THE INSTITUTION OF PRESIDENTIAL IMPEACHMENT IN SEMI-PRESIDENTIAL SYSTEMS

-CASE STUDY OF ROMANIA-

By
Valentina-Andreea Dimulescu

Submitted to
Central European University
Department of Political Science

In partial fulfilment of the requirements for the degree of Master of Political Science

Supervisor: Professor Nenad Dimitrijevic

Budapest, Hungary
2009

ABSTRACT

The present paper examines the institution of presidential impeachment in countries displaying a semi-presidential institutional design. More specifically, it addresses the question whether the functioning of impeachment can be attributed to the particular institutional arrangement mirrored in the specific interactions between the state actors involved – the president, parliament and PM – or by non-institutional factors such as the president's actions throughout his/her tenure which can be considered as having violated the constitutional text. The methodology used is the case study of the 2007 Romanian presidential impeachment against Traian Băsescu. The principal finding is that it is difficult to point to a clear, mono-causal relationship between the tensions caused by semi-presidentialism and the practice of impeachment since the impeachment of the head of state is not a common practice in countries that display semi-presidential features. The Romanian case represents a situation where the ambiguity of the constitutional text permitted the parliamentary majority to sanction the President, whose self-proclaimed active role in the political system was supported by the Romanian Constitutional Court and by the citizens who participated in the referendum on his dismissal.

ACKNOWLEDGMENTS

We would like to thank Professor Nenad Dimitrijevic for the valuable guidance offered throughout the elaboration of the present paper. We express our gratitude to Professor Algis Krupavicius, Professor Carsten Schneider, Professor Ioan Stanomir, Irina Ionescu, Sergiu Gherghina and Stela Garaz for their important advice regarding the topic and the research strategies. Also, we would like to thank Mihail Chiru for his support.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS

FSN	National Salvation Front
PCUN	Provisional Council for National Unity
CDR	Romanian Democratic Convention
PNȚ-CD	Christian-Democratic National Peasants' Party
PD	The Democratic Party
PNL	The National Liberal Party
PSD	The Social Democratic Party
PD-L	Democratic Liberal Party
PLD	Liberal Democratic Party
UDMR	Democratic Union of Hungarians in Romania
PRM	Greater Romania Party
PC	The Conservative Party
PDSR	The Party for Social Democracy in Romania
PAC	The Civic Alliance Party
PSDR	The Romanian Social Democratic Party
PER	The Romanian Ecological Party
PL'93	The Liberal Party 1993
PUNR	The Romanian National Unity Party
PSM	The Socialist Labour Party
PDAR	Democratic Agrarian Party of Romania
Alianța D.A.	Justice and Truth Alliance
C.S.M.	Superior Council of Magistracy
SRI	Romanian Intelligence Service
SIE	Romanian Foreign Intelligence Service
CSAT	Supreme Defence Council
CNI	National Intelligence Community
ECHR	European Court of Human Rights

INTRODUCTION

Topic

The topic of the present research is the institution of presidential impeachment in semi-presidential systems. The purpose is to offer an examination of the place of presidential impeachment in the institutional setup, thus its role in the constitutional document and the dynamic between the different state institutions when deciding to use it against the persona of the president.

Specific problem

The present paper's unit of analysis is the institution of presidential impeachment in semi-presidential systems. More specifically, this study examines whether the functioning of the institution of impeachment can be accounted for by looking at the particular institutional setup, i.e. the specific interactions between the state actors involved – the president, parliament and PM – or by non-institutional factors such as the president's actions throughout his/her tenure which can be considered as having violated the constitution. In tackling this subject, the 2007 Romanian suspension case will serve as a case study.

Puzzle

The puzzling aspect about the Romanian case stems from the fact that there have been two suspension procedures initiated by Parliament in a time span of 17 years after the 1989 Revolution. The first suspension procedure was unsuccessful and occurred in 1994 against Ion Iliescu on the grounds of violating the separation of powers principle through a political statement considered to have curtailed the judiciary's independence. The second suspension procedure received the necessary votes in the legislature to take effect and acting President

Traian Băsescu was suspended for 30 days until the organization for a national referendum on his dismissal. The grounds for his suspension were numerous and targeted his relationship with Parliament, Government, the judiciary and the presidency's own powers and duties.

It is important to note a special feature of the Romanian Constitution relating to the presidential impeachment procedure, namely that the constitutional text distinguishes between "suspension from office" and "impeachment" (see section 1.1. for more details). Most constitutional texts do not make such a distinction between acts consisting in a violation of the Constitution and those of high treason or criminal offences and place them under the same article. It is safe to say that we can include the Romanian suspension case(s) as belonging to what is generally described as a presidential "impeachment". Therefore, in the remainder of this paper we will refer to the *suspension* procedure against the Romanian presidents by keeping in mind that it can be considered as a parliamentary sanction against the head of state for unconstitutional behaviour.

Research question

In light of the fact that there have been two suspension procedures in a relatively short time span, we ask the following question: does the semi-presidential institutional setup, with its inherent possibility for intra-executive and executive-legislative tensions, favour the use of presidential impeachment as a method of dealing with political conflict?

In order to answer this question, we analyze both the formal and the living constitutions of the country under study. More specifically, we examine which are the constitutional conditions under which the president can be suspended and the formal arguments used in favour of suspension in the Romanian case. Also, we look at the presidential powers enshrined in the constitution to see how many and how much power the president possesses at the formal level. Nevertheless, there is also a need to know how much

influence the president actually has on the political system, i.e. what is his relationship with the parties in parliament, the parliamentary majority and with the PM despite the formal configuration of powers. In addition, in tackling this question, we assess the reasons for, as well as the gravity and frequency of constitutional conflicts that Romania went through from 1990 until 2007. In addition, one has to examine the political context in which the president came to power, his conduct and the conflicts he had to deal with throughout his tenure until the suspension moment. The answer to this question points to whether the suspension procedure was clearly the result of a violation of the constitutional text and abuse of power or a matter favoured by a tension-prone institutional design.

This paper's **principal finding** is that it is difficult to point to a clear causal relationship between the tensions caused by a semi-presidential institutional design and the practice of presidential suspension since the impeachment of the head of state is not a common practice in countries that display semi-presidential features. The Romanian case points to a situation where the ambiguity of the constitutional text permitted the parliamentary majority at the time to successfully suspend the President on various charges which were refuted by the Romanian Constitutional Court.

Relevance

The practical relevance is given by the implications the suspension scandal has had since this case constitutes a precedent in the functioning of European semi-presidential regimes: a suspended president who resumed his duties after the citizens voted in the referendum against his removal from office. Furthermore, it reasserted the importance of a constitutional debate regarding the necessity of clarifying the institutional powers of the dual executive so as to make available a reliable mechanism of resolving constitutional conflicts.

The scientific relevance of the present subject resides in the fact that the occurrence of these recent events points to the importance of examining the institution of presidential impeachment. More specifically, it is important to see the way in which such a device can be used by the institutional actors in a political power struggle. In the Romanian case, the existence of a power struggle was evident between on the one hand, the Parliament and the PM and on the other hand, the President supported by the Constitutional Court. The relevance stems from the fact that little research has been conducted in relation to the functioning and practice of presidential impeachment in general and in semi-presidential systems in particular.

The implications of the present research refer to the examination of a possible change in the dynamic of the Romanian semi-presidential form of government, i.e. a tendency to move towards a parliamentary configuration in the sense of affirming the parliament's right to challenge the president so as to, at least officially, protect the democratic balance of power. In relation to this possible tendency, it must be noted that the idea of strengthening the legislature was institutionalized in France, a country that is the prototype of a form of government based on a strong presidency and a rather limited parliament. In July 2008, the French National Assembly made a historic move by narrowly voting in favour of Nicolas Sarkozy's proposal to revise the 1958 Constitution[1] in a manner that will generally "strengthen parliament and make the president more accountable"[2].

[1] There are several changes made in order to strengthen the Parliament's role in the overall semi-presidential system. Firstly, the President's prerogative to appoint members of the Constitutional Council, the Senior Council of Magistrates and the Ombudusman can now be rejected by the relevant standing committee in each parliamentary chamber. In this sense, Article 13-5 reads: "An Institutional Act shall determine the posts or positions, […] on account of their importance in the guarantee of the rights and freedoms or the economic and social life of the Nation, the power of appointment of the President of the Republic shall be exercised after public consultation with the relevant standing committee in each assembly. The President of the Republic may not make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees. […]. Secondly, Article 49-3 limits the practice of emergency ordinances to financial or social security bills in stating that "The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly". Thirdly, the Parliament has more control over its own agenda. Article 34-1(1) reads that "any draft resolution, whose adoption or rejection would be considered by the Government as an issue of confidence, or which contained an injunction to the Government, shall be inadmissible and may not be included on the agenda". In addition, Article 39 (1) provides that Government bills can be rejected from the agenda of the House to which it has been forwarded if the Conference of Presidents of that House "declares that

Research design

The research design chosen for the present paper is the case study. The case study deals primarily with a thorough investigation of a particular entity, be it a country, political system or regime, institution, event or phenomenon[3]. It is based upon three crucial elements, namely: 1) a specific subject; 2) a delimitated geographic space and 3) a particular period of time[4]. Therefore, the present case study fulfils these characteristics: 1) the subject refers to the institution of presidential impeachment in semi-presidential systems; 2) the geographic space is Romania and (3) the chosen timeframe is the 2004-2007 period of Traian Băsescu's presidential mandate.

Research methods and data sources

The research methods that were used in the present paper may be said to fall generally under the category of qualitative research, i.e. "a research strategy that usually emphasizes words rather than quantification in the collection and analysis of data"[5]. More specifically, the approach used was document analysis since the collection and examination of data, such as official documents produced by the state authorities[6] – the Constitution, official reports, public statements, parliamentary debates or Constitutional Court decisions – or private

---

the rules determined by the Institutional Act have been ignored". If there is a disagreement between the Government and the Conference of Presidents, then the bill is referred to the Constitutional Court. Source: The French political system, Constitutional reform 2008, About France.com, http://about-france.com/constitutional-changes-2008.htm, (accessed May 25, 2009).

[2] There are also a number of revisions regarding the presidency. Firstly, the President's terms of office are limited to two consecutive mandates of 5 years each (Article 6). Secondly, the head of state may now address the joint Houses of Parliament – which may be especially convened – via "the message" (Article 18). In addition, the President's right to grant collective pardon is now limited to individuals (Article 17). Source: ***, "France backs constitution reform", *BBC*, July 21, 2008.

[3] John Gerring defined the case study as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units". Source: John Gerring, "What is a case-study and what is it good for?", *American Political Science Review*, Vol. 98, No. 2, (May 2004): 324.

[4] Timothy Lim, *Doing Comparative Politics – An introduction to Approaches and Issues*, (Boulder, London: Lynne Rienner Publishers, 2006), 45.

[5] Alan Bryman, *Social Research Methods*, (Oxford: Oxford University Press, 2001), 264.

[6] An interesting question of credibility was raised by Alan Bryman in relation to such sources: "The question of credibility raises the issue of whether the documentary source is biased. […] In other words, such documents can be interesting precisely because of the biases they reveal". However, neither the other sources can be regarded as 100% objective and credible. Source: Ibid, 375.

organizations and think tanks, mass media outputs and virtual, Internet outputs represent the basis for coming up with a robust and detailed presentation of the case under study. The primary data sources used in this research are the 1991 and 2003 versions of the Romanian Constitution, the legal acts issued by the Romanian Parliament concerning the suspension proposal, i.e. "Proposal for the suspension from office of the Romanian President" and "The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President". Also, we examined the Constitutional Court's ruling on the suspension proposal against Traian Băsescu. The provisions we concentrated on were those regarding the president's formal powers vis-à-vis the PM and the Parliament. Secondly, we examine the dynamics of interaction between the president, PM and the parliamentary majority to inspect the manner in which constitutional conflicts have been resolved in Romania. Moreover, scholarly articles and books that deal with the issue of semi-presidentialism in general and with Romanian semi-presidentialism in particular have been consulted in order to draw adequate conclusions about the functioning of this form of government. Lastly, printed and online newspaper articles were used in order to gather information on the more recent political developments and to examine the opinion of different actors involved in the case under study.

