

# THE SUSPENSION, PROSECUTION AND DISMISSAL OF THE PRESIDENT OF ROMANIA AND OF OTHER HEADS OF STATE FROM EUROPEAN UNION

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## Abstract

*This study examines a critical view of a particularly sensitive topic and briefly discussed in the literature, namely: the responsibility of the President of Romania. Given the complexity of this theme, the research focuses on the severe analysis of the constitutional standards relating to political and legal responsibility of the Institution of the President of Romania in the light of serious violations of the Constitution. The analysis also seeks scientific interpretation of the legal phrases "grave acts" which violate the constitutional stipulations" and "high treason", by identifying specifically those actions that can be classified as "grave", and also those that can meet the elements of an act of "high treason". The whole issue concerns the comparative analysis with the fundamental laws of some states with traditional democratic regimes. The analysis highlights the need for supplementing and amending some constitutional rules on the subject examined from the perspective of more accurate evaluation and of clear demarcation of Constitution violations, which can be interpreted as grave or others of high treason that can be imputed to the President.*

**Keywords:** *Constitution; grave act; high treason*

## 1. Introduction

The constitutions of democratic regimes states recognized throughout the world provide a series of depositions relating to political and/or legal

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responsibility of their leaders. Naturally, the general rule imposed by a series of objective commands aims at ensuring the governance is: the head of state enjoys the jurisdictional immunity.

This paper presents a current perspective, the practical possibilities, in which the President of Romania may be suspended, prosecuted or dismissed, in situations where the President commits a series of serious offenses.

The subject, particularly sensitive in the socio-political context of our country, has not been yet analyzed, as far as we know, by any other authors, but it is still analyzed by us tangentially, in two other papers published in two journals in Romania (*The Relations of the President with the parliament and government. Critical remarks*, in *Transylvanian Review of Administrative Sciences*. No. 1/2010 and *Discussions on the constitutional rules regarding the appointment of the candidate for prime minister by the President of Romania*, in *Dreptul Journal* no. 12/2008).

Without a doubt, taking such extreme measures was determined by committing serious violations of the Constitution of Romania by the President of Romania, deeds that must be first established by the Parliament and subsequently assessed (where applicable) by the High Court of Cassation and Justice.

In this context, according to the stipulations of the Constitution, we may say that the responsibility of the President of Romania may take two forms, namely, political and legal responsibility. In researching the two forms of responsibility, we follow two aspects: on one hand the seriousness of the offenses committed by the President, and on the other hand, the jurisdiction over the final decisions, which belongs to different institutions.

The political responsibility refers to two categories of measures which have a chronological order that is: the suspension and dismissal.

The suspension falls within the exclusive competence of the Parliament, and it is the first phase of political responsibility, then the dismissal from the office, the second phase, is for the voters, that will decide within the referendum.

Regarding the liability, the second form of the President's responsibility can only happen when Romania's President is guilty of "high treason". We consider here only the criminal liability, which is the most severe form of legal responsibility, than any other form.

On the need to provide in the constitution the political and legal sanctions for the President of Romania, we express our view that they are absolutely necessary in terms of occurrence of actions or attitudes that endanger the democracy and the state law, especially by deviations of totalitarianism and consequently of dictatorship.

Moreover, the conducted examination shows that the political or legal responsibility of the heads of state is planned by the fundamental laws of other states, making an exception to this rule the states with constitutional monarchical regimes, of tradition from Europe.

## 2. The suspension of the President

After examining the constitutional institutions, we consider the role of the Romanian Parliament, which is defined as “(...) *the supreme representative body of the Romanian people and the sole legislative authority of the country*” [the Constitution of the Romania, article 61 paragraph (1)].

The key role of the Parliament, results from the fact that the constitutional provisions that govern the organization and functioning of the institution are laid down in Chapter I of Title III suggestively called by the constituent legislator “the Public Authorities”. Likewise, in the specialized literature it is presented this view: “*mentioning the Parliament in the first chapter highlights the importance of this institution in the Romanian political system emphasizing practically its priority in relation to other public authorities, including the President of Romania*” (Rusu, 2010, p. 193-214).

This interpretation, according to the constitutional provisions, was supported by other authors in our doctrine, who mentioned that “*the Constituent Assembly of Romania has given the Parliament, a traditional institution in democratic countries, the first place among public authorities. This settlement of the legislative power is the natural result of the rational order of institutions whose form of government is the republic, and also the representative feature of this authority, of the ancient roots of the institution in state and political practice*” (Vida in Constantinescu et. al., 1992, p. 133).

