

LEGAL RESPONSIBILITY OF THE PRESIDENT OF ROMANIA

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Abstract: *The juridical responsibility of the Chief of State is an important institution in the democratic state governed by the Constitution. Therefore, its effective application is full of particular cases and procedural specificities that are developed in this paper.*

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The headquarters of the matter, regarding the regulation of this kind of liability, is found in art. 96 of the Constitution of Romania, which stipulates that “ The Chamber of Deputies and the Senate, in a joint sitting, with the vote of at least two thirds of the deputies and senators, may decide that the President of Romania shall be charged with high treason.

The motion of indictment may be initiated by the majority of the deputies and senators and shall be immediately brought to the attention of the President of Romania in order to explain the facts imputed to him. until the date of dismissal, the President is suspended by law. The jurisdiction of the High Court of Cassation and Justice belongs to the court. The President is lawfully dismissed at the date of the final judgment of the conviction “. The current form of constitutional provisions was introduced with the revision of the Constitution by Law no. 429 of 23 October 2003 on the revision of the Constitution of Romania, the previous form of these provisions being provided by art. 85, called “Incompatibilities and Immunities”, of the Romanian Constitution of 1991, stating that “ The Chamber of Deputies and the Senate, in a joint sitting, may decide to indict the President of Romania for high treason, with the vote of at least two thirds of the deputies and senators. Judicial jurisdiction belongs to the Supreme Court of Justice, according to the law. The President is lawfully dismissed from the date of the final judgment of the conviction“.

The doctrine⁸ emphasizes that the legal regulation of the suspension of the President of Romania was not properly positioned from a structural point of view and of the logical succession of the provisions, within the Constitution of 1991, being emphasized in the economy of the fundamental law, firstly, the prosecution of the Head of State in the article on Immunities and Incompatibilities, and then his duties.

Also, the 2003 amendment to the Romanian Constitution also clarified some aspects of the procedure to be followed in the case of the indictment of the President for high treason, with previously gaps in who has the indictment⁹. In this context, anyone had the right to make a referral to the Parliament for the prosecution of the head of state, and then to be debated. As a novelty, the measure of the right of the President of Romania to be suspended by the Parliament from the date of the prosecution until the final conviction and dismissal of the law has been introduced. The parliamentary debates that preceded the adoption of the 1991 Constitution also criticized the constitutional text regarding the direct election of the President by the people and the fact that it was accused by Parliament of high treason.

Thus, arguments were put forward to promote the parliamentary republic as a form of government, the representatives of the opposition parliamentary parties arguing with examples of state presidents who were forced to resign: “there are three cases of presidents who were forced to interrupt their career presidential, not death or disease, but the political will of their country. The first case, no one knows him, in 1868, President Abraham Lincoln’s successor President, Andrew Jackson, was subjected to the terrible Bill of Impeachment that equated with the high treason accusation, what he did to punish the South as you can read in Margaret Mitchell’s novel ~ On the Wings of the Wind ~; but as it was in the last year of operation, an elegant solution was resolved and it was not forced to resign. General Ulysses Grant was then elected. The second case, many of us remember: after the Watergate scandal, President Nixon was forced to resign after the former Vice President, who was also involved, had been forced to resign ... Finally, gentlemen, a very curious case. General De Gaulle, a great state man, resigned in 1969 after the negative result of the referendum on the establishment of the regions in France, regions that were founded after General De Gaulle’s dismissal and which today is one of the most important elements of the administrative life French. So three cases that

8 PhD Professor Univ. dr. Stefan Deaconu, Some Constitutional Issues on the Responsibility of the President of Romania, *Law Revista*, 18th Year, 3rd Series, no. 12/2007., Pag. 38

9 Constanta Calonoiu, Victor Duculescu, *Constitutional Law and Political Institutions*, 4th edition, ed. Light Lex, Bucharest, 2008, p. 197

must give us a thought. All these historical inconveniences could be mitigated or canceled if the historical parties' suggestion to accept the principle of the parliamentary republic were accepted instead of the presidential republic"¹⁰

The causes for which the President of Romania may be indicted

At the beginning of this paper, I have specified the two types of responsibilities whose active subject is the President of Romania, namely the political one regulated by art. 95 of the Constitution of Romania and the criminal one regulated in art. 96 of the fundamental law, which will be dealt with in detail in the continuation of this work. The latter occurs when the head of state carries out a qualified act of high treason. The semantics of "high betrayal" deeds or deeds is not detailed in order to explain the constitutional text, but in doctrine it has been described as any act involving the betrayal of a country with particularly serious consequences in terms of state elements, so as these are described in the fundamental law. It is also considered that the constitutional text governing high treason contains both political and legal elements.

