for granting pardons and clemency, pardon is the measure of clemency which consists in removing, in whole or in part of the sentence imposed by the court or in its switching to a lighter one. But the law, rather terse, in my opinion, does not specify conditions that are to be met for the condemned to benefit from this measure of clemency, thus leaving room for interpretation.

Also the President may declare general or partial mobilization of the armed forces and in case of armed aggression against his country is obliged to take urgent action to reject the aggression and to inform the Parliament about it through a letter.

To exercise the prerogatives that are set for the President by the Constitution of Romania and by other laws, the Presidential Administration is organized and functions as a public institution with legal personality established in Bucharest, at Cotroceni Palace. By the Presidential Administration we understand public services available to the President in order to fulfill his duties⁸.

The presidential administration establishes collaboration relations with public authorities and gets support from them in order to fulfill the prerogatives and for exercising the powers of the President of Romania⁹.

Regarding responsibility, we can say that, according to the Article 84 Paragraph (2) of the Constitution, the President of Romania has immunity meaning that he cannot be held legally responsible for the political opinions expressed in exercising his office.

The Romanian Constitution has two texts related to the responsibility of the Head of State: criminal responsibility, mentioned in Article 96 as impeachment and suspension from office, stipulated in Article 95 and which may also be called political responsibility.

Regarding political accountability, the Fundamental law provides that: *In case of committing very serious offenses that violate the constitutional provisions, the President of Romania may be suspended by the Chamber of Deputies and the Senate, in joint session, by the majority of deputies and senators' votes, after consulting the Constitutional Court. The President may bring explanations to the Parliament regarding the facts he is charged with.*

The constitution does not establish which could be the serious offenses committed by the Head of State which may attract suspension from office, being the constitutional court's mission to establish if the facts the President is charged with, go

⁶ Emil Bălan, *Administrative Institutions*, C. H. Beck, Bucharest, 2008, p 78.

⁷ Law no. 546/2002 published in Official Gazette no. 755 of 16 October 2002.

⁸ Article 1 of Law 47/1994 published in Official Gazette no. 210 of 25 April 2001.

⁹ Article 6 from Law no.47/1994.

in the serious offense category. It considered that it falls into the area of application of article 95, acts of decision or evading from fulfilling certain mandatory acts of decision, by which the head of state would suppress the functioning of public authorities, would suppress or restraint the rights and freedoms of citizens, would disturb the constitutional order or would want the change of the constitutional order or other deeds of the same nature which would have similar effects¹⁰.

The President's legal responsibility can be drawn in terms of Article 96 of the Romanian Constitution, which provides that the Chamber of Deputies and the Senate, in joint session, by a vote of at least two thirds of the Deputies and Senators may decide the impeachment of the President of Romania for high treason.

In the doctrine, serious critics have been brought up about keeping the term of high treason in the content of the Constitution¹¹.

We share the opinion on the qualification of the crime of high treason as an act of a complex nature, political and legal at the same time, which cannot be confused with the crime of treason in the Penal Code¹², nor can be an aggravating factor, but we support the need for this deed to find its consecration in an organic law. Otherwise it could make room for political arbitrary and would violate the constitutional principle of legality of the offense¹³.

For deeds that are not related to the President's prerogatives, the person holding the office will respond according to the common law, like any citizen¹⁴.

II. The President of Romania's contribution to the protection and promotion of human rights

Romania has a semi-presidential regime, and this implies a middle position between the presidential system in which the President has very wide prerogative and the parliamentary system in which the President does not have too many prerogatives.

Therefore, everything that the Romanian President undertakes in order to exercise his powers are functions performed in close collaboration with the Prime Minister, respectively with him and the Parliament (for international treaties).

In the Presidential Administration there is a number of departments which are designed to provide the data, information, reports and summaries to the President the Romanian about the condition in which the field he represents is in. For example, the Department of Education and Research provides the President, with information on the status of Romanian Education and Research, the Department Public Health provides solutions to The President regarding public health problems of the country and contributes to the function of mediation between the decision-making factors in the field of public health and the society, etc.

¹⁰ Verginia Vedinaş, *Op. cit.*, p. 350, advisory opinion of the Constitutional Court no. 1/2007.

¹¹ Tudor Drăganu, *A controversial crime: high treason*, in „Curierul Judiciar”, no. 12/2003, p. 89.

