

HEAD OF STATE IN ROMANIA. DESIGNATION. DURATION OF MANDATE

Oana ŞARAMET¹

Abstract: *While the existence of some political-judicial institutions, such as the Parliament, has been contested overtime, in different social-political and historical times, and the people or the nation have always reclaimed the existence of a leader and the state's power organization did not cause it to disappear but to transform that leader into a true head of state.*

Key words: *head of state, president, mandate, duration.*

1. Introduction

Considering the complexity of its role and current functions, the influence of the separation of powers within the state, as well as the evolution toward a more consolidated or a more fragile equilibrium, we feel that, presently, it is more likely to identify this institution by its own constitutional name, that of president, in case of a republic or the ones assimilated to the monarch - king, prince, duke, in case of a monarchy.

2. Appointment of the head of state in Romania

Appointing the head of state has been achieved in different ways ever since the Paris Convention of 1858. Thus, if Cuza's Developing Status maintained the principle of elective or "lifelong" monarchy as P. Negulescu called it, a principle introduced by the Paris Convention, that of choosing the Leader by the Elective Assembly, the 1866 Constitution, according to article 82,

the 1923 Constitution, according to article 77 and also the 1938 Constitution by article 35, abandon this principle in favour of the one of hereditary monarchy.

This principle was first stated in the Organic Regulations, as the Ruler was about to be chosen by the extraordinary Community Assembly for life, thus, giving up the principle of appointing the ruler by the two great empires - the Tsarist Empire - The Protective Court and the Ottoman Empire - The Sovereign Court; this principle was regulated in the 1826 Akerman Convention and the 1848 Balta-Liman Convention.

Unlike the Organic Regulation, the Paris Convention placed the Romanian state under the power of the guaranteeing powers, causing the Tsarist Empire to lose its important influence in choosing the Ruler. The choice of the Ruler or Leader was to be from a noble family, by the Ruler [7].

We must also state that passing through in office within the monarchy would be achieved "in a descending, direct and

¹ Faculty of Law, *Transilvania* University of Braşov.

legitimate line of His Majesty Prince Charles the First of Hohenzollern Sigmaringen” but only by following the male line, giving priority of the first born and by excluding the females and their successors forever.

The historic and social-political context of those times caused the release from office of domestic rulers and, implicitly, their replacement with a Leader from one of the ruling families of Europe.

Changing Romania’s governing form by Law no 363/1947, by replacing the monarchy with the republic resulted in the transfer of the prerogatives of the head of state from a single personal body to a collegial body, represented by the Presidium of The People’s Republic of Romania or the Presidium of the Great National Assembly or the State Council [4].

The appointment of the members of these collegial bodies was no longer made according to hereditary criteria, as it was to be achieved by appointment.

A similar procedure was used in the Presidium of the People’s Republic of Romania, the minutes of the meeting of the Deputy’s Assembly of December 30th, 1947, were published in the Official Gazette of Romania, part III, Parliamentary Debates no 32 of December 30th, 1947.

Among other things, they put forward a suggestion for a law which was needed in order to appoint the members of the Presidium; this law had been passed within the same meeting and 4 of the 5 members of the newly founded body were sworn in; or, by the choice of the legislative body of those times, namely the Great National Assembly - such a procedure was used in order to appoint the other two previously mentioned bodies. See article 41 of the 1948 Constitution article 35 of the 1952 Constitution, article 65 of the 1965 Constitution as well as the provisions of Law no 1/1961 whereby the latter

Constitution was revised, thus founding the State Council.

The changing of the 1965 Constitution determined the transformation of the person who exercised the function of head of state from a collegial body into a single personal body; however, the appointment procedure was maintained as, according to article 72, the President of the People’s Republic of Romania was about to be chosen by the Great National Assembly.

The election of the President of the National Salvation Front’s council - a temporary organ which can be assimilated to a head of state by the nature of its duties, was achieved by the same conditions, namely appointment by a legislative assembly.

By the Law-Decree no 92/1990 a new way of designating the head of state was regulated, namely a way which is characteristic for a presidential republic, similar to section 94 of the Argentinian Constitution which states that the President and the Vice President of the Nation are to be chosen by the people as a result of the second election phase, according to the provisions of the Constitution; the same procedure is found in other states, such as France, Austria, Portugal, whose dualist executive “allowed for the conservation of some parliamentary issues”, a solution which was maintained by the lawmaker of 1991 and by the 2003 Constitution [6], [10], [11], [12].

The constitutional provisions regarding the election of the Romanian President were completed and developed by Law no 69/1992 for the election of the Romanian President, with subsequent changes and additions, published in the Romanian Official Gazette, part I, no 164 of July 16th, 1992.