Case selection

The reason for which Romania was chosen is that it represents a case where the suspension procedure was used twice: in 1994 against Ion Iliescu and in 2007 against Traian Băsescu. In both cases, the Constitutional Court, which has only a consultative role, gave a negative ruling regarding the accusations, but only in 1994 was this aspect taken into consideration and Parliament rejected the suspension proposal. However, in 2007, a large parliamentary majority voted in favour of the President's suspension. In the examination of

the Romanian case, we will make short references to the 2004 impeachment of Lithuanian President, Rolandas Paksas, who was accused of high treason and breach of oath, so as to point out the similarities and differences between these two instances within the European context. We did not take into consideration the 1993 Russian constitutional crisis between the President and Parliament because at that moment Russia was far from being considered a stable democratic country and the point of this research is to examine the impeachment cases in a county that has an established democratic regime.

As mentioned above, the period under study is the 2004-2007 tenure of President Traian Băsescu since it is within this timeframe that the actions and declarations of the President constituted the charges brought against him in April 2007. However, there is the need to have a clear understanding of the context in which the Romanian Constitution was drawn up so as to examine not only the reasons for which such a model was chosen but also the way in which it was adapted to the national context, thus leading to problematic particularities of institutional design.

Structure of the paper

The first chapter offers a theoretical overview of the basic concepts in this paper, namely impeachment and semi-presidentialism. We will refer to the definition of impeachment as theorized by Alexander Hamilton (1788) and its transplantation in the North American context. Semi-presidentialism will be addressed by drawing upon the main contributors to the literature, such as Maurice Duverger (1980), Matthew Shugart and John Carey (1992), Giovanni Sartori (1994), Robert Elgie (1999) and Alan Siaroff (2003). This chapter will also comprise an analysis of French Fifth Republic, in virtue of the fact that it is the prototype of the semi-presidential form of government and the model for the Romanian Constitution. An important aspect which is considered is the manner in which the French

system is able to resolve the conflicts which appear between the President, the PM and the National Assembly.

The second chapter consists of an analysis of the Romanian semi-presidential form of government in order to point out the problematic aspects of this institutional design, as it has been adapted to this particular post-communist country. In this sense, Duverger's three variables that account for the *de facto* diversity within this model will be used for the above-mentioned analysis. We will be dealing primarily with the 1991 constitutional text and the provisions regulating the powers and activity of those state institutions that are of interest for the present paper. Since the 2003 revision has not brought substantial changes to these specific provisions, we will not insist on the modifications, but we will point out the modified articles that deal with the state institutions and place it into brackets.

The third chapter consists in a description of the suspension procedure in order to establish the political, legal and institutional facts and consequences of this case. Therefore, we will provide a detailed account of the events leading up to the suspension proposal in Parliament, the establishment of the parliamentary investigation commission and its findings, the Constitutional Court's ruling, the vote on the suspension proposal and the scandal surrounding the dismissal referendum.

In the conclusion, will we reiterate the research question and give a systematic answer to the issue at hand. Also, we will synthesize the findings and examine the implications of the constitutional and institutional particularities of the case under study.

CHAPTER 1: BASIC CONCEPTS

1.1. A definition of impeachment

Before focusing on the particularities of the semi-presidential form of government, it is necessary to offer a definition of the general notion of impeachment, as well as a brief account of its historical origins.

In the Federalist No. 65, Alexandrer Hamilton defined impeachment as "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself"[7]. The Rodino Report[8] report provides a very good analysis of the historical roots of the impeachment practice by drawing on Federalist No. 65. It also offers a detailed overview of the debates among the Framers of the American Constitution regarding the presidential impeachment in particular.

Hamilton points out that impeachment was a constitutional process which was established in 14th century England as a method of holding the King's advisors and ministers accountable in the political and legal struggle between Parliament and the King. Therefore, the impeachment practice targeted precisely the King's absolutist tendencies and "was one of the tools used by the English Parliament to create more responsive and responsible government and to redress imbalances when they occurred"[9]. The definition of the charges on the basis of which such a procedure could be initiated against an official was quite broad since

[7] Alexander Hamilton, *Federalist No. 65: The Powers of the Senate Continued*, March 7, 1788. Source: The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/fed65.asp, (accessed May 27, 2009).
[8] The "Rodino Report on the Constitutional Grounds for Presidential Impeachment" was written in 1974 after the Watergare crisis which led to impeachmnet procedings against President Richard Nixon.
[9] *Rodino Report, Constitutional Grounds for Presidential Impeachment*, Report by the Staff of the Impeachment Inquiry, U.S. Government Printing Office, Washington, 1974, http://www.uhuh.com/Starr/rodino.htm, (accessed May 27, 2009).

it listed, besides (high) treason and misconduct, the ambiguous phrase "high Crimes and Misdemeanours"[10].

The American Founding Fathers imported the impeachment provision because they wanted to make sure that the powerful executive, especially the presidency, could be effectively held accountable. Although heated debates occurred on which body was to have the legitimacy and standing to judge such an issue, the Framers settled on the Senate as "the sole power to try all impeachments". The problem with the Framers' approach was the unfiltered transplantation of the ambiguous English qualification of impeachable offences, thus leaving Congress much room to manoeuvre. It has been noted that "[t]he phrase is the subject of continuing debate, pitting broad constructionists, who view impeachment as a political weapon, against narrow constructionists, who regard impeachment as being limited to offences indictable at common law"[11].

Other constitutional texts base their impeachment clauses on the same principles: if the head of state is found guilty of violating the Constitution or commits a criminal offence, the parliament is entitled to suspend or impeach him/her after consulting a Constitutional/ High Court or State Tribunal. Also, if we look only at the Constitutions of East-Central European countries which are considered as having a semi-presidential institutional design, we notice that all display a rather low degree of clarity when it comes to listing these impeachable acts[12]. The same can be said about the French Constitution since Article 68

[10] The Rodino Report clarifies the understanding the phrase "high Crimes and Misdemeanors" as the following indictments: misconduct, damage to the state by mismanaging funds, abusing official power, neglecting one's duties, infringing of Parliament's rights, corruption and betrayal of trust. Also, the Report points out that only Parliament could impeach on the above-mentioned grounds. Source: Idem.

[11] The United States Senate, Powers and Procedures, The Senate's Impeachment Role, Chapter 2 "Historical Development", Definition of offences, http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm, (accessed May 27, 2009).

[12] The following list of ECE countries have been chosen on the basis of Rober Elgie's (1999) definition of semi-presidentialism, i.e. "A semi-presidential regime may be defined as the situation where a popularly elected fixed-term president exists alongside a prime-minister and cabinet who are responsible to parliament" (see section 2.1.). Article 88 of the Constitution of the Republic of Belarus states that "The President may be removed from office for acts of state treason and other grave crimes […]The failure of the Council of the Republic and House of Representatives to take a decision to remove the President from office within a month since it was initiated

provides the following nebulous regulation: "The President of the Republic shall not be removed from office during the term thereof on any grounds other than a breach of his duties patently incompatible with his continuing in office".

As stated in the introduction, the Romanian Constitution makes a distinction between "suspension" and "impeachment" from office. These two procedures differ in the indictments brought against the head of state, the majorities needed for the initiation of the specific procedure, the manner in which the charges are judged and the steps needed in order to actually dismiss the President from office[13]. Article 95 of the 1991 Constitution stipulates that the suspension procedure may be initiated by 1/3 of MPs and that the President may be suspended from office by a majority vote in the Parliament "in case of having committed grave acts infringing upon constitutional provisions". Before voting on the suspension proposal, Parliament must consult with the Constitutional Court (CC) on the charges brought against the President. If the suspension proposal is passed by the legislative, then the

---

shall make the move invalid."; Article 103-3 of the Bulgarian Constitution: "[…] Should the Constitutional Court convict the President or Vice President of high treason, or of a violation of the Constitution, the President's or Vice President's prerogatives shall be suspended."; Article 104-1 of the Croatian Constitution: "The President of the Republic shall be impeachable for any violation of the Constitution he has committed in the performance of his duties"; Article 74 of the Lithuanian Constitution: "For gross violation of the Constitution, breach of oath, or upon the disclosure of the commitment of felony, the Seimas may, by three-fifths majority vote of all the Seimas members, remove from office the President of the Republic […]"; Article 87-1 of the Macedonian Constitution: "The President is held accountable for any violation of the Constitution in exercising his/her rights and duties"; Article 198-1 of the Polish Constitution: "For violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic […]"; Article 93-1 of the Russian Federation: "The President of the Russian Federation may be impeached by the Council of the Federation only on the basis of the charges of high treason or another grave crime, advanced by the State Duma and confirmed by the conclusion of the Supreme Court of the Russian Federation on the presence of the elements of crime in the actions of the President of the Russian Federation and by the conclusion of the Constitution Court of the Russian Federation confirming that the rules of advancing the charges were observed"; a somewhat clearer provision is Article 106 of the Slovak Constitution: "The National Council of the Slovak Republic can recall the president from his post if the president is engaged in activity directed against the sovereignty and territorial integrity of the Slovak Republic or in activity aimed at eliminating the Slovak Republic's democratic constitutional system";; Article 109 of the Slovenian Constitution provides that the President may be impeached for violating ordinary law as well: "If in the performance of his office the President of the Republic violates the Constitution or seriously violates the law, he may be impeached by the National Assembly before the Constitutional Court"; Article 111 of the Ukranian Constitution: "The President of Ukraine may be removed from office by the Verkhovna Rada of Ukraine by the procedure of impeachment, in the event that he or she commits state treason or other crime".

[13] The following explanations are also taken from the Joint Sessions Rules of the Romanian House of Deputies and Senate. Source: Romanian House of Deputies, http://www.cdep.ro/pls/dic/site.page?id=748 (accessed May 15, 2009).

President is suspended for a 30 days period and awaits the results of a national referendum on his/her removal. If the referendum is successful, then the President is removed from office. In contrast, if the referendum rejects Parliament's suspension proposal, then the President can resume his/her mandate with no repercussions for the Parliament. In completion, Article 96 provides for the "impeachment" procedure against the President for high treason. The impeachment procedure may be initiated by a higher number of MPs, i.e. a 2/3 majority. In case such a proposal was initiated, the President must appear before Parliament to explain the charges brought against him/her. Furthermore, Parliament appoints a special investigation commission which examines the indictments and presents a report which is voted upon by the two Chambers of Parliament. If the impeachment proposal is passed by the legislative, then the Prosecutor General informs the High Court of Cassation and Justice, i.e. the Romanian Supreme Court, which decrees his/her exoneration or impeachment.

1.2. A definition of semi-presidentialism

The semi-presidential model is considered a hybrid type of institutional arrangement, an alternative between the parliamentary and presidential systems. The term was coined by Maurice Duverger in characterizing the 1958 French Fifth Republic that displayed three characteristics embedded in the constitutional framework. Firstly, the president of the republic is elected via universal suffrage; secondly, he has "quite considerable powers" and thirdly, faces a PM that possesses executive and governmental power but whose stay in office is conditioned by the vote of confidence given by parliament[14]. In addition, Duverger underlined in his study that there are differences in degree of presidential power within the semi-presidential systems and distinguished between "all-powerful presidencies", "balanced presidency and government" and "figurehead presidencies"[15].

[14] Maurice Duverger, "A New Political System Model: Semi-presidential Government", *European Journal of Political Research* 8/2, (1990): 166.
[15] Ibid, 167-177.

Complementary to Duverger's characteristics, Giovanni Sartori identified five more traits. First, the head of state is elected by a direct or indirect popular vote for a fixed term of office. Second, there is a dual executive configuration as a result of the fact that the head of state shares executive power with the head of government. Third, the head of state does not depend on the parliament's support and he/she cannot rule alone or directly. Fourth, the PM and the cabinet depend on the parliament's vote of confidence and the support of a parliamentary majority. Fifth, dual authority can lead to changes in the balance of power between the president and the PM as long as the "autonomy potential" of each executive entity remains unmodified[16].

Matthew Shugart underlined that the important consequence of this system consists in the "dual executive" whereby the presidential office is independent of the legislature in its origin and survival and, although the government's origin varies, its survival depends on the vote of confidence given by the parliamentary majority[17]. Shugart disagrees with Duverger that semi-presidential systems alternate between presidential and parliamentary ideal types since the focus should be on institutional design and on not behavioural outcomes[18]. In this sense, Juan Linz pointed out that semi-presidential systems share with presidentialism the "democratic legitimacy of the presidency and the legislature" via popular vote, the rigidity of the term in office and "the unique personal character of the office"[19].