From the economics of the constitutional text, we can conclude that the constitutional text regulates only an action, namely the "indictment"¹¹, according to the provisions of art. 96 par. (1). This action may be exercised by a lawful subject, namely deputies and senators, assembled in a joint sitting. We also identify another conditionality required for this action, namely that of a minimum quorum of votes. In this situation, we reiterate the provisions of art. 96 par. (1) of the Constitution of Romania in order to find that it is necessary to vote at least two-thirds of the number of deputies and senators in order to decide on the indictment of the President of Romania for high treason.

Returning to the analysis of the legal liability of the President of Romania, we reiterate that the text of art. 96 of the fundamental law contains both political elements and legal elements. The doctrine¹² concluded that the offense of high treason is much more complex than the offense provided and sanctioned by the Romanian Criminal Code at art.155. Thus, any act punished by the Criminal Code in Title I - State Safe Traffic Offenses (Article 155-173) of the Special Party, which has the purpose of producing particularly serious consequences for the state, can be included in the content of the high treason. It was therefore considered, in view of the facts, that the act of high treason is a special offense, with a qualitatively active subject, in this case the President of Romania. The

10 Dan Amedeo Lazarescu, *The Genesis of the Constitution of Romania 1991. The Works of the Constituent Assembly*, Autonomous Registry Official Gazette, Bucharest, 1998, p. 497

11 PhD Professor Stefan Deaconu, *op. cit.*, p. 40

12 PhD Professor Stefan Deaconu, *op. cit.*, p. 40

special character of this fact also includes the aspect according to which it has a dual valence, namely it contains political elements and legal elements.

The lack of definition of high betrayal in the text of the fundamental law, and the lack of clarification about it in the text of the Criminal Code, required the need for interpretation through other laws. This necessity was necessitated by the identification of the necessary framework for the practical application of the constitutional provision in the event of its being committed. The basis for this reasoning lies also in the Latin adage that: „actus interpretandus est potius iure ut valeat quam ut pereat”¹³. In fact, no person can be held accountable for an act that the law does not prescribe and does not sanction it, conditions that need to be cumulatively met.

In another opinion, the act of high treason belongs to both the branch of criminal law, the administrative and the constitutional law¹⁴.

Therefore, according to the doctrine¹⁵, the legal basis for the accountability of the President of Romania is represented primarily by the text of the fundamental law, and secondly by the offenses of treason in the Criminal Code, as prescribed and sanctioned by the latter, respectively: art. 155 - The betrayal¹⁶, art. 156 - The betrayal by helping the enemy¹⁷ and art. 158 - Secret

13 Translation: The law must be interpreted in the sense of its application and not in the sense of not applying it

14 Ion Corbeanu, Maria Corbeanu, Constitutional Law and Political Institutions, ed. Light Lex, Bucharest, 2004, p. 155

15 PhD Professor Stefan Deaconu, op. cit., p. 40

16 According to art. 155 of the Criminal Code, as subsequently amended and supplemented, constitutes the offense of betraying the deed of a Romanian citizen or of a person without citizenship domiciled in the territory of the Romanian State to come into contact with a foreign power or organization or their agents, to suppress or spoil the unity and indivisibility, sovereignty and independence of the state, through actions of provocation of war against the country or the facilitation of the foreign military occupation or of economic or political undermining of the state, or of servitude to foreign power, or helping a foreign power to carry out hostile activities against state security is punished by life imprisonment or by imprisonment from 15 to 25 years and the banning of rights.

17 According to art. 156 of the Criminal Code, as subsequently amended and supplemented, constitutes the offense of betrayal by assisting the enemy of the deed of a Romanian citizen or of a person without citizenship domiciled on the territory of the Romanian state who, in time of war:

a) hand over territories, cities, defense positions, warehouses or installations of the Romanian armed forces or serving the defense;

(b) hand over ships, aircraft, machinery, apparatus, weapons or any other material capable of serving the war;

c) procures the enemy people, values and materials of any kind;d) passes on to the enemy side or performs other actions that are likely to favor the activity of the enemy or weaken the fighting power of the Romanian armed forces or allied armies; shall be punished by life imprisonment or by imprisonment from 15 to 25 years and the forbidding of certain rights.

Forwarding¹⁸. However, it is also necessary to consider the Latin adage governed by the criminal law, according to which the sanctioning of an action / inaction can only take place if it is prescribed and sanctioned by law, namely: *nullum crimen / poena sine lege*. So, in order to be held accountable and legally sanctioned by an individual, the act imputed to it must be prescribed by the law and at the same time a punishment in that sense be sanctioned. Nor does the high-ranking act of betrayal in the French Constitutional Law qualify for the Criminal Code, the competent court, in this case the High Court of Justice of France, will proceed to the analysis of the act in question to qualify as a high treason¹⁹. It is thus distinguished in the constitutional text of art. 96, two sanctions:

a) a political one, namely the indictment of the President of Romania with the suspension from office and

b) a legal one, the jurisdiction being established for being judged and sanctioned by a final and irrevocable judgment of conviction, the High Court of Cassation and Justice.

