



Is Romania Heading Towards a Presidential Republic?

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Abstract: The study focuses on the issue of semi-presidential regime in Romania. Political events in recent years have highlighted major deficiencies in the functioning of public authorities in Romania. The balance of powers provided *expressis verbis* in the Constitution proved to be rather a pronounced imbalance. The option of the Romanian Constituent Assembly in 1991 for a semi-presidential republic has been questioned lately. In our study, we show the characteristics of semi-presidential system in terms of Romanian constitutional provisions and political experiences. The semi-presidential system in Romania was and still is subject to continuous public debates, and it is also an electoral issue, as we speak, between the political parties involved in electoral campaign. For the present research, we have used both the analytical and comparative approach. The study is relevant for the public law experts, as well as for the political authorities because it displays an image of the current semi-presidential system. We believe that a possible option for a presidential regime in Romania is not viable, but rather a clarification of the duties of each public authority would be the best solution for the recovery of the Romanian constitutional system. The study is relevant for the public law experts, as well as for the political authorities because it displays an image of the current semi-presidential system. Our conclusions regarding the evolution of semi-presidential system in Romania can be considered an onset for those who will draft the new Romanian constitutional design.

Keywords: political regime; semi-presidential system; presidentialism system; Constitutional Court

1. Understanding Semi-presidentialism and the Romania's Option for Semi-presidentialism Regime

1.1. Conceptual Approaches

In technical literature, there have been stated arguments for and against the semi-presidential system. Due to the fact our study does not focus on analyzing this type of system, we will highlight the main features of the semi-presidential system.

The *semi-presidential system* concept has been defined for the first time in 1970 by

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Maurice Duverger, in his work “*Institutions politiques et droit constitutionnel*”¹. Duverger defined the French system as a semi-presidential system. In his opinion, “we define (by semi-presidential system) the institutions of a western democracy, which combine the following elements:

1. the President of the Republic, elected by universal suffrage, endowed with great authority;
2. a Prime Minister and a Government that is supposed to engage its responsibility in front of deputies, which can determine the Government to resign” (Duverger, 1978, p. 17).

Between a system that grants the President large prerogatives and a system that does the opposite, the semi-presidential system treads a middle course, in which the President elected by the people becomes a referee between the state powers, while the executive authority actually belongs to the Government, led by a Prime Minister.

As long as the technical literature is concerned, there has been stated a number of definitions that essentially kept the features rendered by Duverger to semi-presidential system. On the other hand, Gianfranco Pasquino claims that semi-presidential system is a particular and independent form of political system because it has specific institutional features. The presidential system cannot be mistaken for semi-presidential system, the same way the parliamentary system cannot be integrated within the semi-presidential system.

In technical doctrine, there are several opinions concerning the semi-presidential system (Radu, 2010, pp. 21-31, pp. 62-64). The French authors Michel Troper and Marie Anne Conhedet (2006²) deny the semi-presidential system an independent status. Juan Linz and Albert Stepan criticize the expression and claim it would have the same meaning with „semi-parliamentarism”. (Linz, 1994, pp. 3-87) Mathew Shugart and John Carey find the expression to be misleading due to its prefix “semi-”, which imply that certain systems would be somewhere in between presidentialism and parliamentarism. Robert Elgie defines semi-presidentialism as

¹ In the 70's, he is the first and only one who uses this expression in order to define the French system, as well as the Austrian and Finnic systems, to which he adds Ireland in 1971.

² The author suggests the following ranking of political systems: 1. *mono-representative systems* (parliamentary systems); 2. *non-parliamentary bi-representative systems* (presidential systems – USA); 3. *parliamentary bi-representative systems* (semi-presidential systems). For Marie Anne Conhedet, semi-presidential systems are a subdivision of parliamentary systems and not a distinct category, the way it may seem at first sight.

“that situation when a President elected by common suffrage, on a certain date, co-exist with the Prime Minister and a Cabinet that are responsible in front of the Parliament” (Elgie, 2004). For the British author, the semi-presidential system displays a variety which is determined by the historic, political-cultural background in which this system has been created. Each state operates within a certain geographic space and a dynamic constitutional frame. Nevertheless, there are similar elements which can be seen in the countries with semi-presidential system. The option for a semi-presidential system can be legitimate by three situations:

1. when the semi-presidential system is only adopted for symbolic reasons (in the event of changing the form of government, from monarchy to republic, when the aim is to reinforce the democratic legitimacy of the new system);
2. when the semi-presidential system is adopted for government reasons (for instance, in the event of the parliamentary regime collapse);
3. when the semi-presidential system is adopted as the result of the transition process towards democracy. (Elgie, 1994, p. 17)