Along the same lines, Cindy Skach argued that the "tensions between the president, the prime minister and the legislature are inherent in the structure of semi-presidentialism, and

[16] Giovanni Sartori, *Comparative Constitutional Engineering: An inquiry into structures, incentives and outcomes*, (Basingstoke: Macmillan, 1994), 132.
[17] Regarding the characterization of this system, Matthew Shugart pointed out that it mixes rather than mirrors the other two systems. He stated the following: "[r]ather than simply combining the two dimensions of origin and survival in the opposite manner from the pure types or being located somewhere in between them on a continuum, a semi-presidential system actually takes from both of the pure types […] for each portion of a dual executive structure". Source: Matthew S. Shugart, *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 3.
[18] Ibid, 5.
[19] Juan Linz, "Introduction: some thoughts on presidentialism in postcommunist Europe", in *Postcommunist Presidents*, ed. Ray Taras, (Cambridge: Cambridge University Press, 1997), 4.

are therefore permanent"[20]. Skach presented three semi-presidential subtypes according to governmental legislative support: 1) consolidated majority government where the President and the PM enjoy the support of a legislative majority; 2) divided majority government where the President has to deal with an opposing legislative majority; 3) divided minority government where there is no clear and solid parliamentary majority because of "shifting legislative coalitions and government reshuffles". The author points out that even consolidated majority governments may have to deal with serious conflicts that can lead to institutional deadlock if the President and PM belong to different parties and their relationship starts to deteriorate[21].

Since its initial exposure, Duverger's definition has come under criticism and the concept has been reformulated so as to offer a more accurate analysis of the variety of constitutional arrangements which are considered to fall under this type of system. Nevertheless, there has been little agreement on a unique definition and the variation on the theme of semi-presidentialism has caused further difficulties in tackling the subject. It has been argued by scholars such as Sartori, Pasquino and Elgie that it would be better to limit this regime type to those that have *direct* election by popular vote for a fixed term for the head of state since this indicates a higher degree of legitimacy. In turn, this makes the possibility of president-government conflict more acute[22].

Another problem refers to Duverger's "quite considerable (presidential) powers" criterion since its ambiguity has lead to the charge that it places together weak and strong presidents in a category which should point only to those with "significant" constitutional power. Duverger's response has been that although the constitutional design settling a semi-presidential system is the same among various countries, there is a variation in the practical

[20] Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, (New Jersey: Princeton University Press, 2006), 15.
[21] Ibid, 16.
[22] Alan Siaroff, "Comparative presidencies: The inadequacy of the presidential, semi-presidential and parliamentary distinction", *European Journal of Political Research* 42, (2003): 291.

results and the actual political behaviour, but this does the undermine the notion's validity[23]. Nevertheless, as Robert Elgie argues, if Duverger's criteria would be followed in full, there would be no commonly accepted inventory of semi-presidential systems since this subjectivity in classification undermines the comparative endeavour of regime types. Therefore, Elgie proposes the following constitutional *definition*: "A semi-presidential regime may be defined as the situation where a popularly elected fixed-term president exists alongside a prime-minister and cabinet who are responsible to parliament"[24].

Elgie's definition is preferable because it is better not to focus on the relational properties of democratic regime type only (on the actual powers of political actors) or on a combination of relational and dispositional properties (combination of formal constitutional provisions and actual powers, i.e. Duverger's definition). The problem with these approaches is that they force the researcher to make a subjective choice of cases in the classification process. The result is that each definition will comprise a different set of countries since there will be different indicators and different scores for the cases under analysis. In addition, the conclusions drawn about the outcomes of institutional choices differ because they depend on the cases chosen to illustrate the concept.

Among the theoretical "reformers" of Duverger's criteria, Matthew Shugart and John Carey introduced the "premier-presidential" and "president-parliamentary" subtypes[25] which point to a very important aspect of semi-presidentialism, namely that the institutional body which selects the government may not be the same as the one able to dismiss it. Since Romania finds itself in the first category, we will not insist on the president-parliamentary system. This distinction is significant because it points to the possibility of having to deal with

[23] Robert Elgie, *Semi-presidentialism in Europe*, (Oxford: Oxford University Press, 1999), 10-12.
[24] Ibid, 13
[25]The "premier-presidential" subtype refers to the situation in which the PM and the cabinet are exclusively accountable to the parliamentary majority, whereas in the "president-parliamentary" subtype, the PM and cabinet are accountable both to the president and the parliamentary majority. Source: Matthew S. Shugart, *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 7-8.

a constitutional deadlock in case of conflict between the president and the PM since the latter cannot be dismissed by the head of state. The goal of this research is to examine exactly the relationships between the major institutional actors and their dynamic in relation to the suspension case. In light of this aspect, we will analyse the Romanian semi-presidential system by keeping in mind Matthew Shugart and John Carey's "premier-presidential" subtype. The concept of premier-presidentialism draws upon Duverger's definition: 1) the popular election of the president; 2) the president possesses some political powers; 3) the PM and the cabinet are responsible to the assembly. The indicators of the power dimension[26] used by Shugart are the following[27]: 1) presidential initiative to name the PM; 2) presidential discretion to dismiss the PM; 3) cabinet forms without investiture; 4) restrictions on the assembly vote of no confidence; 5) Presidential discretion to dissolve the assembly; 6) the dismissal is triggered by assembly inaction; 7) the presidential veto can be overridden by the assembly. We can also add the right of legislative initiative, referendum calling and referring legislation for judicial review[28]. These will be addressed in the section dealing with the constitutional powers of the major institutional actors.

Regarding the reasons which explain the variation in the functioning of semi-presidential systems, Elgie states that there is some scholarly consensus concerning Duverger's three variables: 1) the constitutional powers of the major political actors; 2) the events surrounding the formation of the regime; 3) the nature of the parliamentary majority and the relationship between the president and the majority[29].

[26] For an analysis of the problems associated with the scale of presidential powers adopted by Shugart and Carey, see Steven Roper, "Are all semi-presidential regimes the same? A comparison of Premier-Presidential Regimes", *Comparative Politics*, vol. 34, no. 3, (April 2002).
[27] Matthew S. Shugart, *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 1-22.
[28] Matthew S. Shugart, John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, (Cambridge: Cambridge University Press, 1992), 23-24.
[29] Robert Elgie, *Semi-presidentialism in Europe*, (Oxford: Oxford University Press, 1999), 15-16.

The first is considered to be of secondary importance since everyday political practice may not respect the constitutional norms, but it does allow for an initial assessment of the diversity of semi-presidential systems via the variation in constitutional powers of heads of state, government and legislature. The political and cultural context in which the "zero moment" of constitution writing took place is regarded as a crucial factor in determining the subsequent practical political configuration within a country having adopted a semi-presidential system[30]. Duverger considered that the third factor best accounts for the variation between semi-presidential systems given that the nature of the parliamentary majority can have a different structure in each semi-presidential. Thus, the result would be different patterns of government support and overall political performance[31] since it depends on whether the president is the leader or an ordinary member of the majority and on whether he/ she belongs to the opposition or is an independent.

1.3. French semi-presidentialism

The French Fifth Republic came into being in 1958 when Charles de Gaulle sought to increase the power of the executive over the unstable and conflict-riven legislature of the Fourth Republic. The latter had had a parliamentary form of government with a figurehead presidency and parliament-dependent PM. Therefore, the new Constitution offered the government the possibility to control the legislative process via a number of provisions, among which the ability to pass ordinances (Article 38) and to object to any amendment not previously debated in a parliamentary committee (Article 44)[32]. Furthermore, in 1962, the direct election of the head of state was introduced, thus giving de Gaulle popular legitimacy

[30] Duverger identified three common types of environments or rationales which were conductive for the adoption of a semi-presidential system: 1) symbolic reasons leading to a weak presidency; 2) governability reasons leading to a strong presidency; 3) reasons owing to a transitional phase towards democracy which can lead to either a strong or a weak president. Source: Robert Elgie, *Semi-presidentialism in Europe*, (Oxford: Oxford University Press, 1999), 17-18.

[31] Parliamentary majorities can be classified as: 1) absolute – monolithic (one party has majority), coalition majority with one dominant party, or a balanced coalition majority; 2) quasi-majority (a party has most seats but lacks overall majority; 3) no majority (the seats are divided between the parties in parliament). Source: Ibid, 19.

[32] For a more detailed analysis of the dual executive's powers, see: Robert Elgie, Steven Griggs, *French Politics: Debates and Controversies*, (London and New York: Routledge, 2000), 27-29.

alongside that enjoyed by the parliament. Elgie has argued that this is the reason which led to the presidentialization of the government system whereby the president "gains the right to be treated as the foremost person in the State in both institutional and electoral terms"[33].

Another important feature of the fundamental act was that it prescribed the existence of a dual executive consisting in a powerful president and PM, but where the distribution of power is not well delineated, thus "institutionalizing the potential conflictual duality at the heart of the French executive"[34]. What also needs to be stressed is the parliamentary majority variable because the political party configuration has permitted the PM to dominate the political game within the executive during periods of cohabitation. Nevertheless, the French political custom under semi-presidentialism established that in case of increasing tension within the executive, the president may ask a PM to resign even if the latter enjoys parliamentary support.

In analysing the dynamic between the president, PM and government ministers[35], Elgie notes that a better interpretation would be that what actually occurs are multiple swings from one model of interaction to another depending also on the majorities existent in the legislature and the general political climate. Hence, we cannot argue that either the French president or the PM has taken up the role of absolute decision-maker throughout the existence of the Fifth Republic or that they strictly respected their own spheres of influence.

[33] Robert Elgie, *Political Institutions in Contemporary France*, (Oxford: Oxford University Press, 2003), 114; Steven Roper, "Are all semi-presidential regimes the same? A comparison of Premier-Presidential Regimes", *Comparative Politics*, vol. 34, no. 3, (April 2002): 255.

[34] Robert Elgie, Steven Griggs, *French Politics: Debates and Controversies*, (London and New York: Routledge, 2000), 29.

[35] In the literature on French semi-presidentialism there exist four models of executive politics: 1) monocratic government where the executive is controlled by either the president or the PM (during cohabitation); 2) shared government where the president and PM share the decision-making authority; 3) segmented government where there is a strict division of spheres of inflluence between the two actors; 4) ministerial government where the ministers are the actual drivers behind the decision-making process. For a detailed examination of these models, see: Ibid, 34-47.

CHAPTER 2: ROMANIAN SEMI-PRESIDENTIALISM

The present chapter aims at analysing the nature of the Romanian semi-presidential system, the dynamic between the different state institutions with a focus on the presidency. As mentioned in the previous chapter, Duverger's factors that account for the variation between semi-presidential systems will be used to examine the case under scrutiny.

2.1. Constitution-drafting context

In order to analyze the Romanian constitution-making process and the Constitutions themselves, it is necessary to describe some elements of the communist regime and the first years of the transition period.

Linz and Stepan characterize the Romanian communist system as totalitarian mixed with a form of extreme patrimonialism, i.e. "sultanistic", which had removed the threat of an opposition since there was no institutional autonomy or pluralism[36]. Romania's specificity was evident during the old regime and during its collapse in 1989 since it is the only East-European country which went through a violent regime change. The politically experienced second-rank communist officials managed to fill the power vacuum by emphasizing their revolutionary mandate and organizing a "popular front" called the National Salvation Front (FSN). Its leaders emphasized their "pivotal" role in the Revolution so as to legitimize themselves in the eyes of the population, while insisting on delegitimizing the prior leadership, not the regime itself. This aspect refers to what Linz and Stepan called "the capture" of a revolution by groups close to the prior regime who were not challenged in their claims and actions by others within society during the first moments of the transition. The moment is important since the FSN, through its hegemonic behaviour, managed to create and

[36] Juan Linz, Alfred Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America and Post-Communist Europe*, (Baltimore, London: The Johns Hopkins University Press, 1996), 344-366.

monopolize the interim governing structure by ruling via decree, assuming executive, legislative and military power[37]. Moreover, despite its declared status as a provisional body, the FSN transformed itself into a political party in February and delivered the first post-communist president, Ion Iliescu, in May 1990. This situation developed unhindered also because Romanian civil and political forces were inexistent and organized very slowly, thus missing the chance to play a significant and competitive role as an opposition during the first transitional moments in addition to the fact that the timing of the first elections was too early for other parties to pose a credible threat.