Given this vital role within the state, it is natural for the Parliament to have the competence and ability to suspend the President if he committed grave acts. Thus, as the supreme organ of the Romanian people, the Parliament is the only institution that can decide the liability of the President, even if, as senators and MPs, it has the same legitimacy, being elected by universal, equal, direct, secret and freely expressed vote [Constitution, article 81 (1)]. This view is supported in the literature, which states that “ (...) as supreme body, the Parliament may held liable the President of Romania, even if it enjoys a similar legitimacy to the Parliament, being elected as the MPs by universal, equal, direct, secret and freely expressed vote” (Constantinescu in Constantinescu et. al., 2004, p. 119).

According to constitutional provisions, the President of Romania may be suspended by the Chamber of Deputies and Senate in joint session, by a majority vote of Deputies and Senators, after consulting the Constitutional Court, only when there are committed grave acts that violate the Constitution" [article 95 paragraph (1) of the Constitution].

From a procedural perspective, the Constitution provides that the proposal for suspension may be initiated by at least one third of the deputies and senators.

Although the text does not use the term “total” only “number”, from the interpretation of the constitutional depositions, it results that it cannot be about the total number of deputies and senators.

This view we have supported also in another paper showing that “*the interpretation of these rules leads to the conclusion that the third must come from the total number of deputies and senators, that means that there are different proportions at the level of the two Chambers, being important the total number of parliamentarians. This does not exclude the possibility of one third in the Chamber of Deputies and in the Senate*” (Rusu, 2010, p. 193-214).

If the proposal for suspension has been approved, within 30 days, it will be organized a referendum on the dismissal of President [Constitution of Romania article 95 paragraph (3)].

Given the above the mentioned constitutional provisions, we are justified to wonder which are the serious acts established by the Parliament according to which the Constitution is violated. Please note that currently, that in the Constitution and other laws, there are no legal rules to incriminate certain acts committed solely by the President of Romania.

So, the Parliament will have the role of determining which are the acts committed by the President and if they can be considered as serious violations of the Constitution.

Taking into account the difficulties that may arise in assessing the gravity of the acts committed by the President, the Constitution provides in article 95 paragraph (1) and article 146 point h) that the Parliament is obliged to consult the Constitutional Court.

Using the legal phrase “serious acts”, it leads to the conclusion that they (the serious acts) do not have to be offenses. So, it is serious enough that by these acts it is violated the Constitution.

According to our analysis, we consider that the most important and difficult task of the Parliament is to determine the gravity of the acts committed by the President, the suspension procedure is not likely to cause trouble.

We believe that the assessment of offenses as being serious, must be made in the context of their commission, in relation to further or immediate consequences that may arise. Certain acts committed in the context of an economic crisis or political instability can have serious consequences, for the same acts committed in a situation of political and economic normalcy.

Another category of acts which may be interpreted as serious regards the way in which the President intends to apply the constitutional rules, in his relation with the Parliament or the Government.

Another act that we consider to be serious, is the action of the President to dissolve the Parliament, in conditions of economic or political crisis. Thus, under the provisions of article 89 paragraph (1) of the Constitution, “*after consulting the Presidents of both Chambers and the leaders of parliamentary groups, the President of Romania may dissolve the Parliament if he did not granted the vote*

*of confidence in order to form a government within 60 days from the first request and only after the rejection of at least two requests for investiture”.*

From the assessment of the mentioned constitutional norm, it results that dissolving the Parliament represents for the President a variant of solving the political crisis, an option, not compulsory. In this context, we consider that the dissolution of the Parliament in a situation of serious economic or political crisis, that can lead to causing a general protest from political parties or citizens and thus endangering the constitutional legal order.

Given the examined constitutional law rules, we consider that, in order to suspend the President, the Parliament should set specifically the commitment of grave acts by which there are violated the constitutional provisions, such as those explained above. The acts by which the President violates the constitutional norms, but cannot be interpreted as serious within the meaning of article 95 paragraph (1) of the Constitution, it cannot lead to suspension.

### **3. Prosecuting the President**

Regarding the liability of the President, that is the criminal liability, according to the Constitution, it can take place only if it is established that he is guilty of *high treason*.

Thus, under the Constitution, *the Chamber of Deputies and the Senate, in joint session with the votes of at least two thirds of the deputies and senators may decide to indict the President of Romania for high treason* [the Constitution, Art. 96 paragraph (1)].