Therefore, and given the bivalent constitution of the betrayal, it has been concluded that it has complex, variable content and eloquent political character. The political character is given by the fact that the Parliament, as a legislative power, has the power to charge the head of state for high betrayal, motivating its decision and defining the constitutive elements of the alleged facts deducted from the judgment. I mentioned the term supposed because, regardless of the acts committed by the head of state, he will benefit, under art. 23 par. (11) of the Constitution of Romania, by the constitutional presumption of innocence until the final and irrevocable stay of a conviction. However, the question of legal classification of the deed by the High Court of Cassation and Justice and the application of the related punishment is raised. We reiterate

The same punishment is sanctioned by the Romanian citizen who, in wartime, is fighting or is part of combat groups against the Romanian state or its allies

18 According to art. 157 of the Criminal Code, as subsequently amended and supplemented, constitutes the offense of betrayal by the transmission of secret acts by the transmission of state secrets to a foreign power or organization or their agents, as well as the procurement of documents or data constituting state secrets or possession of such documents by those who do not have the capacity to know them for the purpose of transmitting them to a foreign power or organization or their agents committed by a Romanian citizen or a person without citizenship domiciled in the territory of the Romanian State shall be punished with life imprisonment or imprisonment from 15 to 25 years and the banning of certain rights.

The same facts, if they look at other documents or data that by their character and importance make the act committed to jeopardize the security of the state, are punished by imprisonment from 5 to 20 years and the forbidding of certain rights.

19 Charles Bebbasch, Jean Bourdon, Jean-Marie Pontre, Jean-Christophe Ricci, *Droit constitutionnel et institutions politiques*, ed. Economique, Paris, 2001, p. 687

that the Parliament does not fulfill the role of the court, the prosecution of a purely political nature, sanctioned by the right of suspension from office. Given that no specific sanction is provided in the Constitution or any other law, it is considered that the legal sanction that could be enforced by the supreme court will be that provided by the Criminal Code²⁰ for one of the offenses provided in art. 155 to 157 on betrayal. It should also be borne in mind that “legal liability” means the reality of the duty of a lawful subject to bear the consequences of his own illicit deeds, provided by the law in force, which resulted in the attainment of a subjective right of another²¹.

Thus, regardless of who is the subject of the law, including the head of state, he is responsible for his deeds, assuming the consequences, whether licit or illicit, but if they are unlawful in violation of the law, he will be guilty or will be guilty according to the legal provisions in force, regardless of the form of guilt (intention or fault). Therefore, he is obliged to bear the consequences on the basis that he has suffered a subjective right of another by exceeding the limits of his / her liberty or even the objective right²², by influencing it under the conditions stipulated in art. 155 to 157 on betrayal. Hence, in order to be the subject of legal liability, a natural or legal person must have a certain essential attribute, that is, a capacity that allows the law enforcement authorities to establish liability. It is the ability to respond - the ability of a person to assess the consequences of his deed and to understand his obligations in order to enforce the sanctions provided by the law applied by law enforcement bodies, which is presumed since it was elected at the helm of the state.

Other authors of constitutional law²³ have appreciated that high betrayal does not only consist of the constitutive elements of the treason crime, which is stipulated in most criminal codes but also goes to the political field, but not the criminal field. Thus, the act of high treason was considered as a crime with a political character and a variable content²⁴, art. 60 of the Rules of Procedure of the Parliament’s Joint Sessions, thus qualifying the act of high treason not as a distinct offense, but as a phrase that would encompass several crimes, precisely because of the “facts” and their “legal violation”. In other words, the act of high treason is considered to be the most serious violation of the oath and

20 PhD Univ. Lecturer. Stefan Deaconu, op. cit., p. 40

21 Gheorghe Mihai, *Fundamentals of Law - Theory of Legal Liability*, Vol. V, Ed. C.H. Beck, Bucharest, 2006, p. 83

22 Ibidem, p. 84

23 Claude Leclercq, *Droit constitutionnel et institutions politiques*, 6ème édition, ed. Litec, Paris, 1989, pag. 591

24 Ibidem, p. 648

interests of the people and the country in the exercise of the presidential duties, and it is the Parliament's duty to decide the prosecution and the prosecution of the head of state.

Concluding, it is stated that high treason "lies at the border between politics and law; it is a political crime, consisting in abuses in office for an action contrary to the Constitution and the country's superior interests. "

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