

THEORETICAL ASPECTS CONCERNING THE POWERS OF THE PRESIDENT OF THE STATE ACCORDING TO CURRENT CONSTITUTIONAL RULES

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ABSTRACT

ORGANIZED ON THE PRINCIPLE OF STATES' POWERS IN A STATE, THE SEPARATION PRINCIPLE ENSHRINED BY THE CONSTITUTION AND THE STATE SYSTEM IS BUILT ON THE THREE POWERS: LEGISLATIVE POWER, EXECUTIVE POWER AND JUDICIAL POWER. THE PRESIDENT OF THE STATE IS, AS A RULE, THE EXECUTIVE POWER, HENCE THE COMMONLY USED EXPRESSIONS OF "CHIEF EXECUTIVE" OR "CHIEF EXECUTIVE". ACCORDING TO THE FUNDAMENTAL LAW, THE PRESIDENT REPRESENTS THE ROMANIAN STATE AND IS THE GUARANTOR OF NATIONAL INDEPENDENCE, UNITY AND TERRITORIAL INTEGRITY OF THE COUNTRY. THE ROLE OF THE PRESIDENT OF THE STATE, AS HEAD OF STATE AND THE EXECUTIVE POWER, STEMMING FROM THE PERFORMANCE OF THE FOLLOWING FUNCTIONS: REPRESENTATION OF THE STATE AND PARLIAMENT, WHICH REPRESENTS THE ELECTORAL BODY; GUARANTOR OF THE INDEPENDENCE OF THE STATE, UNITY AND TERRITORIAL INTEGRITY AND THE CONSTITUTION, ACTING FOR COMPLIANCE.

KEY-WORDS: FUNDAMENTAL LAW, THE PRESIDENT OF THE STATE, THE EXECUTIVE POWER, THE POWERS OF THE PRESIDENT.

The Chief of State institution originated in the history of the world, of the State systems.

In Romania, the role of the President of Romania is a clear statement of the provisions of article 80 of the Constitution, according to which Romanian President represents the Romanian State and is the guarantor of national independence, unity and territorial integrity of the country. Thus, the Romanian President's role stems from the following functions: representation of State and Parliament; guarantor of the unity and independence of the State, the integrity of the territory and of the Constitution, acting for its observance, mediation between the powers of the State-legislative, Executive, judicial, and between the State and society, which implies significant segments of political and civil society, focusing on ensuring social peace throughout the country. As lawmakers, the President of Romania has a popular legitimacy, being elected by uninominal constituencies within an encompassing the whole country. To be elected, the candidate for President must meet the option of the majority of voters, which is likely to ensure its President chose a representativeness in particular legitimacy. In this sense, if in the first ballot no candidate

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obtained a majority also organized a second round, in which he is declared elected as one who has obtained the largest number of votes². In accordance with article 83, paragraph (1) of the Constitution "the President's term of Office is five years and shall be exercised by the oath". The result of the elections for the Office of President shall be validated by the Constitutional Court. Offset through law No. 441/2003 to revise the Constitution, parliamentary elections is a necessity for political life in our country, and increasing by one year the mandate of the President of Romania towards the mandate of Parliament is necessary to maintain the continuity of the presidential institution in parliamentary campaigning period, which represents an additional guarantee for the political stability of the country³.

Until the oath-taking of the newly elected President, former President, performs his duties to ensure continuity in all activities. Just like the parliamentary term of Office at the presidential may be extended by organic law in case of war or catastrophe.

In accordance with article 84, paragraph (2) of the revised Constitution "the President of Romania shall enjoy immunity". Immunity occurs as a protection measure, which concerns all forms of legal liability, with the exception of dismissal by the electoral body or by the High Court of Cassation and Justice, which could decide to indict the President for high treason.

