

ONLY STATE PRESIDENT?

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Abstract

Last 4 years showed to Romania that is impossible to deny the national feeling of passionately activism in politics: for sure, we are Latin and we remain Latin. All this big debate was related to a person and to his position in Romanian state.

However, no one was able to be totally independent in his/her analyze, and, if he/she was totally independent, the press take hundreds of attacks against every person who wrote any opinion in this special problem: what kind on republic want we? Politicians want to change this year our Constitution, but I believe they won't be able to do this.

In this context, we must start a real national debate of public law specialists, about this institutional problem: we want one president and one prime-minister with powers, or a prime-minister with powers and a president like a puppet?

This kind of speech appears now because in 2012 and the key-word of our politics was the legitimacy. In this case, when this political concept become too strong, it is necessary to offer a legal answer. Our text tries to be one of them.

Key-words: *President of Romania, Constitution, state institutions, legitimacy, government.*

Introduction

For Romania, the 2012 year was one of the hardest, since the movements of December 1989 brought us the liberty.

That year was not very dangerous because of snow, but it becomes more dangerous because in Romanian legislation are not settled some specific regulations against the politicians, cause their power to make bad for the society is not limited. In this case, even the small medical examination - mainly psychiatric - will be able to stop some "characters" who perform now, without any control, in national and sometimes European politics.

Romanian Constitution is not very good of its institutional part, because the purpose of its regulations was made by the same president, on 1991 and 2003, who had a strong influence on the commission who wrote the project. Thus, the main problem is that no institution is completely well defined by the constitutional norms, and starting with this truth, we can watch that the their functioning was bad from the beginnings.

The author try to analyze and describe where is the limit of state president powers in Romania and abroad, trying to understand what is the main solution for Romanian state and society.

The author intends to answer underlining few ideas who are still available in legal science, especially in their relation with new socio-political paradigm. In the same time, we must offer a perspective for the future: the dispute between national ideas about state framework and world ideas about the executive power must be finished in one way; we must choose one direction and step forward.

On a normal society, this kind of scientific articles are analyzed with deep attention, because it might offer some directions for future, just because - for example - one of the authors can become after a while judge on Constitutional Court and his/her ideas about state framework can produce a lot of result for the daily practice of executive institutions.

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We try to answer to all these question *sine ira et studio*, remembering the historic facts and some specific characteristics of Romanian nation. A real comparative description - which are the regulations on Romanian Constitutions, but also on another ones. After that, we made a small conclusion: in fact, this debate cannot be solved in 10 pages or less, it is necessary to write a treatise about public law and its dimension.

There is a lot of literature for this subject: less in Romanian doctrine, more in Western Europe and other developed part of the world. What is bad - is mainly written by the political scientist, and less by the lawyers, or, in the best cases, professors of law are read, but not followed. And is almost unanimously proportion, politicians don't read law professor's work, because they can find there the legal obstacles against their wishes - which are not always according with the law.

The author believes that is time to come back to normal logic in public law and politics, because the good ideas cannot be replaced by propaganda.

Paper content

1. If we want to remember the constitutional year of 2012, we must note that lawyer had spoken about the legal framework of state stronger than in any other year, because the context was in that way, but they was not listen - the public agenda on constitutional law solutions was made by the politicians and foreign journals.

There is a problem: Constitution of every state is translated into English - so, if the internal debate of Romanian regulation is quite complicate for foreigners, because they don't know Romanian language, the fundamental law is easy to analyze by anyone.

The consequence is related to the national public image, because a bad image affect the national economy, foreign investments and offers a bad image, which is not good for citizens and state. A bad image today means unemployment, means lost of a lot of money and if forced state institutions to make age of lobby and PR to solve this problem.

In the same time, we must understand that the Constitution means "the rule of law" and its dimension is huge now, when internet is able to describe very fast the main activities of politicians. As we can see, in many countries the main public enemy for citizens are the politicians and their unlimited power; just one example, on Cyprus, where the banks was hit and controlled by the politicians, and all society must pay now for the ruler's mistakes.