Presently, these provisions are to be found in Law 370/2004 for the election of the Romanian President, republished with subsequent changes and additions. Law no

370/2004 was republished in the Romanian Official Gazette part I no 650 of September 12th, 2011; the most recent change was brought by the Government's Ordinance no 45/2014, published in the Romanian Official Gazette, part I, no 475 of June 27th, 2014.

Thus, the Romanian head of state – namely the President is elected, according to article 81, alignment 1 of the Constitution, by universal, equal, direct, secret and freely expressed vote. The election is made according to alignments 2 and 3 of the same article, by the majority's nominal vote, in two phases; if neither candidate has an absolute majority in the first phase of election, the first two candidates will participate in the second phase and the President will be the candidate who has the largest number of valid votes, namely a relative majority.

Similar election procedures are regulated by other constitutions such as that of Austria (article 60), France (article 7) or Portugal (article 129). Electing the head of state by universal and direct vote, as a result of a majority rule within a two-phase nominal election, is the preferred system in parliamentary republics, such as Bulgaria (article 93) [12].

The orientation of the Romanian lawmaker towards adopting this procedure of electing the head of state was not random nor did it aim to implement new constitutional procedures as opposed to the old ones, those of the 1991 Constitution.

Embracing a semi presidential regime in an extended form or a semi parliamentary regime, in the detriment of the parliamentary one as regulated by the previous laws led to the accentuation of the mediation function of the head of state thus, his election by the parliament, a measure which would have allowed the election to be the result of free confrontation between parties represented in the legislative, had to be abandoned.

In this context, we believe that the French lawmaker's intention "of creating an arbitrary power, independent from political parties" by pointing out the Presidential institution according to the current legal provisions is all the more justified in the present constitutional context as we are trying to adopt the French semi presidential system by regulating it in a more attenuated form, closer to a parliamentary regime [5].

Furthermore, it is a known fact that the head of state exercises his function not just among the powers of the state, but also between the state and society, as his neutrality, in lack of any influence from political parties, could ensure his objectivity both in the mediation activity and in its result.

Hence, in order to strengthen the neutrality of the President, by confirming his independence, article 84 alignment 1 of the Constitution regulated as incompatibilities for the President of Romania the following: the quality of member in a political party, the impossibility of holding another public or private office.

Given all these, we must not understand that, by implementing this procedure for election, the head of state becomes a superior authority in regard to the Parliament, especially since both institutions benefit from "an original democratic legitimacy" as a result of the universal vote [3].

This statement is valid in regard to any other authority or political organization.

In regard to the conditions to be met in order to run for President, neither the Constitution, nor the current law which regulates the organization of election for the President of Romania - Law no 370/2004 for the election of the President of Romania, do not contain a unified regulation; we must interpret the regulation by using logic. Article 28 of Law no

370/2004, republished, with subsequent changes and additions, expressly states who can't run for this office, identifying two possible situations: inobservance of the provisions of article 37 of the Romanian Constitution, republished, as well as the one according to which, the person had been elected President of Romania twice before.

The absence of any express regulation in regard to these conditions and before the new law came into force, even before the 2003 change of the Constitution, determined the Constitutional Court to decide which are, in accordance with constitutional regulations, the cumulative conditions which should be fulfilled by the person who runs for President of Romania: the right to vote according to article 34 alignment 2; Romanian citizenship and domicile in Romania according to article 16 alignment 3; affiliation to the category of people who are not allowed to be part of a political party - article 37 alignment 3; to be, on the day of the election, at least 35 years of age - article 35 alignment 2, not to have had previously been elected as President twice before - article 81 alignment 4. [2]

The Constitutional Court's decision no 10/1992 regarding the appeal no 233 of September 7th, 1992 by Mr. Ioan Adrian Mihalcea concerning the registration of Mr. Ion Iliescu as a presidential candidate, was published in the Romanian Official Gazette no 238 of September 25th 1992.

Although subsequent to the revising of the Constitution in 2003, some of these articles changed numbers - thus article 34 became article 36, article 35 was now article 37 and article 37 became article 40, their content was unchanged, with the exception of alignment 3 of article 16, whereby the interdiction of exercising a public function by people who have another citizenship along with the Romanian one, was considered unjustified;

thus, we believe that the Constitutional Court's ruling is accurate. On the other hand, in order to avoid any future controversy or appeal regarding a candidate for Romanian Presidency, we feel it would have been good to regulate these notes in Law no 370/2004; this is the reason why we suggest future changes of this law, which will include this issue.

Even in these circumstances, we must not leave out the fact that, according to article 147 alignment 4 of the Constitution, the decisions of the Constitutional Court are mandatory and only regulate for the future; this is a provision of the Constitution which strengthened the mandatory character of the decisions of this authority previous to the year 2003.