Regarding incompatibilities of function of the President it in accordance with article 84 paragraph (1) of the Constitution "cannot be a member of a political party and may not perform any other public or private office." In this respect, the fact that he was elected President by universal suffrage of all Romanians, he cannot be a member of any political party, although via of that political party he came to be elected head of State. Non-affiliation to any political party and fairness toward them, allow the President to be a mediator and guarantor of national unity of the Romanian people, a factor of balance, an effective defender of the independence and sovereignty of the State.

The President represents the Romanian State, State power, the Romanian society, the Romanian people domestically and internationally. He is the person holding the highest authority and responsibility to act on behalf of the State. The State represents a symbol of national community⁴, and the head of State, as the political power, the right to govern on behalf of the citizens of the State, is the moral and legal person governed by public law that defines personality and ensure continuity as the center of power and decision⁵.

In the literature the authors often use various notions refer to actions or inactions on Constitution and laws which confers the President in the exercise of this function. Among these are the concepts of "tasks", "function", "role", "powers" as the authors not make any significant distinction between them.

Leaving aside even etymological traits that each of these notions, the teacher Mircea Preda believes that is the most appropriate expression of the "powers of the President"⁶, that phrase is used in the Constitution in accordance with articles no. 91,92, 94.

² Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *The revised Constitution*, (Bucharest: All Beck, 2004), 141-142

³ Constantinescu, Iorgovan, *The revised Constitution*, 143

⁴ Ion C. Grecescu, *Presidential institution*, (Bucharest: Rosetti Publishing House, 2003), 41

⁵ Grecescu, *Presidential institution*, 41

⁶ Mircea Preda, *Public administration authorities*, (Bucharest: Lumina Lex Publishing House, 2002), 30

I. RESPONSIBILITIES IN RELATIONS WITH PARLIAMENT

Under art. 88 of the Constitution, the President is empowered to make posts on the main political issues of the nation. The role of presidential messages is to sensitize the legislative forum towards political priority issues that emerged in the social life.

However, under the Constitution, this provision is restrictive in the sense that problems can arise from any kind of national interest, not only in the political field, but also in other areas. It should be from this point of view to enable the President to be address Parliament messages concerning problems in any field, if it considers that they are of national interest.

From the perspective of the article 88, the message meets a twofold role: represents an institutionalized communication between the President and Parliament and, at the same time, it is a way for President to draw the attention of representatives of the people and, implicitly, of the people, on some issues, which the State institutions must solve them or which concern them directly on citizens. With respect to the form through which the President addressed message, constitutional text does not contain clarifications in this regard. In the absence of specific regulations, the following situations are possible: 1) presentation of the message of the President; 2) reading a message sent, for example, to the Presidential Advisor and 3) sending the message in the form of a letter⁷.

According to article 89 para. (1) of the Constitution "after consultation with the Presidents of both Chambers and the leaders of parliamentary groups, the President of Romania may dissolve Parliament if it did not give vote of confidence to form a new Government within 60 days after the first request, and only after rejection of at least two requests of investiture." According to para. (3) of the same article of the Constitution, "Parliament may not be dissolved during the last six months of the mandate of the President of Romania, nor during the State of war, mobilisation, siege, or emergency".

According to constitutional rule, dissolving Parliament presumes some mandatory steps⁸: a governmental crisis characterized by the refusal to grant a vote of confidence to form a new Government for 60 days after the first request and after rejection of two such requests (an objective condition), and consultation by the President of Romania with the Presidents of both Chambers and the leaders of parliamentary groups (a subjective condition). Only after these consultations, the the President may issue the Decree of dissolution of Parliament. Law no. 429/2003 revision of the Constitution was introduced and that Parliament may not be dissolved during a State of war, mobilisation or urgent.

The rationale for the imposition of these prohibitions is considering both avoidance of electoral consultations at given too close during the same year, as well as avoiding a crisis of State authorities, determined by the lack of a Government based on the confidence of Parliament and provisional Government of a party lacking Ministerial legitimacy.