2. Last year for Western Europe press was full with subjects about Romanian problems, that the executive branch of powers feel even today the power of any articles published by The Economist, by Spiegel, Le Figaro or The London Times, as example. Their article described Romanian Constitutions and the political facts made by some stupid categories of people, who was almost able to send back to the anarchy times the Romanian state.

Few examples are here:

a) "Romania is divided into two political tribes," says Dimitar Bechev, who runs the Sofia office for the European Council on Foreign Relations. "It isn't a principled political disagreement, it is a dirty war. And it has become very personal."

The nationwide vote on whether Basescu should be allowed to remain in office became necessary after the Romanian parliament suspended the president from his office in early July. The Ponta government accuses Basescu of overstepping his authority to interfere in the daily running of the country and preferring loyalists when making important judiciary appointments.

Disregard for the Constitution

But Ponta's energetic efforts to discredit the president have landed him in hot water with the European Union. Indeed, the prime minister was called to Brussels early this month for a dressing down from European Commission President José Manuel Barroso. Specifically, the EU is concerned with what critics have described as Ponta's disregard for his country's constitution.

For one, Ponta ignored a high court decision regarding who was constitutionally authorized to represent Romania at European Union summits. After the court ruled that the president alone was

authorized, Ponta travelled to Brussels for a summit anyway. In addition, Ponta has indicated that he intended to defang the Constitutional Court and replace some of the justices.

"Events in Romania have shaken our trust," Barroso said two weeks ago, underlining his concern. "Party political strife cannot justify overriding core democratic principles." The EU's progress report on Romania was likewise scathing, saying that "exceptional events" in the country were a "major source of concern."

Ponta had likewise attempted to change the rules governing national referenda of the kind that took place on Sunday. He issued a decree casting aside the requirement that half of registered voters take part in referenda before it became valid. Under EU pressure, however, he reversed course recently.

Still, Ponta seems intent on seeing the back of the president. In a recent interview with SPIEGEL, in which the prime minister was eager to present himself as a committed democrat, he was asked: "If only 45 percent turn out, but there is a clear majority against Basescu, do you think he should remain in office?" Ponta replied: "That would then be his decision if he remains in office or not. He would have to ask himself in such a situation who he represents, but certainly not the majority of the people."¹

b) Is Romania worse than Hungary?

Victor Ponta, the prime minister, ignored a ruling of the Constitutional Court on who should represent Romania at EU meetings. The court was stripped of its powers to overrule the parliament's decisions, judges were threatened, and the ombudsman, Gheorghe Iancu, replaced with a party loyalist. The official journal, which publishes court rulings and laws, was moved under government control to delay inconvenient rulings by the Constitutional Court - such as the one about who represents Romania at EU meetings.....

Nobody in Brussels really understands why the Ponta government is so blatant in ignoring current legislation and in moving swiftly to get institutions - especially the judiciary - under party control. It is even more difficult to comprehend as Mr Ponta is poised to win the general elections later this year. "We were flabbergasted. But it is a mistake for them to think they can pull it through, these are not the 1990s," the EU official said. Romania is still under EU monitoring for guaranteeing an independent judiciary and for effectively fighting corruption and other crimes. A report is due later this month

Another sanction against Romania that is envisaged in Brussels is a freeze of EU funds. Payments are already suspended since July 1st on technical grounds such as faulty public procurement rules. This could be made permanent and linked to the political situation.

The most likely outcome of all this is that Romania's bid to join the borderless Schengen area will be completely derailed. The Netherlands were the only country opposing the move so far. Earlier this year the Dutch indicated they may lift their reservation if the EU commission's report is positive. (The decision to let Romania has to be taken with unanimity among member states.) Now the Dutch position seems to gain Germany's support. On July 8th, Guido Westerwelle, Germany's foreign minister, said "serious violations of the letter and spirit of EU values may raise question about the last steps to Romania's full integration in the EU."²

c) The ruling coalition, of Social Democrats and Liberals, had passed a law earlier this week to ease the impeachment procedure. They had also replaced the heads of both chambers of Parliament, (both allies of Mr Basescu) with politicians close to the Prime Minister, Victor Ponta. One ally, the Liberal leader Crin Antonescu, was appointed president of the Senate. That move will make him the country's interim president if Mr Basescu is suspended.