Despite its tendencies, the FSN had to demonstrate its commitment to the political plurality principle and in February 1990 the Front was dismantled and the Provisional Council for National Unity (PCUN) was organized – a de facto transitional government and legislative body which accepted representatives from the newly re-established historical political parties. The PCUN was considered as the result of Iliescu's "original democracy" notion whereby "narrow party positions are avoided in favour of unity in mind and action" and it served as a vehicle through which Iliescu's appeal consolidated vis-à-vis his own political group and in the eyes of the public[38]. At that delicate moment, Ion Iliescu and Petre Roman were considered the most appropriate candidates for the offices of president and prime minister respectively by the PCUN Executive Board especially because of their public exposure.

The first post-communist elections of May 20th 1990 were marred by numerous irregularities documented by foreign bodies and were considered to be generally free but unfair[39]. At the time, the FSN had the upper hand throughout the campaign because it

[37] For the complete list of powers, see: FSN, *Decret-Lege Nr. 2 din 27 decembrie 1989 privind constituirea, organizarea si functionarea Consiliului Frontului Salvarii Nationale si a consiliilor teritoriale ale Frontului Salvarii Nationale* (FSN, *Law Decree No. 2, December 27, 1989 regarding the establishment, organization and functioning of the National Salvation Front Council and of the territorial councils of the FSN*), http://www.pndro.ro/pdf/1989.pdf (accessed May 2, 2009).

[38] Irina Culic, *Câştigătorii: elita politică şi democratizare în România 1989-2000 (The Winners: political elite and democratization in Romania 1989-2000)*, (Cluj-Napoca: Limes Press, 2002), 68.

[39] The distortions ranged from politically biased media accounts and news broadcasts on national television, negative propaganda and slander of opposition members, national minorities and critical intellectuals to

disposed of larger amounts of campaign funds and control over the still centralized means of communication such as the state television, radio networks and the national and local newspapers[40]. Furthermore, the accusation of voting irregularities and electoral fraud coming from the opposition lacked substantiating evidence in the eyes of foreign representatives because there was no monitoring or even a parallel voting system which could account for such an allegation. Nevertheless, the very large percentage won by the FSN and Iliescu and the high number of invalid votes was enough to raise doubt on the correctness of the count[41].

The result of the 1990 elections was that Ion Iliescu won the presidency with 85% of the popular vote while the FSN obtained a 2/3 majority in the Parliament[42]. Consequently, the former communists were able to control the constitution making process and to tailor the fundamental law according to their political and institutional interests. The resulting party system has been characterized as "pluralist-atomized with a dominant party" which enjoyed a monolithic majority in the parliament[43]. Overall, the 1990 elections were the first (flawed) step towards engendering democratic governance and political pluralism after the fall of the communist state.

---

harassment, intimidation and physical and criminal abuses against the historical parties' candidates and their supporters. For more information on the climate during the first Romanian post-communist elections, see: National Democratic Institute and International Republican Institute, *Report on Romania's Democratic Transition*; Commission on Security and Cooperation in Europe, *Report on the Parliamentary and Presidential Elections in Romania, Bucharest, Bacău and Harghita Judeţ, Timişoara*, Washington, May 30, 1990.

[40] The NDI/IRI report stated the following: "Television news coverage of the campaign was blatantly and consistently biased toward the Front. Printing facilities and distribution networks for newspapers and journals also were monopolized by the FSN government […] The electoral law provided for public campaign financing but little, if any such support, found its way into the coffers of the political parties [...] The systematic violence directed against opposition parties cast serious doubt on the authenticity of the country's democratic transition.". Source: Ibid, 16.

[41] The number of invalid votes was 447.923 for the Presidency, 1.117.858 for the Chamber of Deputies and 869.584 for the Senate. Source: Dan Pavel, Iulia Huiu, *„Nu putem reuşi decît împreună"- O istorie analitică a Convenţiei Democratice, 1989- 2000 ('We can succeed only together'- An analytic history of the Democratic Convention, 1989-2000)*, (Bucharest: Polirom, 2003), 58-59.

[42] The FSN had 263 seats (66.31%) in the Chamber of Deputies and 91 seats (67%) in the Senate. Source: University of Essex, *Political Transformations and the Electoral Process in Post-Comunist Europe*, Romania-election results, http://www2.essex.ac.uk/elect/database/indexCountry.asp?country=ROMANIA&opt=elc (accessed May 2, 2009).

[43] After the 1992 elections, when the Democratic National Salvation Front (FDSN) won the elections but ruled in coalition mainly with the Greater Romania Party (PRM), the system remained pluralist but with a tendency towards bipolarity, i.e. FDSN vs. Romanian Democratic Convention (CDR) – an alliance of Right-of-centre parties. Source: Ibid 41, 96-143.

The circumstances described above lead us to underline the fact that the creation of a new political and constitutional design should be assessed by keeping in mind the ability of the FSN's leaders to shape the rules of the game since their party enjoyed political and institutional dominance. On December 22nd 1989, the FSN Council issued the so-called "Country Communiqué" which outlined the Front's political and administrative program. It asserted that "[t]he FSN's purpose is the establishment of democracy, liberty and dignity for the Romanian people"[44]. In order to uphold these principles, Article 3 settled the immediate functioning of a drafting committee of the first post-communist Constitution. The draft was forwarded to the new Parliament which would also act as a Constitutional Assembly. On March 14th 1990, the PCUN issued "Law Decree No. 92 for the election of the Romanian Parliament and President" which provided that the Senate and the Assembly of Deputies are to become a Constituent Assembly for the adoption of the new Constitution (Article 80-1)[45]. In December 1990, the Draft Constitution was submitted for debate by the Constitutional Commission and the official Draft was presented to Parliament in July 1991 where only 39 among the 145 accepted amendments belonged to the opposition[46]. At the same time, the so-called "Mineriads" occurred, i.e. Iliescu's practice of calling the coal-miners from the Jiu Valley to Bucharest to "restore democracy" by vandalizing the headquarters of the historical parties and their newspapers and emptying the city centre of opposition members protesting against the interim government and Iliescu[47].

[44] CFSN, *Comunicatul către ţară al CFSN- 22 decembrie 1989* (The CFSN Country Communique– December 22nd 1989), Ion Iliescu's blog at http://ioniliescu.wordpress.com/media/comunicat-catre-tara-al-cfsn-22-dec1989/ (accessed May 3, 2009).

[45] PCUN, *Decret Lege nr. 92 din 14 martie 1990 pentru alegerea Parliamentului şi a Preşedintelui României, (Law Decree 92/ March 14, 1990 for the election of Parliament and the Romanian President),* http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=7528 (accessed May 3, 2009).

[46] Tony Verheijen, *Constitutional Pillars for New Democracies: The Cases of Bulgaria and Romania*, (Leiden University, the Netherlands: DSWO Press, 1995), 164.

[47] These interventions occurred on January 29th, February 18th, and June13-15th 1990. The fourth Mineriad was on September 25th 1991 when they protested violently against the Roman government.

2.2. The 1991 Constitution

The framers of the Constitution took as a model the French Constitution of 1958, but the state institutions were designed in such a way that later proved to be problematic. An example pointed out by jurists, such as Lucian Mihai, Monica Macovei and Renate Weber, is the fact that the executive can interfere in the judiciary's activity because, according to the 1991 Constitution, public prosecutors belong to the Public Ministry (Article 130-2) which is under the authority of the Justice Minister (Article 131-1). In addition, the Superior Council of Magistracy (C.S.M.) proposes, in the presence of the Justice Minister, both prosecutors and judges for appointment by the President and acts as a "disciplinary council for judges" (Article 133), but not for prosecutors. Furthermore, it also controls the judges' promotions, transfers and penalties (Article 124-1). Law 92/1992 on the Judiciary is based on these constitutional provisions and thus solidifies the imbalance of power between these two state branches. This constituted a problem in 1993 when the Konig-Jansson Report on Romania's accession to the Council of Europe explicitly criticized this law for allowing prosecutors in the C.S.M., a body which can investigate "the professional activity and conduct of judges" (Article 73), thereby legally allowing the executive to influence the magistrates' activity[48] (see section 2.5.2.).

Several constitutional analysts and political scientists[49] have drawn attention to a number of problematic provisions of the 1991 Constitution such as the "national", i.e. ethnic, character of the state, the ambiguity of the separation of powers principle, the lack of a ministerial responsibility mechanism, the power of the government to by-pass the normal

[48] The Report's conclusion regarding the judiciary underlined that even though the law permits the executive to interfere in the judges' decisions, it does not make it just. In addition, it was argued that "this practice will not strengthen the belief that Romanian courts are independent and impartial as it is requested by the European Convention for the Protection of Human Rights and Fundamental Freedoms". For a lengthier analysis of the Konig-Jansson Report, see: Renate Weber, "Memorandumul MAE: raportul Konig-Jansson" ("Memorandum of the Ministry of Forign Affairs: The Konig-Jansson Report"), *Revista română de drepturile omului*, no. 5, (1994): 52-54.

[49] Among those who have criticized the context and/ or the end product of the 1991 constitutional debates are the following: Eleodor Focşeneanu, Lucian Mihai, Monica Macovei, Daniel Barbu, Cristian Pîrvulescu, Cristian Preda, Alina Mungiu-Pippidi, Ioan Stanomir, Dan Pavel, Renate Weber, Irina Culic etc.

legislative process via emergency ordinances, the bicameral character of the parliament etc. Although some of these criticisms will be tackled, the focus of the present section is to point out and examine those provisions related to the organization of the state and the relationship between the state institutions that point to the weaknesses of the Romanian constitutional framework.

Before analyzing the content of the Constitution *per se*, it is important to stress the fact that there emerged disputes concerning the form of government[50] between the FSN and the opposition both during the constitutional debates and after the Parliament had approved the Constitution. This particular aspect is worth mentioning because both the constitution-making context and the subsequent conflicts regarding the form of government have raised doubts regarding the legitimacy and functionality of the 1991 Romanian Constitution. At the onset of the debates regarding the new Constitution, the opposition accused the new leaders of not allowing for an alternative, i.e. constitutional monarchy, within the Draft Constitution. Another charge was that the citizens did not have the opportunity to express their opinion and did not have enough time to get to know and understand the constitutional provisions since the time between the Parliament's approval and the referendum was only 18 days[51]. Moreover, the country's form of government was decided unilaterally through Law Decree no. 2 issued on December 27th 1989, which stated that Romania is to be a republic (Article 1-

[50] Daniel Barbu notes the following regarding this issue: "[…] the debates that should have been conducted on a solid institutional analysis, on the study of constitutional traditions and Romanian political culture, on the legislative strategies of transitional societies, on a macroeconomic calculus, on comparative law and politics, on empirical studies and surveys, have concentrated exclusively on ideology and on mystifying the values of the past". Daniel Barbu, *Republica absentă: politică şi societate în România postcomunistă (The Absent Republic: politics and society in post-communist Romania)*, (Bucharest: Nemira Publishing House, 2004), 157.

[51] The Constitutional Assembly adopted the Constitution on November 21st 1991 and the referendum was organized on December 8th 1991. Source: Irina Culic, *Câştigătorii: elita politică şi democratizare în România 1989-2000 (The Winners: political elite and democratization in Romania 1989-2000)*, (Cluj-Napoca: Limes Press, 2002), 108-109.

2), although the decree was supposed to refer only to the national and local organization of the FSN Council[52].

2.3. A contested presidential institution

An extremely important act concerning the office of head of state was the abovementioned Law Decree No. 92/ 1990 that established the bicameral parliament and presidential office. Some have contested its legitimacy because it was issued by a provisional body, the PCUN, which could not establish the role and functioning of state powers[53], but its regulations were subsequently incorporated in the 1991 constitutional text[54]. The act itself stipulated that the President appoints the PM whose cabinet is approved by the two chambers of Parliament (Article 82-1). Also, Article 3 established that both Parliament and the President of Romania are to be elected via universal, equal, direct, secret and free vote. According to a minimal definition of semi-presidentialism, these would subscribe Romania under a semi-presidential form of government.

It has been argued[55] that this re-establishment of the presidency indicates a poor constitutional and institutional-drafting experience since the communist power and state structures – among which presidential office that had been specifically set up for Ceauşescu in 1974[56] – had been abolished by Article 10 of the abovementioned Law Decree No. 2/1989. However, this argument is not accurate. Inexperience was not the underlying reason behind

---

[52] FSN, *Decret-Lege Nr. 2 din 27 decembrie 1989 privind constituirea, organizarea si functionarea Consiliului Frontului Salvarii Nationale si a consiliilor teritoriale ale Frontului Salvarii Nationale* (*Law Decree No. 2, December 27, 1989 regarding the establishment, organization and functioning of the National Salvation Front Council and of the territorial councils of the FSN*), http://www.pndro.ro/pdf/1989.pdf (accessed May 3, 2009).

