

THE NEUTRALITY OF THE ROMANIAN HEAD OF STATE

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Abstract: *The Constitution of Romania, republished, expressly enshrines, in art. 1 para (4), the principle of separation and balance of powers in the state. The possibility of respecting this principle is outlined by constitutional provisions relating to public authorities, their powers, as well as the relationships between them. In the 1991 constitutional configuration, maintained even after the 2003 revision, the President of Romania was placed in the sphere of executive power, the constitutional functions recognized to him being placed between the other authorities, especially between the Parliament of Romania and the Government, ensuring the balance between them being one of his missions. Analyzing, through specific methods of interpretation and research: logical, systematic, respectively comparative, in this article we aim to show that, by virtue of its constitutional role, as well as in order to exercise it responsibly, neutrality is one of the essential conditions that it must respect.*

Key words: *President of Romania, neutrality, mediation, separation and balance of powers.*

1. Introduction

A starting point or, in other words, a motivation for writing this article is represented by some statements made by Presidents of Romania over time, in these 33 years since the entry into force of the current Constitution, but especially in the last 16 years, such as: the President of Romania makes, instead of the Prime Minister, statements regarding the tough economic reforms adopted by the Government..., the President of Romania declares that he want his own Government..., the President of Romania, dissatisfied with the result of the parliamentary elections, is taking steps to force the dissolution of the Parliament and the organization of early elections..... Are such statements appropriate for a head of state as this authority is configured by the constitutional provisions in force? In our opinion, the answer to this question is negative, but the argument will emerge from what is detailed below. Currently, the separation of powers in the state, for an "effective practical application" (Muraru & Tănăsescu, 2022, p.14) implies "less a strict separation and rather a balance of powers in the state" (Muraru & Tănăsescu,

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2022, p.14), [the]bodies of the state must depend on each other only to the extent necessary for their formation or designation and eventually the exercise of these powers" (Muraru & Tănăsescu, 2022, p.14). The express inscription, as I mentioned above, of the principle of separation and balance of powers in the state, following the 2003 revision, did not alter the "concretization of this principle in state practice" (Muraru & Tănăsescu, 2022, p.15), and its regulation is found, mainly, in Title III of the Constitution (see Muraru & Tănăsescu, 2022, p.15), a title in which the vast majority of the provisions relating to the President of Romania are also found.

The period of communist dictatorship also left its mark on the way in which the architecture of the institution of the head of state was conceived, right from the moment of the debates for the adoption of the current Constitution. Thus, during the debates for the adoption of the Constitution, it was stated that the President of Romania: personifies the Romanian state, is the symbol of the nation as a whole, being chosen directly by the people, through its powers, ensures the balance and smooth running of the activities carried out by the public authorities, according to the principle of separation and balance of powers in the state (See: Vasilescu, 1991, p. 489, in Muraru & Tănăsescu, 2022, p.716). Therefore, from the very beginning, one of the main dimensions of the role of the President of Romania, which shaped this institution, was that he should contribute to achieving a balance „between the powers of the state, between the state and society”, as currently provided for in art. 80 para. (2) sentence II of the Constitution. We appreciate that such an approach by the constituent legislator, maintained by the derived one, was not only determined by the need to prevent the concentration of power in the hands of the President, as had happened during the dictatorship, but also the need to constitutionally identify an authority – even that of the head of state – that would contribute, through a role focused on representativeness, mediation, and guarantee, to the reorientation and development of the state on democratic principles. Thus, "[he] ensures, through the exercise of his duties, the balance ... of the activity carried out by public authorities, in accordance with the principle of separation of powers in the state, with a view to applying democratic principles" (Vasilescu, 1991, p. 489, quoted by Muraru & Tănăsescu, 2022, p.716)

In accordance with the provisions of art. 80 of the Constitution, republished, the President of Romania has a multidimensional role consisting of: representing the Romanian state, guaranteeing national independence, unity and national integrity, ensuring compliance with the Constitution and the proper functioning of public authorities, by mediating between the powers of the state, between the state and society. Art. 148 para (4) of the Constitution also identifies another dimension of this role, namely guaranteeing the fulfillment of the obligations resulting from Romania's accession to the European Union. Starting from these constitutional provisions, the doctrine identified „three situations in which the President of Romania may appear: head of state, head of the executive, alongside the prime minister, guarantor of the Constitution and mediator between the powers of the state” (Iorgovan, 2005, p.290), or even four, thus appreciating the guarantee by the President of Romania of the fulfillment of the obligations assumed by Romania towards the European Union (Deaconu, 2012, pp. 312-313). In order to achieve such a complex and consistent role,