In the procedure for appointing the President of Romania, along with the electoral offices which have, according to Law no 370/2004 republished, with subsequent changes and additions, specific duties regarding the organization and unfolding of the presidential election, an important role is equally played by the political-judicial institutions, such as the Constitutional Court, the Parliament or the Government.

3. Duration of the head of state's mandate in Romania

The 2003 change of the Romanian Constitution entailed the reconsideration of the mandate of the head of state, thus choosing a 5 year duration as opposed to the previous duration of 4 years regulated in the 1991 Constitution.

This new duration of the mandate, justified by the necessity of granting more political stability within the country, helped in maintaining continuity in accordance with the constitutional provisions in most European states [2].

Constitutions of other states such as: Albania (article 25); Bulgaria [article 93

alignment (1)]; the Czech Republic (article 55); Cyprus [article 43 alignment (1)]; Croatia [article 94 alignment (1)]; Estonia [article 80 alignment (1)]; Lithuania [article 78 alignment (2)]; Macedonia [article 80 alignment (1)]; Poland [article 127 alignment (2)]; Portugal [article 131 alignment (1)]; Slovakia [article 101 alignment (2)]; Slovenia [article 103 alignment (3)]; France [article 6 alignment (1)] Germany [article 54 alignment (2)] all provision a duration of 5 years of the president's mandate; there are few states with a shorter or longer duration of the president's mandate. Certain states regulate a duration of 4 years, such as Russia – article 81 alignment (1), Argentina – article 90, Bosnia – Herzegovina – article V paragraph 1 letter b); Latvia - article 36; Mongolia – article 30 alignment (2), the United States of America – article 2 paragraph 1 point 1). Another group of states is formed of those such as Sweden - article 5 of the Constitution and the provisions of the Act For Access to the Throne, Norway - article 6, Holland - article 24, Denmark - Section 1 of the Act for Access to the Throne of 1953 where there is no specific duration of the mandate, as we are dealing with monarchy in which succession is decided according to hereditary criteria. [10][11][12]

However, there are some heads of state whose mandates are of 1 year, like Switzerland [article 176 alignment (2) of the Constitution]; of 6 years – Austria – article 60 alignment (5) of the Constitution or of 7 years - Ireland - article 12 alignment (3.1) of the Constitution, or Italy - article 85 alignment (1) of the Constitution.

Although the reasons behind the latest change in the duration of the President's mandate are justified, we feel that for now and for the next 10-20 years, neither the political stage in Romania nor the citizens

have the political maturity needed to fully understand the reasons which justify this change.

We feel this statement should be obvious just by looking at the political stage in Romania and the fact that Romania is currently on campaign for the presidential election, ever since the beginning of 2014, be it openly or masked; this campaign trail will end toward the second half of November 2014, once the presidential elections are finalized.

The 1965 Constitution stated a similar duration for the President's mandate, thus by corroboration of the provisions of article 71 with those of article 45, we can see that the mandate was of 5 years, identical with that of the Great National Assembly.

Previous to this Constitution, both the 1948 and the 1952 Constitution stated the same duration of the mandate for the President - the Presidium of the Great National Assembly with that of the supreme body of state power - the Great National Assembly, by limiting it to 4 years. On the other hand, during the time when Romanian was a monarchy, regardless of whether it was elective or hereditary, the duration of the head of state's mandate - the monarch – was equal to the duration of his life.

According to article 83, alignment 1 and 2 of the Constitution, the President of Romania exercises his 5 years of mandate, from the date he takes the oath stated in article 82, alignment 1 of the Constitution before the Unified Chambers of the Parliament until when the new President is sworn in. Under these conditions, the value of the oath is not merely symbolical or formal, but also judicial, as it causes legal effects by effectively starting the mandate [3].

The mandate of the President can end before those 5 years and the circumstances in which the presidential mandate ends before the 5 year term, as stated in article

96, alignment 1 of the Constitution, are the following: resignation, removal from office, the impossibility of exercising his duties, death.

Most constitutions state the same situations in which the mandate of the head of state can end before term. Thus, for example, the Finnish Constitution states in article 54, among other situations, when the president's mandate can end before the term, his death or his permanent impossibility to exercise his mandate.

However, unlike our constitutional provisions, in the latter case it is the Government who acknowledges the existing situation and the need for a new president to be elected as soon as possible. Up until this date or in any other case in which the president is prevented from exercising his duties, the interim is exercised by the prime minister or the minister who is vice prime minister [10], [12].