[53] Eleodor Focşeneanu cited in Irina Culic, *Câştigători: elita politică şi democratizare în România 1989-2000 (The Winners: political elite and democratization in Romania 1989-2000),* (Cluj-Napoca: Limes Press, 2002), 108.

[54] Tony Verheijen, "Romania", in *Semi-presidentialism in Europe*, ed. Robert Elgie, (Oxford: Oxford University Press, 1999), 193.

[55] Irina Tănăsescu, "The Presidency in Central and Eastern Europe: A Comparative Analysis between Poland and Romania" (paper presented at the Conference entitled *The Contours of Legitimacy in Central Europe: New Approaches in Graduate Studies*, European Studies Centre, St. Anthony's College Oxford, 24-26 May, 2002): 11.

[56] In 1974, Ceausescu had further centralized power after being given the title "President of the Socialist Republic of Romania", in addition to holding the offices of President of the State Council, General Secretary of the Romanian Communist Party and the President of the National Defense Council.

the decision to provide the new Romanian state with a presidential office. The FSN leaders clearly perceived the possibilities their revolutionary legitimacy and power position offered them in addition to Iliescu's widespread popularity as the mid-wife of the new regime. In this sense, the office of the presidency was exactly the institution they needed to further consolidate their position. Therefore, the semi-presidential system provided them with the adequate institutional mechanisms during the *interim* government. However, after the fundamental law was ratified in December 1991, Iliescu was obliged to accept a more limited role provided by the Constitution[57] and this can be seen when compared to the 1958 French Constitution (see section 2.5.1.).

In analyzing the existence of the post-communist presidential institution, references can be made to Romania's political culture, considered as being characterized by civic apathy and paternalistic discourse and practices[58]. The idea is that the central political figure – the ruler/ head of state/ president – was expected to step in and take an active role in the decision-making process irrespective of the existent constitutional constraints[59]. Scholars such as Alina Mungiu Pippidi have argued that a mixture of traditional and charismatic authorities still persists especially among old people living in rural communities[60]. In the first years of the transition, Ion Iliescu was "able to impose himself as the principal element of stability in the

[57]Tony Verheijen's explanation regarding this limitation of presidential powers points to the traumatic communist experience and underlines that "[e]ven though the NSF controlled a large enough majority to impose a strong presidential model, the fears of the potential consequences […] prevented the creation of a strong presidential office". Source: Tony Verheijen, "Romania", in *Semi-presidentialism in Europe*, ed. Robert Elgie, (Oxford: Oxford University Press, 1999), 197.

[58] Anthropology professor David A. Kideckel argues that paternalist leanings are still present in contemporary Romanian politics and economic relations, although limited by the development of civil society, NGOs and individual economic initiatives. For more on Romanian paternalism during the Ceasuescu regime see David A. Kideckel, "The Undead: Nicolae Ceasuescu and Paternalist Politics in Romanian Society and Culture", in *Death of the Father: An Anthropology of the End in Political Authority*, ed. John Borneman, (New York, Oxford: Berghahn Books, 2004).

[59] Renate Weber, "Constitutionalism as a Vehicle for Democratic Consolidation in Romania", in Jan Zielonka, (ed.), *Democratic Consolidation in Eastern Europe Volume 1: Institutional Engineering*, (Oxford: Oxford University Press, 2001), 220.

[60] Regarding the post-communist period, the World Values Survey showed that 47% of Romanians considered that a strong leader is better than representative democracy and as much as 40% would have preferred a technocratic government in 1993. In contrast, the 2001 Eurobarometer revealed that 30% were in favour of a strong leader and 81% in favour of a government of experts. Source: Alina Mungiu-Pippidi, "Revisiting Fatalistic Political Cultures", *Romanian Journal of Political Science*, Vol. 3, No. 1, (Spring 2003): 101.

context of unstable parliamentary majorities, with government action otherwise paralyzed by the absence of a clear majority and deprived of leading political personalities" [61]. His role was categorized as that of an absolute decision-maker who controlled the FSN's parliamentary majority and managed to create a precedent of personal involvement in politics via the presidential institution[62].

2.4. Faulty separation of powers

One of the most controversial aspects of the 1991 Constitution was the absence of a clear reference to the separation of powers principle. As noted above, the "Country Communiqué" was a political and legal act which established the democratic norms to be followed by the Constitutional Assembly. Article 2 of this document proposes the separation of powers between the legislative, executive and judiciary. Lucian Mihai, a former CC judge, argued that the Constitutional Assembly acted in a self-interested manner by not respecting the democratic principles put forward by the Communiqué, an act endorsed by the revolutionaries' will in 1989[63]. Regarding this issue, Ion Deleanu, a member of the Drafting Committee, has argued that the principle was still valid and working in view of the fact that it "is inherent in the cooperative character of the activity of each institution"[64]. However, the problem was that he also officially pointed out during the debates that "in this day and age (the separation of powers principle) proves to be simply a scientific error […] state power is

[61] François Frison-Roche, "Semi-presidentialism in a post-communist context", in *Semi-presidentialism Outside Europe: A Comparative Study*, eds. Robert Elgie, Sophia Moestrup, (London, New York, Routledge, 2007), 72-73, http://books.google.com/books/semi+presidentialism+outside+europe#PPP8,M1 (accessed May 5, 2009).

[62] Some similarities can be found in the attitude of Polish President Walesa towards the other state institutions since he "did not want to be a passive figurehead but intended to play an active role in shaping policy" and sought to set precedents that he hoped would become political custom. Source: Ania van der Meer Krok-Paszkowska, "Poland", in *Semi-presidentialism in Europe*, ed. Robert Elgie, (Oxford: Oxford University Press, 1999), 179.

[63] Lucian Mihai, "Separarea puterilor în stat: propuneri de modificare a Constituției" ("Separation of State Powers: Proposals to Amend the Constitution, *Revista română de drepturile omului*, Vol. 2, (1993): 9.

[64] Ion Deleanu cited in Renate Weber, "Constitutionalism as a Vehicle for Democratic Consolidation in Romania", in *Democratic Consolidation in Eastern Europe Volume 1: Institutional Engineering*, ed. Jan Zielonka, (Oxford: Oxford University Press, 2001), 221.

only one, therefore it is not divisible."[65] Moreover, it has been argued that the terminology used in the final constitutional text, i.e. "public authority" instead of "state power", indicates the tendency to give preference to the executive in view of the fact that the public authority concept was imported from the 1958 French Constitution where it is connected to the functioning of the executive power[66]. In 2003, Article 1 was modified whereby the state must be organized within the framework of constitutional democracy and according to the principles of balance and separation of powers into the legislative, executive and judicial branches.

Why has this ambiguity proven to be problematic? It has been pointed out in the literature on constitutional types that parliamentary systems are based on "mutual dependence" or "power sharing" given that there is no separation of powers between the legislature and the government[67]. Semi-presidentialism also faces this issue since the dual executive structure presupposes power sharing between the President and PM. Nevertheless, this vague delineation of powers in the Romanian case was not restricted to the President-PM relationship, but it could also be seen in the relationship between the government and the legislative, as well as between the executive and the judiciary. These, along with the issue of institutional checks and balances, will be explained in the section dealing with the constitutional powers and duties of the Government (see section 2.5.2.).

2.5. Constitutional powers and duties of the major political actors

The present section will firstly present some scholarly characterizations of the Romanian form of government and secondly delineate the constitutional powers of the three

[65] Also, Vasile Geonea, the vice-president of the commission charged with writing the draft Constitution, stated that: "It is inconceivable that the three powers, equal and independent, by bringing them together are able to constitute a unique and sovereign state power. Therefore, the conclusion is that Montesquieu's theory is based on a contradiction". Source: Eleodor Focşeneanu, *Istoria Constituțională a României: 1859-1991* (*Romania's Constitutional History: 1859-1991*), (Bucharest: Humanitas, 1998), 159.
[66] Ibid, 160.
[67] Giovanni Sartori, *Comparative Constitutional Engineering: An inquiry into structures, incentives and outcomes*, (Basingstoke: Macmillan, 1994), 101-117; Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, (New Jersey: Princeton University Press, 2006), 12.

main state institutions that are of interest for this research, i.e. the President, Government and Parliament. In addition, we will illustrate the dynamics of interaction between these powers and underline the way in which the President-Government-Parliament relationship has evolved throughout the post-communist years.

As stated above, the members of the Constitutional Drafting Committee were inspired by the French Fifth Republic model. However, an important caveat must be made concerning the Romanian type of semi-presidentialism. The framers of the Constitution qualified the new regime as a "limited' or parliamentarized" form of semi-presidentialism since the aim was to increase the standing of the other state institutions, especially the Parliament[68]. The parliamentarian element rests in the fact that the Government receives the vote of confidence from Parliament and it is collectively responsible for its actions in front of the legislative body. Also, the President, who is elected by direct popular vote, has to deal with a number of constitutional limits. Giovanni Sartori followed the same lines by stating that "the Romanian political system is parliamentarian characterized by a strong head of state (but who is not strong enough to change the parliamentarian nature of the system) and whose strength derives from popular legitimacy, but also from several reinforcing constitutional provisions" [69]. He argued that only the power to consult with the Government about urgent matters (Article 86) and the (circumscribed) right to participate and preside Government meetings (Article 87) would point to a presidential element[70]. In analysing the impact a semi-presidential design has

[68] Florin Bucur Vasilescu cited in Constanța Călinoiu, Victor Duculescu, Georgeta Duculescu, *Drept Constituțional Comparat* (*Comparative Constitutional Law*), Vol. 1, 4th edition, (Bucharest: Lumina Lex Publishing House, 2007), 216.

[69] Sartori pointed out that several presidential prerogatives can be attributed to a parliamentary form of government. The function of "mediation" between state institutions is actually given to president in parliamentary systems. Also, the Romanian president must consult with the parties in parliament before naming a PM. The process of dissolving parliament is cumbersome to the point that the legislature has more control over it than the president. Source: Giovanni Sartori, "Sul Sistema Constituzionale Romeno" ("On the Romanian Constitutional System"), *Studia Politica, Romanian Political Science Review*, Vol. 2, no. 1, (2002): 10.

[70] Giovanni Sartori, "Alcuni Chiaramenti sul Semipresidenzialismo" ("Some Clarifications on Semi-presidentialism"), *Studia Politica, Romanian Political Science Review*, Vol. 3, no. 3, (2003): 618.

on democratic consolidation, Robert Elgie categorized the Romanian form of government as a balanced design of powers between the President and the PM[71].

Shugart has characterized the result of the Romanian design as "premier-presidential", i.e. a system where the President is elected by popular vote and where he/she has the initiative in selecting, but not dismissing the PM who is responsible solely to the legislature[72]. As in any semi-presidential system, it is much easier for the Romanian President to have his/ her political views and programme implemented if the party from which he/ she comes from either wins parliamentary majority or dominates in case of a coalition. In addition, a smooth mandate is more likely when the PM is named from within the same political party as the president and, thus, is expected to accept a weaker position in the overall functioning of the system.

One of the most precise and simple descriptions of the inherent problems existent in the Romanian Constitution in regards to the powers conferred to the state institutions was done by Alina Mungiu-Pippidi. Her main idea is that the separation of powers between and within the state institutions is not clearly delineated and favours conflicts in areas of joint responsibility. Thus, the system is "overloaded with checks and balances to the limit of deadlock"[73]. An example would be the slow passage of laws in the bicameral Parliament. In the 1991 Constitution, the problem was that there was no clear delineation of Chambers' competencies[74] since these were designed to balance and check each other, a situation which

[71] Elgie made a distinction between "highly presidentialised semi-presidential countries", "semi-presidential countries with ceremonial presidents" and "semi-presidential countries with a balance of presidential and prime-ministerial powers". His conclusion was that, although this type is most prone to intra-executive conflict and stalemate, countries that have chosen it managed to stay on the path of democratic consolidation. Source: Robert Elgie, "Variations on a theme", *Journal of Democracy*, Vol. 16, no. 3, (2005): 98-122, http://doras.dcu.ie/64/ (accessed May 26, 2009).

[72] Matthew Shugart, *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 9.

[73] Alina Mungiu-Pippidi, *Politica după Comunism: structură, cultură şi psihologie politică* (Politics after Communism: structure, culture and political psychology), (Bucharest: Humanitas, 2002), 42-46.