also consecrating the semi-presidential character of our political regime, the constituent legislator established that the election of the President of Romania should be made, according to art. 81 para. (1) of the Constitution, by „universal, equal, direct, secret and freely expressed vote". This method of direct designation, by the entire electoral body, „... gives it a legitimacy equal to that of the Romanian Parliament" (Muraru & Tănăsescu, 2022, p.728), but "[it] allows the head of state a certain equidistance from all the political forces in the Romanian Parliament and makes him more accountable to the electorate than to the Romanian Parliament" (Muraru & Tănăsescu, 2022, p.728), being or having created the premises to be „a President of the Nation" (Deleanu, 2006, p. 722). The candidate who wins the elections, and whose validation will be decided, according to the constitutional and legal provisions in force, by the Constitutional Court of Romania, will have to take the oath of allegiance, in accordance with art. 82 of the Constitution, the date from which he will begin exercising his mandate. The content of the oath makes anticipated reference to the role that the person thus designated as President of Romania will have to fulfill. Therefore, this person also assumes „respect for the Constitution and the laws of the country, the defense of democracy, the fundamental rights and freedoms of citizens". One of the constitutional provisions that he must respect is that provided for in art. 84 para (1) of the Constitution, according to which „during the exercise of his mandate, the President of Romania may not be a member of a political party and may not perform any other public or private function". Through such a constitutional provision, it is made clear to the person who wishes to run, be elected and exercise the office of President of Romania that in order to be a true president of the entire nation, he must have the necessary capacity to distance himself, to break away, even, from absolutely any influence, of any nature, even from former partners in the party or political formation from whose ranks he ran for a first term, or by which he was supported for a second term. Indeed, compliance with this „incompatibility of a political nature" (Muraru & Tănăsescu, 2022, p.743) is conditioned by the will, power, psychological construction of the person who exercises the function of President of Romania and which may differ from one person to another. Also, the temptations that may determine the violation of this incompatibility may be pragmatic ones, determined, for example, by the desire to obtain a new mandate as President of Romania - when the conduct of the electoral campaign usually implies, even more easily, the involvement of a political party or formations, or by the desire to obtain another public dignity, national or international, after the exercise of the second presidential mandate, when the support of a political party may also be essential. The doctrine revealed, in this regard, the fact that “[a]lthough, after the elections he will no longer formally appear as the leader of the party, with the support of which he was elected, the President of Romania will continue to be the invisible guide of this party, at least with regard to the most important political issues" (Drăganu, 1998, p. 234). Moreover, the questions formulated at the beginning of this article, inspired by the behavior and attitudes of some presidents of Romania, would also justify us in appreciating the fact that we are in the presence of „more of a desideratum based on which the head of state has an equidistant role in relations with political parties" (Muraru & Tănăsescu, 2022, p.746).

But, on the one hand, and if we consider that this is such a goal, given the democratic legitimacy of the President of Romania, his constitutional role, we consider that it is the duty of any person who will exercise that mandate to make all the necessary efforts, to exceed all their limits in order to achieve this goal. On the other hand, according to the same art. 84 para. (2) of the Constitution, the President of Romania enjoys immunity. And, if as far as the political opinions expressed in the exercise of the mandate are concerned, protection is ensured, as for parliamentarians, in accordance with the provisions of art. 72 para (1) of the Constitution, when it comes to its second component, namely inviolability, its limits are represented by the provisions of art. 95 and art. 96 of the Constitution regarding political and criminal liability, respectively. Therefore, a violation of the limits imposed by the provisions of art. 84 of the Constitution may lead to the initiation of specific procedures for political or even criminal liability. However, we cannot have a utopian approach to this incompatibility, considering that the constitutional text envisages an absolute prohibition of the President of Romania from relating to the political party of which he was a member. Moreover, even the Constitutional Court of Romania has appreciated, through its jurisprudence, that art. 84 of the Constitution „provides that he cannot be a member of a political party, but he is not prohibited from maintaining ties with the party that supported him in the elections or with other political parties... and in order to achieve the program for which he was elected, the president can continue to dialogue either with the party he was a member of or with any other party that would support the achievement of the program” (AOCCR no. 1/2007). The Constitutional Court revealed that „the provisions of art. 71 para (1) of the Constitution encourage the mandate holder to adopt an active role in the political life of society” (DCCR no. 678/2014), recognizing "the possibility of continuing to express the political opinions, commitments and goals presented in his electoral program or to campaign and act to achieve them, in compliance with the constitutional provisions" (DCCR no. 53/2005).