Paragraph (2) of the same article provides *that the proposed prosecution may be initiated by a majority of deputies and senators and, without further delay, the Romanian President must be informed in order to give explanations about the accusations*.

Paragraph (3) provides that *from the date of the prosecuting until the dismissal, the President will be rightfully suspended*.

Paragraph (4) provides the court jurisdiction, which belongs to the High Court of Cassation and Justice, and the fact that *the President is rightfully dismissed at the date of remaining definitive the sentencing decision*.

Prosecuting is the most serious measure that can be imposed by the Parliament against the President of Romania.

According to our assessment of the mentioned constitutional rules, it is necessary to clarify the interpretation of some legal phrase, given that the literature has not made yet this interpretation.

Thus, a first aspect envisages the legal interpretation of the expression “*high treason*”. As it is well known, both in the current Penal Code and special laws with criminal depositions, it is not incriminated such offense (an offense with this name).

In this context, with no Constitutional Court's interpretation on a particular case (it is not desirable) and only a few interpretations in the specialized literature, we would naturally ask the question, what did the legislator mean by the legal phrase “high treason”?

In the previous work, we identified several possible actions that could be assimilated to the President as acts of high treason, namely:

“– Politico-legal implications of that act, in terms of socio-economic and political life;

– Causing a major political crisis with direct implications on the evolution or devolution of the national economy, public order and safety or state stability;

– Causing serious state prejudices;

– Betrayal of national interests or committing offenses against state security; and

– Other related issues that lead to the conclusion that the act committed by the President is very serious” (Rusu, 2010, p. 193-214).

In addition to the above facts, we believe that there can be interpreted as acts of high treason committed by the President, the following:

– Instigating people against a certain social category, this resulted in a serious disruption of constitutional order and brought serious damage on the social category;

– Some crime provided under Title I of the Special Part of the Criminal Code, namely: treason (article 155 of the Penal Code) treason by helping the enemy (article 156 of the Penal Code), treason by transmitting secrets (article 157 of the Penal Code) disruption of state power (article 162 of the Penal Code) propaganda in the favor of the totalitarian state (article 166 of the Criminal Code) etc.;

– Crime and corruption; and

– Action seeking to change the constitutional order.

No doubt that the scope of crimes which can be charged on the President, that can be attributed as the legal phrase of high treason, it seems to be much larger, their presentation is merely illustrative.

In the specialized literature, it was highlighted that “*high treason should not necessarily be framed in a text of the Penal Code, it must be accepted and defined as the most serious breach of oath and interests of the people and the country, in the exercise of presidential powers*” (Vasilescu in, Constantinescu et. al., 1992, p. 193).

We express some reservations about this view, because in our opinion, prosecuting for high treason involves, necessarily, at least committing a crime, whether it is provided in the Criminal Code or in another special law with criminal provisions.

The second issue that needs to be clarified is the legal interpretation of the phrase “prosecution”, a specific activity only to the Parliament.

Please note that the concept of “prosecuting” cannot be interpreted as criminal activity undertaken by Parliament since the institution of state law, cannot substitute for the prosecution bodies.

In these circumstances, if the Parliament no longer has the mentioned above status, we legitimately wonder what is, practically, the work of prosecuting and how can it be done effectively?

The specialized literature did not analyze this issue, although in our opinion, under the current conditions it may be of great importance. Please note that the existing constitutional rules make no reference to how to make this Parliament activity work.

Given the above, we consider that the activity of prosecuting the President will be achieved in practice by the parliament in three stages: successive, that is the proposal of prosecution, which requires collecting the necessary evidence, the decision referral for prosecution and informing the High Court of Cassation and Justice.

In the first stage, the proposal of prosecution may be initiated by the majority of senators and deputies, in joint session. This proposal must be embodied in a document, where there will be included the related evidence; they will be signed and endorsed by the senators and deputies that initiated it. Although the constitutional rules do not provide it, we believe that informing the President involves sending the proposal accompanied by transcript of the hearing, and the President will have to give explanations on the facts of the accusation.

After receiving the explanations and examining them, the Chamber of Deputies and the Senate, in joint session with the votes of at least two thirds of deputies and senators, may decide to prosecute the President for high treason.

The third and the last stage involve informing the High Court of Cassation and Justice, which will proceed to trial the president for the charged acts.

Remember that, unlike the institution of suspension where it is asked the Constitutional Court's advisory opinion, in case of prosecution it does not need such advice.