The dissolution of Parliament, regulated in art. 89 of the Constitution, republished, and subject to multiple strings attached, unable to intervene than in full compliance with these provisions,, which makes it almost impossible to achieve. Even in the fulfilment of these conditions and conditionalities, the dissolution of Parliament according to constitutional provisions remains a decision which is a discretion of the President of Romania, the Romanian State's practice not to have identified any situation of dissolution of Parliament⁹.

⁷ Mihaela Codrina Levai, Camelia Tomescu, "The duties of the President in relation to the Parliament-the theoretical and practical aspects,, Administrative Sciences Magazine, Romania 1(30)/2012, 86-87

⁸ Constantinescu, Iorgovan, *The revised Constitution*, 147

⁹ Levai, Tomescu, *The duties of the President in relation to the Parliament-the theoretical and practical aspects*, 91

Put in question the refusal by those who see the dissolution of Parliament. Under these circumstances, the President may dissolve Parliament, because the Constitution does not make any indication in this regard, and may give rise to different interpretations.

Thus, the lawmakers may argue that if they oppose the President cannot dissolve Parliament because their opinion is in accordance with the compulsory. On the other hand, one can argue that opposition members of Parliament is not mandatory for the President, and he can dissolve Parliament, because the Constitution provides for consultation and not the approval of the lawmakers, Parliament's opinion therefore has only advisory in nature and not according to.

The President can intervene in two situations to summon Parliament into session:

- art. 63 para. (3) - the President shall convene the Parliament who resulted from elections no later than 20 days after the date of carrying out of elections
- art. 66 para. (2) - the President may request the convening of an extraordinary session of both parliamentary chambers.

This constitutional prerogative of the President is justified by the fact that after the election the new Parliament, and the Presidents of both Chambers have not yet been elected to exercise the responsibility of convening the legislature. The Act by which the President of Romania brings to fruition this attribution is the Decree¹⁰.

As regards the second situation, the Constitution is not regulated the legal value of the President's demand, meaning if his request is mandatory or not. Instead, the rules of procedure of the two chambers solves this problem. To this end, the regulation provides that the Chamber of Deputies be disapproved by the room of the agenda requested prevents keeping special session. As in the case of the Senate. In the literature, it was claimed that the constitutional rule does not amount to a legal demand to the President, meaning if the request for convening the special session is mandatory for Parliament, because only by the Constitution it can regulate the jurisdiction of Parliament and the President in their mutual relations¹¹. Taking advantage of such that the Constitution does not specify whether the request of the President or not binding for Parliament, the two Chambers have rules in their relations with the President, exceeding their powers.

A constant of the contemporary public law is the recognition of the right for the President to promulgate laws passed by Parliament, obliging the authorities to put in execution the provisions thereof. Promulgation is the operation by which the head of State exercises his constitutional powers regarding the adoption of the law and materializes in a decree, which enshrines the finality of the legislative process and to be published in the Official Gazette, making it possible the entry into force of the law¹².

Under art. 77 of the Constitution, the President must promulgate laws passed by Parliament. He must promulgate within twenty days of receipt, the right to ask for a one-time review of her by Parliament. The Constitution, however, does not specify what is the value of sending the law for review, in the sense that it does not show whether the Parliament is obliged to alter the law, taking into account the observations of the President. There is no provision in this respect, Parliament is not obliged to take into account the specifics of the President, having the possibility to adopt the law in the same form, the President being forced to promulgate after review. However, the Parliament is obliged to take into account the Constitutional Court's decision and

¹⁰ Levai, Tomescu, *The duties of the President in relation to the Parliament-the theoretical and practical aspects*, 89

¹¹ Levai, Tomescu, *The duties of the President in relation to the Parliament-the theoretical and practical aspects*, 89

¹² Levai, Tomescu, *The duties of the President in relation to the Parliament-the theoretical and practical aspects*, 92

amend the law according to its decision, the Court said the law or provision of the Act unconstitutional.

So, in the relationships with Parliament, the Constitutional Court has a superior position to the President, and even Parliament. After receiving the law after the review times of receipt of the decision of the Constitutional Court by confirming the constitutionality of the law, the President must promulgate the law within 10 days. Promulgation: final legislative procedure and it allows the President to submit a law last checks in terms of its content and even the constitutionality of them.