¹² Pierre Pactet, *Political Institutions. Constitutional Law*, Masson, Paris, 1992, p. 384.

¹³ Verginia Vedinaş, *op. cit.*, 2012, p. 352.

¹⁴ Emil Bălan, *op. cit.*, 2008, p. 79.

Starting with this information, the President may detect any legislative gaps, but does not have the right of legislative initiative and then can only stop the adoption of draft laws by resending it to the Parliament for review. But even this number of resending is limited (only once), then the law will be promulgated as binding.

It is well known: the most important political decisions since December 1989 have been taken at Cotroceni Palace. The Authority that the presidential office gave was fully exploited by all three post-December presidents. In Romania, the constitutional prerogatives of the presidential office encourages authoritarian inclinations of the supreme status, allowing the easy ability to any person who fulfills this function to use their power to achieve individual goals or the goals of the group that elevated him in that position. None of the presidents were able to implement the program in the campaign, and this has naturally attracted the antipathy of the electorate.

So far, at least in Romania, we cannot speak of an actual contribution of the President, to protect citizens' rights, given that in everything he undertakes he is coordinated, supervised by other state institutions or political parties.

As president of CSAT he has still important tasks. This public authority is to organize and coordinate unitary the activities concerning national defense and security. By virtue of its quality of President of CSAT, the President of Romania has drafted the National Defense Strategy, a tool with which risks can be managed and also existing vulnerabilities in the national security policy.

This strategy reflects the need to ensure balance between national security and other important areas such as health, economy or education, so that, besides military defense, the strategy also aims fields of foreign policy, energy security, cybernetics, information services, public order, etc.

We should not overlook the fact that at the base this strategy is the citizen's safety and the President of Romania (and CSAT) has the right and must identify effective sectorial strategies to protect the citizens that elected him.

So, benefiting from reduced prerogatives in times of crisis, unlike presidents of parliamentary republics such as Italy or the Czech Republic which can dissolve the Parliament, the President of Romania is forced to attend the party political game. Bound by the Constitution to ensure smooth functioning of public authorities, but also to mediate between state powers and between state and society, the President can call on its prerogatives or leave a clear path, to parliamentary solutions for solving the crisis¹⁵.

In 2014 we will elect a new President, but before that a reform of the institution itself would be needed, as part of a whole system of values of Romanian society and the newly elected President is expected to be able to design and implement concrete programs to get out of the crisis, for the recovery of the economy, to improve the citizens' living standards.

¹⁵ Cristian Pîrvulescu, *Presidency, an institution seeking balance*, „Magazine Coverage Policy”, no. 86/2000, p. 13.

III. Conclusions

Analyzing the institution of the President of Romania, one can observe his dependence on the Prime Minister, but also that, in everything he undertakes, the President is supervised or collaborates with other institutions.

The Presidential office involves, among other things, his obligation to supervise objectively and impartially the proper functioning of the state institutions. To fulfill these conditions, the President should be apolitical. Theoretically he is, but in reality, the fact that he was a part of a political party before having the Presidential status is enough to understand that he will never give up the political relationships that he has with the party that supports him. On this matter, I recommend finding solutions for real depoliticization of this institution.

Another modification that we consider pertinent, if not necessary, is the introduction of a condition related to the studies. Therefore, among the conditions that a candidate must fulfil in order to run for presidency in Romania, there is no obligatory condition related to the level of studies or to their type. In such a situation, we consider that it is necessary to introduce the condition that *the candidate should be a graduate of a university of legal, political or administrative sciences*, considering that, as it is known, the president also has an essential role in the enactment of laws.

The Romanian Constitution stipulates in Article 74, Paragraph (1): *the legislative initiative belongs, according to the case, to the Government, Deputies, Senators, or a total number of at least 100,000 citizens with the right to vote*. We propose changing this constitutional provision as follows: *the legislative initiative belongs, according to the case, to the Romanian President, the Government, Deputies, Senators, or a total number of at least 100,000 citizens with the right to vote*. The argument is that the Romanian President exercising the executive power in the state and answering in front of people for the proper functioning of the Government and all public institutions that make up the executive, should essentially have such a prerogative.

As these items are precisely not coherent, we could not delineate the Romanian President's contribution to the protection of human rights from the contribution of other institutions or public authorities, and his role in this sense seems insignificant or it is just about mediating the relationships between the state powers as well as between the state and the society.