On the other hand, there are authors like Arend Lijphart and Giovanni Sartori who support this new type of political system, being two authors who mark out the guiding lines of this system. Lijphart defines semi-presidential systems as those which also have a commonly elected President, and a Prime Minister elected by the Parliament. In his opinion, Austria, Finland, France, Iceland, Ireland and Portugal are semi-presidential systems (Lijphart, 1996, pp. 123-126). From Sartori's point of view, semi-presidentialism is a political system which displays the following properties or features:

- the head of state (the President) is elected by popular vote – either directly or indirectly – for a fixed term of office;
 - the head of state shares the executive power with a Prime Minister, creating a dual power structure, with the following three features:
1. The head of state is independent from the Parliament, but is not entitled to govern alone or legislate directly. His directives must be routed through the Government and the legislature.
 2. Conversely the Prime Minister and cabinet are independent from the President the same way they are dependant to the Parliament and must be sustained by a working majority.
 3. The dual power structure of semi-presidentialism oscillates between different

balances, mutual power arrangements inside the executive, so that the “potential autonomy” of each unit or executive component can subsist” (Sartori, 2008, p.146-147).

1.2. Romania’s Option for Semi-presidentialism

The way in which the relationship between the three leading actors (Parliament – Government – President) has been constitutionally „drawn” mirrors the political system nature in a state. In the light of this consideration, defining the political system in Romania proved to be a difficult task.

Following the 1989 events, there have been considerable debates in the Constituent Assembly over the system which was about to be adopted in Romania. The resolution expressed by the Constituent was for a *semi-presidential system*.

In the literature, the regime was considered to be either *rationalized parliamentary* one (Deleanu, 2006, p. 131), is a *semi-presidential attenuated* one, or has been defined as an *eclectic regime* (Preda & Soare, 2008, p. 26). From another perspective, it was considered that Romania is in an intermediate position on an imaginary scale semi-presidentialism: without being part of the hiper-presidential regimes (such as in Russia), it does not have any ceremonial President, like the Austrian and Irish model. The incumbent place is a *semi-presidential regime with parliamentary dimension*, defined by duality Head of State/Head of Government (Carp & Stanomir, 2008, pp. 259-266). In our opinion, Romanian semi-presidentialism has specific characteristics, being marked by the duality between the President and the government, represented by Prime Minister¹.

There is an excerpt in the doctrine which states that separation of powers, in light of the 1991 Constitution of Romania, can be linked both with presidential and parliamentary systems (Drăganu, 1998, pp. 227-235)². It has been also highlighted

¹ Regarding the relation between powers, we have to point out that there are differences between the states that benefit from a semi-presidential system. These differences cover the responsibilities held by the President and the Prime Minister, as well as the relationship between them. There are semi-presidential systems in which the President plays the main role (France), while the Prime Minister keeps the spot light in countries such as Austria, Finland, Portugal, Ireland, and Iceland.

² According to the Constitution, two bodies with a clearly defined existence emerge: the President of the Republic and the Prime Minister. The ways in which Parliament could influence the responsibilities exercised by the President in compliance with the Constitution cannot harm their very essence. The same way, the President of the Republic doesn’t have effective means to determine the Parliament to embrace his political ideas. The Constitution doesn’t create well organized channels in order to ensure a unity of action for the President of the Republic and Government. Without a doubt,

in technical literature that the entire way in which the originators of the 1991 Constitution imagined the separation of powers fit the frame of the so-called “constitutionalism of aversion” (Guțan, 2010, pp. 54-60). In comparative law studies, the experts identified Romania as a state with semi-presidential system (Vergottini, 2012, p. 148; Elgie, 1994, p. 14)¹.

Political transition in Romania determined the revise of the Constitution in 2003. The derived Constituent thus expressly established in the constitutional text *the principle of separation of powers*, adding the phrase *the balance of powers*. The new constitutional order compels the powers to cooperate and to strike a mutual balance. The new order between power and legislative gave a peculiar touch about Romanian semi-presidentialism. From our perspective, the Romanian semi-presidentialism² displays the following features:

- The President is elected by direct vote by the electoral body, so as the Parliament, so both of them enjoy the same popular legitimacy. But let's not forget a constitutional detail of extreme importance, as provided in Art. 61 (1) of the Constitution: “Parliament is the supreme representative body of the Romanian people”;
- The Government is politically liable only before the Parliament (art. 109 (1) of the Constitution). But the appointment of Government also implies the concern of the President of Romania due to his legitimate right to designate a candidate for the Prime Minister office, as well as to appoint the Government after receiving the investiture vote passed by Parliament (art. 85 of the Constitution);
- The Romanian executive is a two-headed executive, represented both by President and Government;
- The President enjoys large responsibilities, but in order to exercise them, he most of the times needs to cooperate with the rest of state authorities (Parliament, Government, Superior Council of Magistracy³);

by strength of circumstances, the President of the Republic and the Government will have to align their actions.