The text of the Constitution states, in fact, that it is the only exception that a physical entity can be judged without following the procedure for committing a specific criminal offense.

#### **4. The dismissal of the President**

Depending on the President's political or legal liability, the dismissal of the President can take two forms, namely the dismissal as a result of political or legal responsibility.

The dismissal of the President as a result of political liability can take place when, after his suspension from the office by the Parliament, following a referendum, the voters approve the measure adopted by the Parliament.

The dismissal, as a result of legal liability, may take place when the President's sentence, passed by the High Court of Cassation and Justice, is final.

Of course in both cases, the immediate effects will be: the Government will organize an election within three months for another President.

## **5. Aspects of comparative law**

### *5.1. The Constitution of the Italian Republic*

Under the article 90 of the Constitution of the Italian Republic, "*the president is not liable for his committed acts while exercising his functions, except the act of high treason or violating the Constitution*".

In case of attacking the Constitution, the President "*is prosecuted by the Parliament, in joint session, with the vote of the absolute majority of its members*" (Constitution of the Italian Republic, 1998, p. 43).

We note that the legal term of "high treason", is mentioned in the Constitution of the Italian Republic, without being defined explicitly (which is an element of similarity with the Romanian Constitution).

Another element of similarity refers to the institutions called for impeachment, i.e., the Chamber of Deputies and Senate in joint session. Regarding the vote, it is sufficient an absolute majority from both the legislative chambers. Unlike the Romanian Constitution, the jurisdiction of the court, under the provisions of article 134, is of Constitutional Court, the procedure is very different from that provided in our legislation.

### *5.2. Greek Constitution*

The Greek Constitution provides that the President of the Republic shall not be liable for the acts performed in exercising its functions, except for two situations, namely when he commits an act of high treason or intentional violation of the Constitution. Given this formulation, it is clear that the President may respond to certain committed acts, not to the exercise its constitutional attributions, but the prosecution is suspended until the expiry of his mandate. So for committing some crimes that are not directly related to its constitutional attributions, the President shall be criminally responsible, after his mandate expires. Regarding the procedure of impeachment, it is similar to the Romanian Constitution, meaning that the proposal of impeachment may be initiated by one third of the members, and then it is submitted to the Chamber.

### *5.3. French Constitution*

According to article 68 paragraph (1) of the Constitution of France concerning the President responsible for high treason, the jurisdiction is of the High Court of Justice, the court has jurisdiction to hear and judge "the government members if

they would be accused of committing crimes or offenses or other facts of great gravity for the state” (Ionescu, 2008, p. 380).

#### 5.4. Portugal Constitution

Regarding the responsibility of the President, in the doctrine, it was established that *“it is interesting that the Basic Law has provided the criminal responsibility for crimes committed by the President in exercising its functions, and more. The power to institute proceedings is of the Republic Assembly under the approval of the parliament by a vote of two thirds of the active in office members. In the first case, the conviction sentence – handed down by Supreme Court Justice – will automatically entail the dismissal of the president. In the second case, the President will answer for his acts committed outside of his duties after ending his mandate”* (Ionescu, 2008, p. 396-397).

Note that the criminal responsibility of the President under the Constitution of Portugal, is similar to that of the Greek Constitution.

#### 5.5. The Constitution of Finland

Finland's Constitution provides that the President's responsibility, only in the case of three categories of crimes committed, namely, *treason, high treason or crimes against humanity*. In connection with the constitutional depositions on criminal responsibility of the President of Finland, the literature has argued that *“if the Chancellor for Justice, the Parliamentary Ombudsman or the Government believes that the President of the Republic shall be guilty of high treason, treason or crimes committed against humanity, he will inform the Parliament. The legislative body may, in such a case, decide the vote of three fourths of its members, so that the charges are brought by the General Attorney before the High Court of Indictment to be judged. During the trial, the head of state will be suspended. In addition to the three categories of allegations, there are not admitted other charges on the official documents issued by the President of the Republic”* (Ionescu, 2008, p. 433).

#### 5.6. The Spanish Constitution

Under the article 56 paragraph 3 of the Spanish Constitution, *“the king is inviolable and he is not submitted to liability. His acts are always countersigned as established by article 64, otherwise invalid, except the ones provided by article 65, paragraph 2”* (The Spanish Constitution, 2003, p. 35)

Therefore, according to the interpretation of those mentioned constitutional rules, the King cannot be held liable, not even for the acts signed by him, in this case the responsibility becomes of the Prime Minister or his cabinet.