¹ <http://www.spiegel.de/international/europe/basescu-survives-referendum-in-romania-a-847178.html>, consulted at 27th of March 2013.

² <http://www.economist.com/blogs/easternapproaches/2012/07/romanian-politics-2>, consulted on 27th of March 2013.

In another important move, an emergency ordinance shifted control of the Official Gazette, a bulletin that gives formal publication to laws and regulations, from parliamentary to government. Civil society groups are concerned that this could enable instant lawmaking.

The Cabinet also replaced the Ombudsman with a former Social Democrat lawmaker. That has sparked another round of controversies. The Ombudsman is the only Romanian public body who can challenge the emergency ordinances of the Government before the Constitutional Court.

Mr Ponta has also tried to change some of the judges from the Constitutional Court, accusing them of political bias. According to the Constitution, the judges are irremovable during their time in office. The Court said Mr Ponta's government is trying to threaten its independence with such potential dismantling acts.³

As we can see, the main vectors of Western Europe press presented state institutions - mainly the government - as an aggressor, who don't respect the Constitution and who lost its respect abroad. In fact, even a single article about this problem can create problem for a weak economy, but on June, July and August the number of articles was huge; a map from that time underline that Romanian case of war between President and Parliament + Government - with all legal context described - was present of 98% of states.

3. Is not our job to solve the image problems, there are a lot of institutions able to do that, a lot of PR companies ready to work for this subject.

We must analyze which are the main conditions to put in form on Romanian Constitution, to fulfill the main purpose of state: increasing its power, offering satisfaction to every citizen.

For this, we must imagine a real and coherent legal framework for our country. On this hypothesis, we must imagine a national way of solving problem, but watching carefully to other states examples - good practices are always necessary to be known, because their importance is huge of juridical battles of arguments.

There are two global models in fact, because both of them are the main expression of a special kind of legal culture:

French one, who is a representation of former times, when Paris was the intellectual center of the world, and where the ideas were followed with passion. Its role was huge for many countries, because the cultural domination of XIX corresponds to the national state creation on many continents; in this case, the global time of ideas was good not only for writers, but also for lawyers, and many codes and constitutions had as main influence French legislation.

The second example is the United States of America's example, because after World War II its power becomes the single pillar of democracy - and, for this, their legal concepts started to be spread on world: first, on the commercial branch, after that, one many other cases.

There is something very special on both cases: France is based by the national and historical loyalty, but the US are based by the loyalty for Constitution.

4. French president powers - which are closer by the Romanian regime - are described by few articles, as they are:

Article 5:

The President of the Republic shall see that the Constitution is observed. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the State.

He shall be the guarantor of national independence, territorial integrity and observance of treaties.

Article 8:

The President of the Republic shall appoint the Prime Minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government.

³ <http://www.economist.com/blogs/easternapproaches/2012/07/romanian-politics-1>, consulted on 27th of March 2013.

On the proposal of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments.

Article 9:

The President of the Republic shall preside over the Council of Ministers.

Article 10:

The President of the Republic shall promulgate Acts of Parliament within fifteen days following the final adoption of an Act and its transmission to the Government.

He may, before the expiry of this time limit, ask Parliament to reconsider the Act or sections of the Act. Reconsideration shall not be refused.

Article 11:

(1) The President of the Republic may, on a proposal from the Government when Parliament is in session or on a joint motion of the two assemblies, published in either case in the Journal Officiel, submit to a referendum any government bill which deals with the organization of the public authorities, or with reforms relating to the economic, social, or environmental policy of the Nation and to the public services contributing thereto, or which provides for authorization to ratify a treaty that, although not contrary to the Constitution, would affect the functioning of the institutions.

Article 12:

The President of the Republic may, after consulting the Prime Minister and the Presidents of the assemblies, declare the National Assembly dissolved.

A general election shall take place not less than twenty days and not more than forty days after the dissolution. The National Assembly shall convene as of right on the second Thursday following its election.

Should it so convene outside the period prescribed for the ordinary session, a session shall be called by right for a fifteen-day period. No further dissolution shall take place within a year following this election.