¹ Robert Elgie, one of the most famous experts of semi-presidential system.

² The Romanian law specialists (Antonie Iorgovan, Dana Apostol, Tofan, Genoveva Vrabie) characterize the semi-presidential regime as a *softened semi-presidential regime*, or as a *parliament-related one*.

³ See: art. 89 alin. (1) of the Constitution: “*After consultation with the presidents of both Chambers and the leaders of the parliamentary groups, the President of Romania may dissolve Parliament, if no vote of confidence has been obtained to form a government within 60 days after the first request was made, and only after rejection of at least two requests for investiture*”.

- art. 92 alin. (2) of Constitution: “*He (President) may declare, with prior approval of Parliament, partial or total mobilization of the Armed Forces. Only in exceptional cases shall the decision of the*

- The President is both politically (art. 95 of the Constitution)¹ and judicial (art. 96 of the Constitution) liable;
- The President may, in his turn, dissolve Parliament, only in compliance with the provisions of art. 89 of the Constitution;
- The President may not revoke the Prime Minister (art. 107 (2) of the Constitution);
- Regarding the appointment of Government members, the President makes the appointment based on the Prime Minister's proposals² (art. 107 (4) of the Constitution).

Professor Tudor Drăganu, in an artistic way, defines the relationship between the Romanian political actors as follows: “The constitutional frame (...) confronts a *President of the Republic*, with a strongly outlined judicial status, and a *Parliament* which can be dissolved only in exceptional circumstances. It goes without saying that such a constitutional regulation mirrors the principle of separation of powers. This narrow separation is softened by the fact that between these two bodies, which do not depend on one another, has been placed a cushion body: the *Government*, a scapegoat, designed to be the sole possible victim in the clash between two titans” (Drăganu, 1998, p. 232). In the clash between these two “titans” (Parliament and President), the “victims” have been, on one side, the Government³, and on the other

President be subsequently submitted for approval to Parliament, within five days of the adoption thereof”;

- art. 91 alin. (1) of the Constitution: „*The President shall, in the name of Romania, conclude international treaties negotiated by the Government, and then submit them to the Parliament for ratification, within a reasonable time limit. The other treaties and international agreements shall be concluded, approved, or ratified according to the procedure set up by law*”;

- art. 134 alin. (1) of the Constitution: „*The Superior Council of Magistracy shall propose to the President of Romania the appointment of judges and public prosecutors, except for the trainees, according to the law*”.

¹ *Suspension from office* (art. 95) and *the impeachment* (art. 96).

² The Constitutional Court, through Decision no. 98 of 7 February 2008, published in the Official Gazette of Romania, Part. I, no. 140 of 22.02.2008, stated that: “As opposed to regulation provided by art. 85 (1) and (3) of the Fundamental Law, indent (2) of the same article provides that *The President revokes and appoints, at the suggestion of the Prime Minister, some members of the Government*”. If we read *word for word* the text, we reach the conclusion that, with respect to this matter, the President doesn't apply a Parliament decision, but he finds himself in the situation *to decide all by himself the appointment of some ministers, at the suggestion of the Prime Minister. The decision-making process is, by definition, an act of free will, so it is obvious that the President has the liberty to receive the proposal made by the Prime Minister or to ask him to make another proposal.*

³ Whether we are talking about the President appointing a candidate for the Prime Minister office (see the situations in 2004, 2008), or refusing the appointment of some ministers (2007 – the case of Adrian Cioroianu – Constitutional Court's Decision no. 356/2007, published in the Official Gazette of Romania, Part. I, no. 322 of 14.05.2007, 2008 – the case of Norica Nicolai – Constitutional Court's

side, the citizens of Romania, left out of the equation of power. The several conflicts between public authorities have weakened the constitutional ground of Romania, as well as the citizens' trust in the fundamental institutions of Romania. In order to solve these judicial conflicts of constitutional nature between public authorities¹, the Constitutional Court had to interfere on a regular basis. This in fact proved the flaws of powers in the Romanian constitutional system and a failure, from our point of view, of semi-presidentialism.