[74] Article 75 stated simply that "bills or legislative proposals passed by one Chamber shall be sent to the other Parliament Chamber". In case of a rejection, the bill would be sent back to the initial Chamber for another debate and forwarded again to the other Chamber. Moreover, Article 76 provided for a mediation committee in case one of the Chambers had passed a bill "in a different wording from that approved by the other Chamber". If the

only created a weak parliament and a negative popular perception[75]. Consequently, one of the 2003 modifications aimed to clarify the competencies of each Chamber[76] in addition to erasing the necessity for a mediation commission. However, it has been stressed that these measures solved the problem only halfway because according to Article 75 of the 2003 version, bills are still being passed from one Chamber to another and these may not even be debated since they can be tacitly approved if the first notified Chamber does not pronounce itself in a specified time-period[77]. This particular problem of the Romanian Parliament was addressed from 2005 by President Băsescu who declared that the bicameral legislative has only led to inefficiency and an overall "system deadlock". Therefore, he underlined that the best solution would be a unicameral parliament that would lead to the reformation of the Romanian political class and that he would push for a referendum on this issue[78]. This is important in view of the fact that one of the charges brought against Băsescu was that he tried to force through Parliament the organization of such a referendum (see section 3.6.1.)

---

commission did not solve this issue, then the bill would be sent to both Chambers for debate in a joint session. This institutional inefficiency might also account for the executive's abuse of emergency ordinances, albeit their number has grown over the years due to the political parties' support (see 2.5.2.).

[75] Tom Gallager, Viorel Andrievici, "Romania: political irresponsibility without constitutional safeguards", *Semi-presidentialism in Central and Eastern Europe*, eds. Robert Elgie, Sophia Moestrup, (Manchester: Manchester University Press, 2008), 146-147.

[76] Article 75-1 of the 2003 constitutional version states the following: "The Chamber of Deputies, as a first notified Chamber, shall debate and adopt the bills and legislative proposals for the ratification of treaties or other international agreements and the legislative measures deriving from the implementation of such treaties and agreements, as well as bills of the organic laws […] The other bills or legislative proposals shall be submitted to the Senate, as a first notified Chamber, for debate and adoption".

[77] For more information, see: Ioan Stanomir, "Dupa 1998. Câteva reflecții asupra constituționalismului românesc postcomunist" („After 1989. A few reflections on post-communist Romanian constitutionalism"), *Studia Politica. Romanian Political Science Review*, vol. VI, no. 1, (2006): 161-165; Adrian Ilie, "Ineficienta cronica a bicameralismului romanesc" ("The cronic inefficiency of Romanian bicameralism"), *Curierul National*, August 4, 2006; Cadi Institute, "O Constitutie pentru Libertate II" ("A Constitution for Liberty"), *22 Plus-Supliment*, XVI, nr. 267, January 29, 2009, http://www.revista22.ro/22-plus-anul-xvi-nr-267-o-constitutie-pentru-libertate-ii-cadi-5458.html (accessed May 26, 2009); Raluca Alexandrescu, "Parlamentul cel slab" ("The weak parliament"), *Revista 22*, October 11, 2005, http://www.revista22.ro/parlamentul-cel-slab-2105.html (accessed May 26, 2009).

[78] Public Communication Department of the Romanian Presidency, *Traian Băsescu 's participation in the Ediție Specială television program, TVR 1,* October 12, 2005, http://www.presidency.ro/?_RID=det&tb=date&id=6690&_PRID=ag (accessed May 26, 2009); Beatrice Nechita, Mara Stefan, "Partidele parlamentare, naucite de ideile lui Băsescu ", ("Parliamentary parties, baffled by Băsescu 's ideas"), *Adevarul*, September 15, 2005.

Another characterization of the Romanian system was that of a semi-presidential system within an unstable political environment and blurry constitutional norms in which the Parliament plays a secondary role[79]. This situation is prompted by the executive's above-mentioned tendency to dominate the legislative via the practice of issuing emergency ordinances. These ideas will be explained and exemplified throughout the remainder of this chapter.

2.5.1 The President

In this sub-section, we will firstly describe those powers and duties of the President that were referred to in the 2007 suspension case. Secondly, considering the fact that Article 80 has been used in 1994 and in 2007 to initiate the impeachment procedure against the holder of the presidential office, it is only just to examine this particular provision and assess its practical implications. The President's relationship with the Government and Parliament will be examined in the sub-sections dealing particularly with these two state branches.

If we take into consideration Duverger's distinction between the degrees of presidential power, Romania would fall under the "balanced presidency and government" category since the President's powers are more limited than his French counterpart. In the Romanian system, unlike in the French one, the 1991 Constitution states that the President can dissolve Parliament only once a year and if within 60 days of his PM proposal the Parliament has not reached agreement and if the latter has rejected two other proposals (Article 89). The implication of this article is straightforward: it is extremely difficult for the Romanian President to dissolve the Parliament and trigger early elections. Furthermore, the President has to consult with the majority winning parliamentary group(s) to propose a candidate for the office of PM (Article 102-1 [103-1]), but the ultimate decision rests with the President. In the eventuality of a government reshuffle or vacancy in office, the President

[79] Jean Michel de Waele, Sorina Soare, Petia Gueorguieva, "Parlamentele din Europa Centrală şi de Est" ("Central and Eastern European Parliaments"), *Studia Politica, Romanian Political Science Review*, vol. III, no.1, (2003): 141-161.

must decide on the dismissal and appointment of Government members based on the PM's proposal (Article 85-2). The President may preside over governmental meetings on issues of national interest – foreign policy, defence and public order (Article 87), but does not have the right to co-initiate legislation or a veto right. In addition, he enjoys powers in foreign policy and defence (Articles 91, 92), but any decision has to be countersigned by the PM (Article 99). In addition, the President can return legislation to the Parliament for reconsideration only once or to refer it to the Constitutional Court (Article 77), but has no veto right. Nevertheless, the President has the right after consultation with Parliament to call for referendum on issues of national interest (Article 90) and the interpretation of such issues is left up to the President[80]. Shugart argues that this right is similar to that of dissolution of Parliament since the President can propose policy issues he/she deems vital by pleading directly to the voters, thus sidestepping parliament and government[81]. An important aspect of the presidency is the ability to nominate the heads of the national intelligence (Article 65-2, h) agencies and to preside over the Supreme Council of National Defence (C.S.A.T.) (Article 92).

In the following lines, we will present the problematic aspects of Article 80 that have been discussed by several scholars. As stated above, Article 80 and 84 represent an important aspect to take into consideration when discussing the presidential institution in relation to the practice of suspension. More specifically, these clauses, either together or separately, can and have been used as an indictment against two Romanian presidents, i.e. Iliescu in 1994 and Băsescu in 2007.

[80] A controversial use of the prerogative belonged to President Băsescu who called for a referendum in November 2007 on the new uninominal electoral system that was considered an issue of national interest in the sense of providing a mechanism for "reforming the political class". A scandal broke out because the referendum was organized during the same day as the European Parliament elections. Băsescu was accused of ignoring the Constitution since there was no fixed date for the referendum in the Presidential Decree, as well as manipulating these elections so as to favour his newly formed Liberal-Democrat Party. Source: ***, "Referendum pentru votul uninominal pe 25 noiembrie" ("Referendum for the uninominal vote on November 25th""), *BBC Romania*, October 23, 2007.

[81] Matthew Shugart, *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 12.

Article 84-1 of the Romanian Constitution reads that "[d]uring his term of office, the President of Romania may not be a member of any political party, nor may he perform any other public or private office". The reference to political parties has allowed the initiators of the suspension procedure against President Băsescu to argue that based on this particular provision, the head of state displayed unconstitutional bias towards his party, the PD[82]. In the Romanian case, the issue of the president's function of mediating between the state institutions is extremely important since it has affected the constitutional and political stability of the country by triggering two suspension procedures.

What is so problematic about Article 80? This provision states that in regards to his/ her role as the guardian of the Constitution and of the proper functioning of the public authorities, the president acts as a mediator "between the Powers in the State, as well as between the State and society"[83]. The function may consist in consultations with the parliamentary groups and the leaders of those bodies considered as representing society, i.e. parliamentary political parties, trade unions, NGOs, etc. The dominant interpretation is that this particular aspect of the President's duties entitles him/ her to act in such a manner that prevents or minimizes the conflicts that might appear in the relationship between the public authorities and society or between the public authorities themselves.

In regards to this function, an important caveat has been made by Ion Deleanu, a former CC judge, who pointed out that "mediation" must not be understood as "arbitration" since the latter term indicates the possibility of intervening in a potential conflict of the type described above. Consequently, while performing this function, the Romanian President must

[82] For an analysis of this specific issue, see chapter 3, section 3.6 where we list the charges brought against the President in the suspension proposal.

[83] There are several practical actions, some of which have been referred to above, that can be undertaken as a result of the function of guaranteeing the observance of the Constitution. These may be the right to return only once a law to Parliament or refer it to the Constitutional Court (Article 77-2 and 3), to make appointments to public offices, such as judges and public prosecutors at the proposal of the Superior Council of the Magistracy (Article 133-1), to address Parliament by calling for a joint session of the two Chambers (Article 62-2, a), to preside over government meetings dealing with certain issues (Article 87) or to call for a referendum (Article 90).

act in a neutral fashion and use constitutional tools to appease a conflict because the presidency does not give him/ her necessary leeway to impose a certain solution[84]. This interpretation can be compared to the provision present in the 1958 French Constitution. According to Article 5, the French President actively ensures the proper functioning of the public authorities via the function of *arbitration*. Of course, the ambiguity of the word "mediation" in the Romanian Constitution has permitted the development of the opposite interpretation also: that this function *includes* the notion of arbitration since the resolution of a conflict between the public authorities demands institutional compromises that can be attained with the President's involvement[85].

Another analysis belongs to constitutional law expert and political scientist Ioan Stanomir, who has pointed out that there is a tension which stems from "the original paradox" of the presidential institution. This refers to the fact that the President is elected via direct, universal, secret, equal and free popular vote, thus giving this institution the legitimacy of a representative body that can claim to embody the will of the population. Therefore, the President has the legitimacy to become involved in political life within the limits of the electoral mandate and the Constitution. Nevertheless, this institution is constitutionally limited by the aforementioned article which prescribes political detachment aimed at creating a constitutional and institutional balance. Problems appear especially because the concept of "mediation" lacks both a definition and an enumeration of possible instances when it can be used[86]. Therefore, its vagueness leaves room for interpretation both for the President who is entitled to act upon it and for the parliamentary political parties to accuse the head of state of

[84] Ion Deleanu cited in Gheorghe Borsa, "Quelques considerations sur le role du President de la Roumanie", *Curentul Juridic, the Juridical Current*, Petru Maior University, Faculty of Economics Law and Administrative Sciences and Pro Iure Foundation, vol. 3, (December 2007): 94.
[85] Cristian Ionescu cited in Ibid, 95.
[86] Ioan Stanomir, "După 1998. Câteva reflecții asupra constituționalismului românesc postcomunist" („After 1989. A few reflections on post-communist Romanian constitutionalism"), *Studia Politica. Romanian Political Science Review*, vol. VI, no. 1, (2006): 166

abusing his constitutional powers. The fundamental question would be: How much is mediation and how much is intrusion?

Another problem associated with this article deals with the ambiguity of such notions as "state", "society" and "public authorities"[87]. More specifically, what is the difference between the "state" and "public authorities"? The problem stems from the fact that the term "public authority" in the Constitution enlists the Parliament, the President, the Government, the public administration and the judiciary. Thus, taken literally, the presidential institution is considered as belonging to the category of public authorities, i.e. with no clearly defined special status. Although the article states that the President guards the observance of the Constitution and ensures the mediation between the state powers and between the state and society, there is no specification as to what are the "Powers in the State" or if we should consider them a synonym for "public authorities"[88]. Also, the term "society" is extremely vague as to which political actors, how many and in what circumstances are they entitled to represent the society at large.