However, in our opinion, this active role of the President of Romania in the political life of society, including the expression of political opinions and dialogue with the party or political formation that supported him in the elections, or with other political parties, must be achieved while respecting those limits that, once violated, would affect the objectivity and impartiality of the President of Romania in the exercise of his duties. Given their direct election by citizens with the right to vote, therefore the democratic legitimacy it enjoys, as well as their constitutional role, he must constantly and continuously bear in mind that he acts in the name and for the entire nation.

2. The neutrality of the President of Romania in carrying out his constitutional role and duties

In the foregoing, we have identified the role of the President of Romania as outlined by the constitutional provisions of art. 80 of the Constitution. Regardless of how we identify the functions that reflect this role, as we have already indicated above, or by identifying four such functions when, practically, we dissociate between the function of ensuring compliance with the Constitution and the proper functioning of public authorities, on

the one hand, and that of mediation between the powers of the state, as well as between the state and society, on the other hand (See: Safta, 2024, p.287), these will materialize through the powers (See: Deaconu, 2012, p. 306) established by the legislator. Thus:

- exercising the function of representing the Romanian state, in his capacity as head of state, will represent the state both externally, when, for example, according to art. 91 para. (1) of the Constitution: concludes international treaties on behalf of Romania, negotiated by the Government, and submits them for ratification to the Romanian Parliament, or, according to para. (3) of the same article, accredits diplomatic representatives of other states in Romania, as well as internally when, for example, according to art. 94 of the Constitution, will confer decorations and honorary titles [lett. a)] or will appoint to public positions, according to the law [lett. c)] [See, for example, Săraru, 2023, p. 59, or Muraru & Tănăsescu, 2013, pp. 259-261] – exercising the function of guarantor of national territorial integrity, unity and territorial integrity, thus acting as one of the heads of our dualist executive, the President of Romania will exercise attributions such as: commander of the armed forces and president of the Supreme Council for the Defense of the Country, according to art. 92 para. (1) of the Constitution, or will declare the mobilization of the armed forces, according to art. 92 para. (2) of the Constitution, or will establish one of the exceptional situations – state of emergency or state of siege, according to art. 93 of the Constitution [See, for example, Săraru, 2023, p. 59, or Muraru & Tănăsescu, 2013, pp. 259 - 261]

- exercising the function of overseeing compliance with the Constitution and the proper functioning of public authorities, acting as a guarantor of the Constitution and as a mediator between the powers of the state, but also between the state and society [See, for example, Săraru, 2023, p. 59, or Muraru & Tănăsescu, 2013, pp. 259 - 261], the President of Romania will exercise duties such as: consulting the Government, according to art. 86 of the Constitution, or even participating in its meetings, according to art. 87 of the Constitution, or addressing messages to the Romanian Parliament, according to art. 88 of the Constitution, or requesting the expression of the will of the people, through a referendum, according to art. 90 of the Constitution, or notifying the Constitutional Court of Romania with the objection of unconstitutionality within the framework of the prior constitutionality control of the law, according to art. 146 lett. a) of the Constitution, or even notifying the Constitutional Court of Romania regarding the resolution of a possible legal conflict of a constitutional nature, according to art. 146 lett. e) of the Constitution.

In our opinion, in the performance of any of the functions, by exercising any of the corresponding constitutional powers, the President of Romania "must have an active role, his presence in political life cannot be reduced to a symbolic and protocol exercise" (AOCCR no. 1/2007). Likewise, "in any case, the exercise by the President of an active role in the political and social life of the country cannot be characterized as a behavior contrary to the Constitution" (AOCCR no. 1/2007) and "thus functions involve the impartiality, neutrality of the President of Romania" (AOCCR no. 1/2007).

Moreover, since the debates generated by the adoption of the current Constitution, it has been stated that the President of Romania „ensures, through the exercise of his or

her powers, the balance and smooth running of the activity carried out by public authorities, in accordance with the principle of separation of powers" (Vasilescu, 1991, p. 489, in Muraru & Tănăsescu, 2022, p. 716). Moreover, in order to be able to resolve, within the limits of their constitutional powers, possible blockages or conflicts that arise „between the powers of the state, between the state and society”, he should be in a position of neutrality, thus creating the possibility of resolving any disagreement exclusively from the perspective of the interests of the state" (Constantinescu, Deleanu, Iorgovan, Muraru, Vasilescu, 1992, pp. 182).