II. RESPONSIBILITIES IN RELATIONS WITH GOVERNMENT

Under art. 103 of the Constitution, the President designates a candidate for the post of Prime Minister. Nomination takes place after consulting the party who has an absolute majority in Parliament, or, if there is no such majority, the parties represented in Parliament¹³. Thus, if there is no political party that owns a majority in Parliament, will have consultations with all the parties represented in Parliament in order to constitute a majority parliamentary support, necessary for obtaining the vote of confidence and form a new Government, the President in this case has a mediation function.

The proposal to give the Government a vote of confidence shall be subject to a vote in a joint sitting of the two chambers, the vote being secret and is expressed through balls. To the extent that this proposal meets the majority of Deputies and senators, she is adopted and shall take the form of a decision of the Parliament which shall be signed by the Presidents of both Chambers and and shall be forwarded to the President of Romania who shall be to proceed to the appointment of the Government. The President will issue a decree on the appointment of the Cabinet of Ministers, in accordance with the list which was the subject of a vote of confidence, the Government's appointment followed by oath by all members of the Government in front of the President.

The President may consult the Government about the urgent problems and is of special importance, consultation aimed at the exchange of information and a thorough preparation of the decision. (the conclusions of the meeting of Government do not constitute obligations for the President, which has only an advisory opinion and any opinions of the President are not mandatory pt Government.)

In accordance with article 87, paragraph (1) and (2), the President may take part in meetings of the Government debating upon matters of national interest with regard to foreign policy, defence of the country, ensurance of public chairing his Government attended meetings he and deprived of the right to vote, because otherwise, would meet jointly with members of the Government for the decisions and actions taken, what is inadmissible.

III. RESPONSIBILITIES IN FOREIGN POLICY

The President of Romania has significant powers in foreign policy, these concerning the conclusion international treaties and ensuring the ties diplomatic with other countries¹⁴. According to article 91 para. (1) of the revised Constitution "the President of Romania shall conclude treaties on behalf of the Romanian, negotiated by Government, and subjecting them to Parliament for

¹³ Ion Rusu, *Relations with Parliament President and the Government. Critical observations*, Administrative Sciences Magazine, Romania 1(25)/2010, p. 202; see Marieta Safta "Rolul Parlamentului și al Președintelui României în procedura investiturii Guvernului și a numirii miniștrilor. Dezvoltări în jurisprudența Curții Constituționale a României", Administrative Sciences Magazine, Romania 1(30)/2012, 160-161

¹⁴ Rodica Narcisa Petrescu, *Administrative law*, (Bucharest: Hamangiu Publishing House, 2009), 68

ratification within a reasonable time". Law no. 429/2003 revision of the Constitution has provided that international treaties concluded by the President, as a result of negotiations by the Government, negotiations may participate directly and the President, shall be subject to ratification in Parliament a reasonable period of time. This notion of "reasonable time" is provided and in the European Convention on human rights¹⁵.

Given this high power to enter into treaties on behalf of Romania, the President expresses the will of the Supreme in the State having the capacity to acquire rights and assume obligations on behalf of the Romanian State by legal acts concluded. Capacity to enter into international treaties is a defining attribute of the international legal personality of the State as the main subject of international law, which the President shall exercise his duties by virtue of constitutional.

The Mission of the President of Romania shall be reduced solely to expressing Romania to become a party to that Treaty, putting your signature on that Treaty, which, under the terms of the Constitution and of international public law practice, means "the conclusion of the Treaty on behalf of Romania". But the President's signature, however, lacks any legal relevance, if Parliament will not ratify that Treaty, the President being forced to send it to Parliament within a reasonable time¹⁶.

According to article 91 para. 2 of the Constitution "the President on a proposal from the Government, accredit and recall diplomatic envoys of Romania and approve the establishment, disestablishment, and ranking of diplomatic missions abroad".