2.5.2. The PM and the Government

According to the 1991 Constitution, the role of the Government is to "ensure the implementation of the domestic and foreign policy of the country and exercise the general management of public administration" (Article 101-1 [102-1]). In line with the requirements of the semi-presidential model, the President designates the PM who, upon presenting both the list of cabinet members and the Government's political program, must seek the Parliament's vote of confidence (Article 102 [103]). Also, the Government is collectively politically responsible only before Parliament (Article 108-1 [109-1]), although the President, together with the MPs, may request the initiation of criminal prosecutions against a

[87] Cristian Preda, *Modernitatea Politică şi Românismul*, (*Political Modernity and Romanianess*), (Bucharest: Nemira, 1998), 187-189.
[88] Cristian Preda argues that if this synonymy is the case, then it can be considered as an indication of "the total character of the state" which can act in all public domains. Source: Cristian Preda, Ibid, 189.

government member and suspend that person from office (Article 108-2 [109-2]). The notion of parliamentary control of governmental activity is clearly stipulated in the section regarding the Government-Parliament relationship. Therefore, the Government is obliged to provide Parliament with any requested documents or information (Article 110-1 [111-1]) and to answer any questions or interpellations coming from MPs (Article 111 [112]). In accordance with the checks and balances principle, an important mechanism for legislative control is the so-called "motion of censure" which permits the Parliament to withdraw its vote of confidence. In the Romanian Constitution, the PM and his cabinet can be dismissed following a vote of no confidence initiated by ¼ of the total number of MPs during a single parliamentary session (Article 112 [113])[89].

The relationship between the Romanian President and PM in the post-communist period[90] is an extremely important issue that needs closer examination in view of the fact that the semi-presidential model presupposes a special dynamic between these institutions[91]. In the Romanian context, the main issue in the conflicts between the Presidents and the PMs has been the possibility to dismiss the latter from office. As was argued above, during the interim period, Iliescu enjoyed wide influence and the 1990 decree gave the presidency substantial

[89] The limit imposed as to the number of censure motions can be side-stepped if during one parliamentary session the Government assumes responsibility for a policy or bill before Parliament. If this is the case, then after three days from the date the Government assumed responsibility a motion of censure can be forwarded by the MPs. If this motion fails, then the bill is passed (Article 113).

[90] It has been noted that the relationship between Iliescu and Nicolae Văcăroiu was the most peaceful since the latter uncritically accepted the President's political options. In contrast, Emil Constantinescu had a conflict-riven relationship with almost every PM. In 1998, Victor Ciorbea resigned after Traian Băsescu, Minister of Transportation at the time, severely criticized the Government's activity and Ciorbea blamed the President for these troubles. The relationship between Iliescu and Năstase was generally peaceful, but occasional clashes have occurred since Năstase was also in a strong position as President of the PSD. For a list of Romanian Presidents and PMs, see Table 1. For a short account of the President-PM relationship, see: Petru Clej, „Cuplul presedinte-premier dupa 1989" ("The President-PM couple after 1989"), *BBC Romania*, January 18, 2007; Alina Mungiu-Pippidi, *Politica după Comunism: structură, cultură şi psihologie politică* (Politics after Communism: structure, culture and political psychology), (Bucharest: Humanitas, 2002), 42-43.

[91] For a more detailed analysis of the president-PM relationship in Eastern Europe, see Thomas Baylis, "Presidents versus Prime Ministers: Shaping Executive Authority in Eastern Europe", *World Politics*, vol. 48, no. 3 (April 1996): 297-1022.

powers[92]. After the elections, President Iliescu established a strong presidential office and adopted an active role in domestic politics while entering into conflict with the first PM, Petre Roman, on the issue of economic reform. The law that was in place at the time, namely Law Decree 92/ 1990, did not refer to the possibility that the president may dismiss the PM. Therefore, a crisis ensued between Iliescu and Roman, which was resolved with the latter's resignation following the fourth "Mineriad" in September 1991.

Another such crisis occurred in December 1999, when President Constantinescu insisted on removing PM Radu Vasile who refused to step down, but eventually resigned due to lack of parliamentary support. This state of affairs was possible since the 1991 Constitution did not explicitly prohibit the PM's dismissal by the President. The fact of the matter was that Vasile was revoked from office and Alexandru Athanasiu was named as interim PM. The argument presented by the President in Law Decree 426 was that PM Radu Vasile was unable to perform his duties because 1) the majority of his cabinet members had resigned and 2) he lost parliamentary support of the parties in the governing coalition[93]. The constitutional motives for dismissing the PM were Article 106-2 and Article 105[94] of the 1991 Constitution. The latter article provides that government membership ceases also in the case of "dismissal", thus leading to the interpretation that the President is actually entitled to sack the PM. Furthermore, in accordance with Article 106, then the President can appoint a new PM. Because of the severity of this situation, the 2003 revised Constitution specifically states that the President cannot dismiss the PM from office (Article 107-2).

---

[92] According to Article 82 of Law Decree no. 92, the President had the right to appoint the PM and the judges of the Supreme Court of Justice, to govern by decree countersigned by the PM, to call extraordinary sessions of the Constituent Assembly, to dissolve the Constituent Assembly if the Constitution was not passed in 9 months with the accord of the PM and the Constituent Assembly of the two chambers of Parliament. Source: Romanian Chamber of Deputies, http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=11160 (accessed May 3, 2009).

[93] RADOR Press Agency, December 14, 1999, http://www.ici.ro/romania/ro/stiri/arh1999/dec14.html (accessed May 15, 2009).

[94] Article 106, paragraph 2 stipulates that "If the Prime Minister finds himself in one of the situations provided under Article 105, or in case of his inability to exercise his powers, the President of Romania shall designate another member of the Government as interim Prime Minister [...]". Article 105 states that "Membership of the Government shall cease upon resignation, dismissal, disenfranchisement, incompatibility, death or in any other cases provided for by the law".

In section 2.2, we mentioned that one of the problematic aspects of the post-communist institutional design was the imprecision of the separation of powers principle and the example offered was subordination of the judiciary to the executive. Briefly, the Justice Minister, through the Public Ministry, has control over prosecutors who, in turn, can also hold positions in the C.S.M. Lucian Mihai noted that the 1991 Constitution permitted the executive's interference in the judiciary's activity without providing the latter the ability to check the former[95]. Regarding the same issue, Monica Macovei, former Justice Minister (2004-2007), stated that "[w]hile all judges and prosecutors are classified as members of the magistracy (magistratura), the latter are more clearly and exclusively under the thumb of the executive branch—and the Constitution, in its original form, has left the lines of administrative demarcation unclear" [96]. Macovei points out that the 1997 amendments to the aforementioned law have clearly separated the judicial power from the other state bodies, but the 2003 revision has not modified the Constitution to reflect this division since the essence remained the same. What is more, the revised version added that five public prosecutors are also appointed to the C.S.M., a body charged with guaranteeing the independence of the justice system (Article 133-1 and 2).

[95] Mihai also argued that Law 92/1992 on the Judiciary further illustrates the faulty separation of powers between the executive and the judiciary because, for example, Article 34 states that the Minister of Justice is the one in charge of controlling the activity of all judges through inspector-judges or delegate-judges who are subordinated to the executive. Also, Article 67 notes that the judges are promoted based on an evaluation made by their superiors and by the above-mentioned inspectors. Source: Lucian Mihai, "Separarea puterilor în stat: propuneri de modificare a Constituției" ("Separation of State Powers: Proposals to Amend the Constitution, *Revista română de drepturile omului*, Vol. 2, (1993): 10-12.

[96] Monica Macovei, "The Procuracy and its Problems", *East European Constitutional Review*, Vol. 8, no. 1-2, (Winter-Spring 1999), http://www1.law.nyu.edu/eecr/vol8num1-2/feature/romania.html (accessed May 23, 2009).

Table 1: Romanian Presidents and PMs (1990-2009)

Mandates	Presidents	Prime Ministers
1990-1992	Ion Iliescu (FSN)	Petre Roman (FSN) Theodor Stolojan (independent)
1992-1996	Ion Iliescu (FDSN)	Nicolae Văcăroiu I Nicolae Văcăroiu II (PDSR) Nicolae Văcăroiu III(PDSR)
1996-2000	Emil Constantinescu (CDR)	Victor Ciorbea (PNȚCD) *Gavril Dejeu* (PNȚCD) Radu Vasile (PNȚCD) *Alexandru Athanasiu* (PSDR) Mugur Isărescu (independent)
2000-2004	Ion Iliescu (PDSR)	Adrian Năstase (PDSR/ PSD) *Eugen Bejinariu* (PSD)
2004-2008	Traian Băsescu (PD)	Călin Popescu Tăriceanu I (PNL) Călin Popescu Tăriceanu II (PNL)
2008-present		Emil Boc (PD)

Notes: The italics indicate the interim Romanian Prime-ministers.

2.5.3. The Parliament

In section 2.4 of the present chapter, we stated that one of the most striking traits of the 1991 Constitution was the ambiguity of the separation of powers principle. The consequences can be seen in a special aspect of the Government-Parliament relationship, namely the Government's right to adopt emergency ordinances via the mechanism of legislative delegation (Article 144-4). Generally, the use of such a procedure is constitutionally limited to exceptional or urgent social and political circumstances whereby the Government is entitled to pass laws that are not debated in the Parliament and that have immediate legal effect. These can be contested at the CC, but until a ruling is passed on their possible unconstitutionality, the effects would have already taken place.

A persisting problem in the Romanian case is the fact that all post-communist executives, except the one headed by Nicolae Văcăroiu, have abused the right of legislative delegation and especially the use of emergency ordinances irrespective of their extraordinary

character[97]. What is more, favoured by parliamentary majorities or coalitions, the political parties have generally accepted this practice, the only logical outcome being that the Parliament's role as the sole legislative body has diminished. A study made on the frequency of emergency ordinances from 1992 to 2005 has revealed that there have been 1582 such acts, i.e. once every three days. Nevertheless, the Tăriceanu government was the one that issued the largest number of emergency ordinances out of all other executives: 730 from 2004 to 2008. In contrast, in France the number of published government ordinances from 1984 to 2007 has been 325[98]. The conclusion drawn by Adrian Moraru, deputy director of the Institute for Public Policy think-tank, was that the legislative is still subordinated to the executive since "in Romania the majority of laws are initiated by the Government […] the Parliament does not have the predominant role of initiative, but that of legislator for either Government legislative initiatives or emergency ordinances"[99].

2.6. The nature of the parliamentary majority and its relationship with the President

This Parliament-President relationship is important since as Linz argued: "the success of a system having a predominance of the president or his cohabitation with the prime minister with the support of the majority in parliament is largely dependent on the party system and the relationship between the president and the parties"[100].

According to the 1991 Romanian Constitution, the presidency's term in office is 4 years – this is an important aspect since the President's role was enhanced from 1990 to 2004

[97] Also, every executive, except for Văcăroiu, has increased the number of such ordinances at the end of their mandate. For more information on the frequency and nature of the executives' emergency ordinances, see Constantin Palade, "The political character of the Government Emergency Ordinance within the Romanian transition context", *Curentul Juridic, the Juridical Current*, Petru Maior University, Faculty of Economics Law and Administrative Sciences and Pro Iure Foundation, vol. 3, (December 2005): 22-27.

[98] This analysis was done only in relation to the ordinances issued under Article 38 of the Constitution, which provides legislative delegation for the Government. For a more detailed examination of its evolution, see: Le Sénat Français, *Les Documents de Travail du Sénat, Serie Etudes Juridiques, Les Ordonnances – Bilan au 31 decembre 2007*, http://www.senat.fr/ej/ej_ordonnance/ej_ordonnance0.html#haut (accessed May 28, 2009).

[99] Ramona Leşeanu, "Abuzul de ordonanțe de urgență, meteahna tuturor guvernelor" („Abusing the emergency ordinance, the sin of every governmnet"), *Curierul Național*, March 4, 2009.

[100] Juan Linz, "Introduction: some thoughts on presidentialism in postcommunist Europe", in *Postcommunist Presidents*, ed. Ray Taras, (Cambridge: Cambridge University Press, 1997), 10.

thanks to the simultaneous organization of presidential and legislative elections that permitted the presidential candidate to influence the parliamentary majority[101]. Article 80 of the 1991 Constitution stipulates that the President's role is that of a neutral mediator between the state institutions and that of a guardian of the constitutional order. However, emphasizing the president's influence and role and a highly personalized political life were the legacies on Ion Iliescu's mandates and have led to the Romanian electorate's perception that the parliamentary majority is actually a "presidential majority", parties having to organize either for or against the President, while the Government is seen as a presidential creation validated by Parliament[102].