2. Romania, Heading towards a Presidential Regime?

The way the Romanian president has been increasing his role on the political national scene, lately, by his taking over the duties of Prime Minister, as well, as compared to the diminishing weight of the Parliament, has raised the question as to whether Romania has turned from a semi-presidential republic into a presidential one. These changes within Romanian society led to the suspension of the Romanian president, in 2012, by the Parliament. The suspension request issued by members of parliament contained the following charges: 1) usurping the role of the Prime Minister and taking over the parliament's constitutional duties; 2) The President has repeatedly failed to meet the citizens' constitutional rights and liberties; 3) The President has repeatedly failed to meet the principle of state powers separation and the independence of the justice system; 4) The president has initiated a non-constitutional project regarding a change of the Constitution and has not observed the legal proceedings of a change in the Constitution provided by the basic law system; 5) The president has been instigating to break the Constitutional Court's decisions and has directly pushed the Court's judges, by paying them so called visits before adapting important bills of law; 6) The president has repeatedly broken the rule of the president's neutral political status and has abandoned his constitutional given role as a mediator within the state and society; 7) The president has seriously broken the Constitutional rules, as well as the basic principle of the representative democracy, by stating he would not appoint a USL Prime Minister, even if the above mentioned party would reach an absolute

Decision no. 98/2008, published in the Official Gazette of Romania, Part. I, no. 140 of 22.02.2008), whether it was subject to censure motion from the Parliament (2009, 2012), the Government has always been under the pressure exercised by one of these two constitutional bodies.

¹ A document regarding the activity of the Constitutional Court since its inception until 31 October 2012, issued by the Court, indicates 21 judicial conflicts between public authorities since 2005 up till now (the document can be seen at: http://www.ccr.ro/statistics/pdf/ro/activ10_12.pdf).

majority in the Parliament¹. The Constitutional Court, in their Consultative Bill², regarding the suspension proposal, stated that: “the fact that the Romanian president, through his political conduct, has publicly assumed the taking of political-economical measures, before their amending by the government, by the procedure of responsibility accept, may be viewed as an attempt to diminish the prime minister’s role and prerogatives”. The Court has also stated that the President “has failed to exercise with full efficiency his role as a mediator between the state bodies, as well as between state and society”.

The Constitutional Court itself, through opinions expressed by some of its judges, has touched the idea of a presidential republic³. Thus, in a separate, opinion, four Court judges stated that “some of the Court’s decisions stand for significant steps toward turning a *semi-presidential republic into a presidential one*, through the Constitutional Court. Taking into account the fact that none of the two options are suitable for a state that used to have a dictatorial regime.” (Barbu & Motoc, 1998, p. 264) Taking all these issues into account could we state that *Romania is headed toward a presidential regime?*

In our opinion, such regime is out of the question⁴, as long as the constitutional provisions refer to a semi-presidential regime. But, a “misshaped” semi-presidential regime, due to incoherent laws, regarding the relations between public bodies, which have often led to constitutional dead-ends.

3. Conclusions

The Romanian constitutional system, facing, lately, increasing constitutional dead ends, needs a constitutional make-over. In our opinion, a revision of the constitution is necessary, one which should clearly state the way in which the state bodies cooperate and interfere. The dosage of each institutions constitutional prerogatives will lead to the establishment of a more balanced state system, thus

¹See: <http://www.juridice.ro/208713/cerere-de-suspendare-a-presedintelui-romaniei-text-integral.html>

² The Consultative Agreement published in the Official Gazette of Romania, Part. I, no. 456 of 6.07.2012.

³ Decision no. 784 of 26 September 2012, published in the Official Gazette of Romania, Part. I, no. 701 of 12.10.2012.

⁴ During a speech held in 1991 in front of the Constituent Assembly, Ion Diaconescu, stated: “only those countries with a long democratic tradition and great political stability can afford the luxury of a presidential regime. All countries which have gone through the terrible experience of hard dictatorship years have made their way towards liberty by a parliament-based republic”.

avoiding any possibility of dictatorship, as well as any freewill or free action on the part of the state institutions (Enache, 1991, p. 491).

The resulting constitutional system should consider the actual political facts and foresee the system development in an ever-changing society.

It is not the kind of republic, through itself, that ensures the democratic value of a political regime, but the way the constitutional rules are enforced and the way this is kept under control (Bucur Vasilescu, 1991, p. 488).

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