The Romanian State's diplomatic representatives appointed by the President in foreign States fulfilling the function of representation of interests of State and Romanian citizens in the State of residence, negotiates with the Government of the State concerned, shall inform the Romanian Government about the events and conditions in the State in which they are accredited.

Also according to article 91 para. 3 "envoys of other countries are accredited in addition to Romanian President," who are the representatives of other States, nominated by the heads of State concerned.

IV. RESPONSIBILITIES IN THE FIELD OF DEFENSE

The Chief of State has important powers under the Constitution in the field of defense and security of the country¹⁷, some being subject to approval of Parliament¹⁸. The President of Romania shall be commander-in-Chief of the armed forces in accordance with article 92 paragraph (1), and the President of the Supreme Council of national defense. As Commander-in-Chief of the armed forces can mobilize them, with the approval of Parliament.

Also in the event of armed aggression, for rejecting its, the President shall decide on the measures required in such a situation and bring them to the attention of Parliament through a message. If it is not in regular session, the President convenes by right in extraordinary session by the Chairmen of the boards, within 24 hours.

According to military doctrine and policies, the Romania's armed forces are prepared for the purposes of the defense of the country from any aggression from outside, of the rejection of the attacks directed against the territorial integrity, independence and sovereignty of the State of Romania and of the fulfillment of international obligations incumbent on it under the partnership

¹⁵ Ina Raluca Tomescu, *Citizens' rights and liberties vs. antiterrorist legislation*, Annals of the "Constantin Brâncuși" University of Târgu-Jiu, Letters and Social Sciences Series, no. 3/2013, 48-52.

¹⁶ Antonie Iorgovan, *Treatise on administrative law*, vol.I, Ed. 4, (Bucharest, All Beck Publishing House, 2005), 321

¹⁷ See Marcu, Flavius-Cristian, „*Security as a determining factor of quality of life in a state from an insecure regional area*”, Annals of the "Constantin Brâncuși" University of Târgu-Jiu, Letters and Social Sciences Series, no. 4 (2016): 77-85.

¹⁸ Zoica Zamfirescu, *The romanian constitutional system*, (Craiova: Sitech, 2005), 247-248

for peace. The President of Romania is entitled to take exceptional measures in the event of exceptional events such as natural disasters (earthquakes, floods, fires, etc.).

In accordance with article 93 para. (1) of the revised Constitution "the President of Romania shall set up, under the law, State of siege or a State of emergency throughout the country or in certain administrative-territorial units and require approval of the measure adopted, Parliament not later than 5 days after taking it." Paragraph 2 of the same article states that "if Parliament is not in session, the President convenes by right no later than 48 hours after the imposition of a State of siege or State of emergency and works throughout their duration."

These exceptional circumstances which may affect the situation of political, social, and economic life of Romanian citizens cannot leave indifferent the presidential institution, the Executive who must intervene promptly to remedy the situation by adopting measures of a political, administrative or otherwise, as is the practice in all States of the world in such a situation. The action taken by the President should be subject to approval by Parliament not later than 5 days from the time it was taken, it was convened by law throughout the existence of the exceptional measure, in order to be able to exercise continuous supervision of implementation of the measure adopted¹⁹.

In the case of these extremely serious circumstances (military aggression, State of siege or emergency) which, by their nature, affect fundamental rights and freedoms, but also the stability of the country, the Parliament meets the role of guarantor against potential abuses²⁰.

Taking into consideration the most important powers of the President, it can be asserted that respect the Constitution and laws of the country, the deployment to ensure a good functioning of all organs of the State, the respect for the separation of powers are the constitutional principles fundamental and obligations of the President of the State.

¹⁹ Olivia Roxana Popescu, *Quality management and organizational change*, Annals of the Constantin Brancusi University of Targu Jiu-Letters & Social Sciences Series, supliment 1/2016

²⁰ Levai, Tomescu, *The duties of the President in relation to the Parliament-the theoretical and practical aspects*, 91

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