At the same time in examining the king's attributions, under the Constitution, it results that they are almost insignificant, the government responsibility always belongs to the Prime Minister and his cabinet.

### *5.7. Constitutional documents of the United Kingdom of Great Britain and Northern Ireland*

As the Spanish Constitution, the Constitutional Documents of the United Kingdom of Great Britain and Northern Ireland do not provide the legal responsibility of the King (Queen); it enjoys full immunity from criminal, civil or political matters. All documents emanating from the king, under his constitutional powers are countersigned by the Minister, which has to implement them, and he assumes full responsibility for the way it is implemented and its legality.

### *5.8. The Belgian Constitution*

Under article 88 of the Belgian Constitution, the king is inviolable, the ministers, that countersign the documents emanating from the king, are legally responsible. Also, the acts of the king, have no legal effect unless signed by the minister who will implement them.

The summary presentation of certain provisions of the constitutions of some states with recognized democratic regimes on political or legal responsibilities that are incumbent on the heads of states, regardless their political regimes (parliamentary, presidential or semi-presidential), clearly expresses two different main orientations:

– A first orientation concerns the political and legal liability in case of committing certain categories of offenses, usually known by the generic legal term “high treason” for Romania, Italy, Greece, France and Finland (although in the case of this country the Constitution provides two other categories of crime).

– The second orientation, including states such as Spain, the United Kingdom of Great Britain and Northern Ireland and Belgium, where their constitutions expressly provide that the king's person is inviolable, so he cannot be held for legal or political liability.

A special case is presented by the Constitution of Portugal, where it is stated that the President may be responsible for the crimes committed in the exercise of his duties and also for other crimes, which have no connection with the exercise of his powers. The essential difference lies in the procedure of liability, in the first case the liability may intervene in the exercise of its function with the necessary consequences, and in the second case, the liability will occur after the mandate.

So at the beginning of the third millennium, we cannot talk about a constitutional regulatory unit in Europe, on the political and legal responsibility for the ruler of a state in the case of committing grave acts, which violates seriously the constitutional norms. However, note that in some states the

constitutional rules on political and/or legal responsibility of the head of state are similar.

## **6. Conclusions**

The issue of liability of the President in terms of committing grave acts that violate some legal rules or endangering the constitutional order, is topical and we believe that it should be of serious concern, as theorists of constitutional law and of political world or of the civil society.

Despite its major importance, inexplicably, the problem itself was considered too little in the doctrine, but being instead very often debated in the audio-visual media and political circles.

The central idea of such concerns in countries with modern democratic regimes, is related to the possibility of obstructing some tendencies of the leaders towards dictatorship and totalitarianism, the examples from the history of the last century are eloquent in this regard, both in Europe and around the world.

Given the two forms of liability of the President, the research conducted is focused on the scientific interpretation of the constitutional rules that relate solely to the President's responsibility and to the need for constitutional amendments and completions of some constitutional norms, which under an inadequate formulations, it may lead to misinterpretations that are not in line with the will of the constituent legislator.

Thus, in our opinion, the interpretation of the legal phrases “serious violation of the provisions of the Constitution” and “high treason” is the key element, from where to start when it comes to the political or legal responsibility of the President.

Also the conducted research on the current constitutional rules, highlights the fact that it has some flaws, that has to be regulated, because, as it has been argued repeatedly in our doctrine also, the ambiguity of the legal rules can only lead to an interpretation which is not in line with the will of the constituent legislator.

With more reason we sustain such an approach, since in our case, it is about the fundamental law, a law that is designed to ensure normal operation of the state law, with strict adherence to the principles of modern democracy.

The research is carried out as a point of departure for further studies, we have in mind, which envisages ultimately the scientific argumentation concerning the need to change and amend the Constitution regarding the duties and responsibilities of the President.

This brief examination, referring to how to approach the responsibility of the President in other fundamental laws of Member States of the European Union, highlights a constant concern of these countries for addressing this major problem.

We appreciate that the political and/or legal responsibility of the head of state must be oriented towards achieving two main objectives, namely: insuring the act

of governance following the basic principles of modern democracy and limiting the powers of the presidential institution, in the sense of the inability to initiate and support actions that lead to dictatorship and totalitarianism.

In this idea, the attempt to adopt the European Union Constitution (currently abandoned), is in our view, a modern approach, which may constitute an assurance that, at least within the European Union, the slide into dictatorship and totalitarianism will not be possible.

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