Through its jurisprudence, the Constitutional Court of Romania has emphasized that "the mediation function ... requires impartiality on the part of the President of Romania" (DCCR no. 53/2005). The Constitutional Court of Romania also showed that "the person who exercises this dignity, through his institutional behavior and constitutional discourse, must demonstrate the existence of respect and attachment to constitutional values as they transpire from the national identity of the Romanian people and the constitutional identity of the state and society enshrined in the Fundamental Law" (DCCR no. 2/2024, point 37).

Consequently, in our opinion, even if, at first glance, „the need for a President of the Republic, neutral and equidistant from political parties" (Apostol Tofan, 2020, p. 113) were to relate only to the mediation function, we would only find ourselves in an apparent situation. In exercising his powers and, implicitly, any of his functions, the President of Romania must promote, support and defend the general interest, thus ensuring respect for the Constitution because, although "respecting the Constitution is a general obligation of citizens ... this obligation of a constitutional nature for candidates for the office of President of Romania [even for any incumbent President, our mention]" must be interpreted through the prism of the art. 80 para (2) – assuring the observance of the Constitution – which means that it is not just a simple attitude or behaviour of pure and simple compliance with the requirements of the Constitution, but of an active and responsible manifestation in this regard" (DCCR no. 2/2024, point 43-44). On the other hand, it is necessary to emphasize that the aspects mentioned above, including the indication of incompatibilities to the position of President of Romania, through art. 84 para (1) of the Constitution, in order not to "affect the impartiality and decision-making independence of the person" (Săraru, 2023, p. 58) and, in particular, the mediation function, do not allow the head of state "[to] intervene directly between public authorities that perform the classic functions of the state" (Apostol Tofan, 2020, p. 113) because "such an interpretation would lead to the unacceptable conclusion that he would be located somewhere above the three powers of the state, possibly as a supra-state authority" (Apostol Tofan, 2020, p. 113). Moreover, the constitutional text mentions, *expressis verbis*, that the President of Romania exercises „the function of mediation between the powers of the state, between the state and society" in order to „guard the observance of the Constitution and the proper functioning of public authorities". Now, as noted in the doctrine, this mediation „has a well-defined purpose. The President cannot intervene to mediate under all conditions. If the law provides for forms of unblocking the activity of state institutions by establishing powers given to other authorities, the President should not intervene based on the mediation powers provided for in art. 80" (Muraru &

Tănăsescu, 2022, p.723). Therefore, we reiterate that any attribution of the President of Romania must be exercised within constitutional limits „taking into account the role of the President as a representative of the state who oversees the proper functioning of its authorities” (Muraru & Tănăsescu, 2022, p.724) reflected, equally, by his neutrality and active role, all being imperative requirements for exercising the role of the President of Romania in accordance with the provisions of the Constitution.

3. Conclusions

Guarding the observance of the Constitution, ensuring "the regular functioning of public powers, but also the continuity of the state, guaranteeing national independence, territorial integrity, respect for community agreements and treaties" are, according to Art. 5 of the French Constitution, dimensions of the role of the French President, a source of inspiration, moreover, for the constitutional configuration of the role of our President. The defining elements of such a constitutional role of the President of the Republic are also found in other constitutions through which a semi-presidential regime inspired by the French one was established, but with specific, national elements. Defining this very institution, the Constitution of Portugal, through art. 120, provides that "The President of the Republic watches over the Portuguese Republic, guarantees national independence, state unity and the proper functioning of democratic institutions...". In the same sense are the provisions of the Constitution of Poland which mention the role of the President in art. 126, mentioning, inter alia, the fact that he "watches over the observance of the Constitution", but also that he "exercises his functions within the limits and in compliance with the principles provided for by the Constitution and other laws". Even if these constitutions do not expressly provide for the prohibition of the President from being a member of a political party, some of them, such as the Constitution of Poland, through art. 132, provide that the President "may not assume other duties or exercise other public functions, except those related to the exercise of his office". However, any of these constitutions emphasizes the role of the president of the republic in ensuring that the Constitution is respected. Or, in our opinion, the correct and genuine exercise of this function is conditioned by the impartiality, equidistance and neutrality of the President.

Therefore, do we need a neutral President in our constitutional system or should we change his constitutional status, for example, by allowing the Romanian Parliament to elect the President, or by granting him the specific powers of a genuine and unique head of the executive?

In this moment, my opinion is that we need to keep the current status of our head of state. We need a genuine person to act as a neutral president, but an active one to express relevant opinions within the limits of his constitutional powers and who should mediate different conflicts between public authorities, but also between these authorities and society. This is why I do not think that it is a good idea (perhaps just a proposal) to revise the duration of the presidential mandate from 5 to 4 years as the one of our Parliament. In my opinion, such a modification will consistently affect the neutrality of the President of Romania.

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