In case of monarchies, the situation of "vacancy of throne" entails certain rules which are established by constitution and by the Act of Access to the Throne. In case of death, abdication or permanent impossibility to exercise the activities, the monarch's duties will be exercised by the children of the monarch or his collaterals - brothers or sisters or members of the closest collateral line of the monarch, according to the principle of heredity, as stated in the Act for Succession to the Throne. Section 9 of Denmark's Constitution states that when the throne is vacant and there is no successor, the Parliament will elect the King, thus establishing the order of succession to the throne. [10][12]

Doctrine distinguished between these circumstances as follows:

- "natural", independent of the monarch's will, like the permanent impossibility of exercising his duties or death;
- "voluntary", when the initiative of

adopting one of the solutions stated in the Constitution belong to the jurisdictional authority - the Constitutional Court; this is the case of removal from office or resignation [3].

According to article 97, alignment 1 corroborated with article 98, alignment 1 and article 146 letter g of the Constitution, in any of these situations, the Constitutional Court will acknowledge the vacancy, by decision. This decision will be the basis for exercising interim presidency.

According to article 98, alignment 1 of the Constitution, the interim will be ensured in the following order: the president of the Senate or of the Deputy's Chamber. However, article 98 alignment 1 of the Constitution mentions two other situations when the interim is necessary: when the President is suspended, according to article 95 of the Constitution or when the President is temporarily unable to exercise his mandate. In both these situations, the necessity of an interim president must be acknowledged by the Constitutional Court.

We can make another distinction based on the definitive or temporary character of the circumstances which justify the interim:

- definitive circumstances - thus causing the vacancy of the presidential institution;
- temporary circumstances - such as suspension from function, regardless of whether this is made by engaging political liability according to article 95 or criminal liability according to article 96 alignment 3 or in case of temporary inability to exercise the duties [5].

Any of these circumstances justifies interim presidency; however, this must be acknowledged by the Court as a result of a request by the President himself or the interim President or the President of one of the Parliamentary chambers; in case of suspension from function, the request must come from the President who led the joint

meeting of the two chambers of Parliament.

Along with stating the conditions in which the presidential mandate can end before term, the Constitution also states the circumstances in which the mandate of the president can be prorogued.

As stated in article 83 alignment 3 these are two such situations: the existence of one of the expressly mentioned situations such as war or catastrophe and the passing of an organic law by the Parliament.

Article 81, alignment 4 of the Constitution mentioned *expresis verbis*, that no person can be in office for more than two mandates, whether they are consecutive or not. This mention was meant to avoid the transformation of the presidential institution into a personal institution [6], [9].

The Romanian constitutional provisions are similar to those of many other states. For example, the Finnish Constitution - article 54 alignment 1, the Bulgarian Constitution - article 95 alignment 1, the Irish Constitution - article 12 point 3.2. Other fundamental laws, such as the Austrian one [article 60 alignment (5)] or the Argentinian one (section 90), point out this interdiction by stating that re-election for the following mandate is allowed once.

But, since Argentina does not have only a President but also a Vice-President, the interdiction operates in case the President and Vice President run for the second time, each for the other's office. [10][11][12]

Our Constitution states a rule which originates from a constitutional tradition born in the United States of America where no President, except for Franklin Roosevelt who had 4 consecutive mandates between 1933 and 1945, served for more than two mandates.

Once the 22nd amendment is ratified, no president will ever do that again [10], [11], [12].

The previously mentioned interdiction concerns only those mandates which were, are and will be exercised under the current Romanian Constitution, as the Constitutional Court mentions "any judgment regarding the logic, meaning and implications of some constitutional texts, including those which concern the institution of the President are analysed and interpreted starting with the situations which arise after its coming into force"; thus, the provisions of article 8 alignment 4 can only be applied for the future.

4. Conclusions

In regard to the election procedure for the Romanian President we feel that there should be no consistent critique in regard to the duration of the President's mandate, at least at this moment when the present article was drafted, a moment which is previous to the organization of the 2014 Presidential elections.

Thus, we must notice that the political-judicial reality, but especially the political reality of the two last presidential mandates, whose duration did not coincide with that of the Parliament and indirectly with that of the Government, was marked by significant controversy, political conflicts and even legal conflicts of constitutional nature which required a decision from the Constitutional Court.

Although, in our opinion, this difference of mandate between the two representative bodies - the President of Romania and the Parliament of Romania - is supposed to accentuate the neutrality of the head of state, the controversy and lack of understanding between these institutions, the need to collaborate, coexist even between the President and the Government and the Parliament or even between the Government, the President and the Parliament could cause a change in constitutional provisions.

Indeed, perhaps the simplest way in which these conflicts between the previously mentioned authorities can be stopped, would be returning to a 4 year duration of the presidential mandate.

However, we believe that, by choosing such a way, we would devolve, as it is not necessary to abandon or diminish the neutrality of the head of state in exercising his specific duties.

We believe that it is justified to maintain the current duration of mandate for presidency, especially since we feel it is advisable to revise our current Constitution by adopting a parliamentary regime instead of the semi presidential regime regulated by the present constitutional regulations.

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