Article 13:

The President of the Republic shall sign the ordinances and decrees deliberated upon in the Council of Ministers. He shall make appointments to the civil and military posts of the State. [...]

Article 14:

The President of the Republic shall accredit ambassadors and envoys extraordinary to foreign powers ; foreign ambassadors and envoys extraordinary shall be accredited to him.

Article 15:

The President of the Republic shall be commander-in-chief of the armed forces. He shall preside over the higher national defence councils and committees.

Article 16:

Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take the measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the assemblies and the Constitutional Council.

5. United States president is considered - by the force of the American economy and military power - the most powerful man in the world. For sure, from the military point, but the legal doctrine underline other things:

The basic features of the U.S. presidency noted above are part of what distinguishes presidential systems of government from other systems. By definition, in a presidential system the president must originate from outside the legislative authority. In most countries such presidents are elected directly by the citizens, though separation of origin can also be ensured through an electoral college (as in the United States), provided that legislators cannot also serve as electors. Second, the president serves simultaneously as head of government and head of state; he is empowered to select

cabinet ministers, who are responsible to him and not to the legislative majority. And third, the president has some constitutionally guaranteed legislative authority: for example, the U.S. president signs into law or vetoes bills passed by Congress, though Congress may override a presidential veto with a two-thirds majority vote in both houses⁴.

Article II, Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Analyzing these disposition, we can see that the French president is much close by the royal powers of history, because - we must remember, France is the country of monarchic absolutism.

6. Romanian history is connected - as almost good part of the European continent - to this paradigm. In fact, we can see that only after strong wars, where the national power was deeply affected, European states renounced to the absolutist power for chief of state.

Romania is a territory where wars were too much present, only in the last century we participated on 4 wars. Everyone was strong and with deep traces on Romanian map and Romanian citizen number, because our neighbors were not very positive in their attitude related to Romanian interests.

⁴ Brian Duignan, *The executive branch of the federal government: purpose, process, and people* (New York: Britannica Educational Publishing, 2010), 34.

Thus, it appears the main and single question, who speaks about also about the president legitimacy against the government legitimacy: for what is he elected: mainly for economic powers or mainly for military dimension of presidential position?

The answer is very simple in Romania, and somehow it is shown by the public social investigations about the trust for state institution, when the church and the army are on the first position.

The church and the army are the state pillars (with the family). In this hypothesis, we must note that the citizens want to see a strong president, able to protect the state against any other aggression. This answer is the consequence of history and not of a paternalist mentality, because every state teaches its pupils national history. The Romanian history is complicate, but it offers a red wire: when the ruler was strong, the borders and citizen's life was better defended.

The legitimacy is given not only by the elections, there is more important to understand the history, to understand why a state acts in its way (for example, the Hungarian politics is almost no woman policy) - and laws cannot change in one day of vote (the referendum for Constitution approval) decades and centuries of history.

In the same time, the same social research wants to see the prime-minister more involved in economic problems - in fact, his career depends in almost complete proportion by the economic results, rather the military aspects.

In the same time, Romanian citizens watch every day without too much satisfaction to the borders, and they are not satisfied - they always consider that the main dangers come from the power and hate of some neighbor countries rather than the internal state framework.

For these arguments - who must be developed on a special book, but only after 2014 elections - we consider that is much better to not have a prime-minister, because, however, two important positions occupied means - naturally and without any other hesitations - an institutional conflict between persons (first) and institution (after).

Conclusions

Our text tried to describe better the main issues for a new regulation of executive power in Romania, presenting the French and United States regulation on this case.

In the same time, we presented some ideas about legitimacy and constitutional framework of Romania, underlining that the whole context is more close by the strong position for president, because the Romanian history send us to this conclusion, who don't show much options for prime-minister.

These kind of ideas are not totally welcomed today and a good part of readers will accuse me as being a partisan in internal politic war. In the same time, if the angry people will try to think with a "cold mind", they cannot ignore two things: history and map of Romania, especially our neighbors.

On this context, we consider that is necessary to understand much better the future on a correct line of history; if we cannot ignore geography and history, is better to deep our research on this part of public law. For sure, the author will continue this study, trying to present the best results for Romania and its nation.

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