Every president has been the leader of the partisan formation who supported him in Parliament when there was a monolithic majority (Iliescu 1989-1992), dominant-party coalition (Iliescu 1992-1994; 2000-2004) and a balanced coalition (Constantinescu 1996-2000). The situation from 1996-2000 was more complicated in the sense that the Democratic Convention (CDR), who won against the Social Democrats (PDSR), comprised ideologically different parties which failed to reach consensus because of opposing political interests and ended up splitting from the alliance during the mandate[103]. Emil Constantinescu was less active than Iliescu and had less influence on the parliamentary majority who was not always supportive of the President's initiatives. The traditional situation changed in 2005 when President Băsescu entered a bitter conflict with PM Tăriceanu who ousted the PD ministers in March 2007 through a government reshuffle[104] resulting in a minority government between the PNL and the UDMR supported by the PSD. Thus, from April 2007 the first post-

[101] The 2003 constitutional revision extended the President's term of office to 5 years (Article 83).
[102] Daniel Barbu, *Republica absentă: politică şi societate în România postcomunistă (The Absent Republic: politics and society in post-communist Romania)*, (Bucharest: Nemira, 2004), 176.
[103] We would not consider the CDR as a truly balanced coalition since after the 1996 elections the PNŢ-CD held the dominant position within the alliance, a factor that only contributed to the frictions between the members.
[104] The reshuffle targeted especially Ministers Vasile Blaga (Administration and Interior) and Monica Macovei (Justice) for rejecting the government's decision to postpone the European Parliament elections. Source: ***, "All eyes turned to Cotroceni", *Nice o'Clock*, March 20, 2007.

communist cohabitation period ensued in Romania between the former D.A. Alliance coalition partners.

Table 2: Types of parliamentary majorities and presidents (1990-2008)[105]

	President			
Type of parliamentary majority	**Head of the majority**	**Opposed**	**Member of the majority**	**Neutral**
Monolithic (true majority)	Absolute ruler **Iliescu** (Roman)	Regulator	Symbolic	Regulator
Dominant-party coalition (true majority)	Limited powers **Iliescu** (Stolojan, Văcăroiu II) **Băsescu** (Tăriceanu I)	Regulator	Symbolic	Regulator **Iliescu** (Năstase)
Balanced coalition (true majority)	Dyarchy	Regulator **Băsescu** (Tăriceanu II)	Symbolic **Constantinescu** (Ciorbea, Dejeu, Vasile, Athanasiu, Isărescu)	Regulator
Quasi-majority	Limited decider **Iliescu** (Văcăroiu I, III)	Regulator	Symbolic	Regulator
No majority				Dyarchy

2.7. The 1994 suspension case against President Ion Iliescu

Because of the importance of the 1994 suspension procedure in establishing a precedent in the Romanian political and legal practice, it is necessary to reserve a part of this sub-section to the examination of the reason and arguments used against the President, as well as the negative ruling made by the CC regarding this case.

As already mentioned above, Article 80 was invoked in the 1994 suspension procedure against then acting President Ion Iliescu. He was accused by the parliamentary opposition of grave intrusion in judicial proceedings resulting in the breach of the separation

[105] Taken and adapted for the case under study from François Frison-Roche, "Semi-presidentialism in a post-communist context", in *Semi-presidentialism Outside Europe: A Comparative Study*, eds. Robert Elgie, Sophia Moestrup, (London, New York, Routledge, 2007), 71, http://books.google.com/books/semi+presidentialism+outside+europe#PPP8,M1 (accessed May 5, 2009).

of powers principle. The motive was Iliescu's mid-May official declaration that the final and incontestable judicial rulings, which recognized the right of ownership over nationalized houses, are invalid because they do not have a legal basis – since a law in this sense had not been passed – and should not be implemented by the state administration[106].

The suspension procedure was initiated by the PNȚCD in mid-June. Iliescu refused an invitation made by political parties involved – PNȚCD, PAC, PSDR, PER, PL'93, PD – to appear and explain before the joint houses of Parliament the accusations brought against him. Furthermore, the opposition called for a censure motion against the government and protested during the parliamentary debates against the law regulating the status of nationalized houses by calling it "a second nationalization"[107]. In late June, the parties managed to gather 167 signatures to initiate the procedure and start the parliamentary debate. The CC gave a negative ruling concerning the indictment against Iliescu by stating that his declarations do not constitute "grave acts infringing upon Constitutional provisions"[108] and underlined that in accordance with Article 80, the President's function of mediation obliges him/ her to act in such a way so as to diminish or prevent the appearance of institutional or social conflicts. More explicitly, in the eventuality of a social conflict, such as the one between the tenants and the former owners of nationalized houses, the President's constitutional duty is not to remain passive, but to aid in bringing about a resolution[109]. The basis of the argument consisted in the fact that the holder of the presidential office is entitled to express political opinions or to propose – not impose – ways of solving the issue at hand since his/ her statements are not

[106] Petru Clej, "Ce este suspendarea din functie a Presedintelui Romaniei" ("What is the suspension from office of the Romanian President"), *BBC Romania*, January 21, 2007.
[107] ***, "President Iliescu faces impeachment", *The Free Romanian: The organ of the World Union of Free Romanians*, vol. 10, no. 7, July 1994.
[108] For a more detailed description of the debates and the full chronology of the 1994 suspension procedure, see Dan Pavel, Iulia Huiu, *„Nu putem reuşi decît împreună"- O istorie analitică a Convenției Democratice, 1989-2000 ('We can succeed only together'- An analytic history of the Democratic Convention, 1989-2000)*, (Bucharest: Polirom, 2003), 166-170.
[109] Ioan Stanomir, "După 1998 Câteva reflecții asupra constituționalismului românesc postcomunist" („After 1989. A few reflections on post-communist Romanian constitutionalism"), *Studia Politica. Romanian Political Science Review*, vol. VI, no. 1, (2006): 167.

supposed to have any legal effects on the public authorities. Ultimately, the parliamentary majority at the time, formed by PDSR, PUNR, PRM, PSM and PDAR, rejected by 242 votes the suspension proposal against Iliescu[110].

The problem in the case presented here is that Iliescu's statements have had legal consequences that have affected the Romanian state in the form of lawsuits filed at the European Court of Human Rights (ECHR). The explanation for this state of affairs is that the Prosecutor General, at the level of the Supreme Court, annulled the judicial rulings whereby the nationalized houses had been given back to the former owners. Therefore, beginning with 1995 up to 1997, these houses were taken away by the state in accordance with the decision of the Supreme Court. The outcome was that the Romanian state has had to deal with hundreds of lawsuits regarding the issue of nationalized houses[111]. Monica Macovei has pointed out that this situation was possible because the prosecutor general "has the exclusive authority to appeal final judgments passed by courts in criminal trials […] 'when courts exceed their jurisdiction'"[112]. Therefore, in virtue of the above discussion about the constitutional ability of the executive to interfere in the judiciary's activity via prosecutors, so the prosecutor general could intervene in line with Iliescu's statements.

[110] Cristian Preda, Sorina Soare, "Un Executiv dualist-conflictual" ("A dualist-conflictual Executive"), *Revista 22*, May 28, 2008.

[111] The 1999 decision in the *Brumărescu vs. Romania* case, where the former owner was given back the house and monetary compensation, only increased the number of lawsuits which, if successful, would oblige the state to pay very large sums of money in restitution. In 2002 the press signalled that the Romanian state had to pay over a million Euros after 10 lawsuits were decided in favour of the former owners. The ECHR recognized that their right to private property and to a fair trial had been violated by the Romanian state. For more information, see: ***, "Contribuabilii împotriva României" ("The tax payers versus Romania"), *Adevărul*, July 11, 2002; ***, "20.000.000 de USD costă greşelile justiţiei române" ("20.000.000 USD is the price for the mistakes made by the Romanian justice system"), *Capital*, February 1, 2001; ***, "In procesele cu foştii proprietari, statul e bun de plată" ("In the lawsuits against the former owners, the state has to pay"), *Capital*, July 8, 1999.

[112] Monica Macovei, "The Procuracy and its Problems", *East European Constitutional Review*, Vol. 8, no. 1-2, (Winter-Spring 1999), http://www1.law.nyu.edu/eecr/vol8num1-2/feature/romania.html (accessed May 23, 2009).

CHAPTER 3: THE 2007 SUSPENSION CASE

Traian Băsescu was the second European leader to have been sanctioned by the legislative after the 2004 impeachment of the Lithuanian President, Rolandas Paksas, who was accused of high treason. In contrast to Paksas' situation, Băsescu was not charged with acts of corruption which threatened state security, but was accused of abusing power and violating the Constitution. In the present chapter, when referring to the articles of the constitutional text, we will have in mind only the 2003 version of the Constitution.

3.1. The political background

In order to understand the reasons which led to the presidential suspension, we need to offer some background information regarding the political context after the 2004 elections. These elections were characterized as Romania's "Orange Revolution" against the PSD, the FSN's inheritor, because the Justice and Truth Alliance (Alianța D.A.), which comprised the PNL and the PD, ran on a strong reform and anti-corruption platform that appealed to the population. Traian Băsescu nominated his running mate Călin Popescu Tăriceanu as PM although the PSD had obtained most seats in Parliament. In order to form a majority in Parliament, the Alliance formed a coalition with the UDMR and the Conservative Party (PC)[113], thus throwing the PSD and Greater Romania Party (PRM) in opposition. Nevertheless, in December 2006, due to conflicts with the President, the conservatives withdrew from the cabinet and the Alliance lost parliamentary majority.

Băsescu declared that he wanted to be an active voice that, together with Parliament, would keep the Government busy and characterized himself as a "player-president"[114]. This meant that he would follow Iliescu's style of constant involvement in domestic politics by

[113] The PC joined the Alliance in Parliament although it had run with the PSD in the electoral campaign. This prompted Băsescu to characterize the PC's move as "the immoral solution". For a description of the conflicts between the President and the PC, see: ***, "Traian Băsescu semnează pentru 'soluția imorală'" ("Traian Băsescu signs for the 'immoral solution'"), *Ziare.com*, July 7, 2006.

[114] Oana Stancu, Monica Iordache, "Băsescu se vrea președinte jucător" ("Băsescu wants to be a player-president"), *Jurnalul Național*, October 10, 2004.

frequently criticizing the slow reform in the justice department and by blatantly accusing the PM and members of government of supporting "interest and 'Mafia-like groups'", while continuing to support the PD. This energetic participation was one of the main accusations brought against him by the suspension proposal. His relationship with the PM worsened after the latter refused to resign in 2005. In February 2007, the PSD took advantage of the ill blood between the two and managed to initiate the suspension procedure in Parliament.

3.2. The suspension procedure

Article 95 of the Romanian Constitution provides that in case the President commits "grave acts infringing upon Constitutional provisions", the Parliament can propose his/her suspension if such a proposal is supported by a 1/3 majority, i.e. 157 MPs at the time of the 2004-2008 legislature. The next step consists in consulting the CC after whose ruling the suspension procedure must be passed by an absolute parliamentary majority, i.e. 235 votes, but the removal from office must be validated via a popular referendum. There have been two cases when this article was invoked: in 1994 against Ion Iliescu and in 2007 against Traian Băsescu. In both cases, the CC gave a negative ruling regarding the accusations, but only in 1994 was this aspect taken into consideration since the Parliament rejected the impeachment proposal against Iliescu. However, in 2007, the Parliament voted in favour of Băsescu's impeachment with a large majority voting for, namely 322 out of 465 MPs.

3.2.1. The Voiculescu Investigation Commission

On February 12th, 2007, 184 MPs, belonging to the PSD and the PRM initiated the suspension procedure. On February 28th, on the PC's initiative, the Parliament established a special Joint Investigation Commission in charge of reviewing the indictments brought against the President[115]. The legal basis for the formation of such a commission is found in

[115] The Commission's formation received 258 votes for from the PSD, PRM, PC and PNL, 76 votes against from the PD and PLD, while the UDMR abstained. Source: ***, "Dan Voiculescu, şeful comisiei parlamentare pentru anchetarea lui Băsescu " ("Dan Voiculescu, head of Băsescu 's investigatory commission"), *Romania Online*, February 28, 2007, http://stiri.rol.ro/content/view/35995/2/ (accessed May 25, 2009).

articles 67 and 68 of the Joint Sessions Rules of the House of Deputies and the Senate, which establish that if the MPs consider that there is not enough clear evidence in the suspension proposal forwarded to the Parliament, they may decide to create a joint investigation commission (Article 67). The Commission's mandate was to "analyze the data, documents, public acts and attitudes of President Traian Băsescu" so as to offer the two Chambers of Parliament the necessary elements to decide on the suspension proposal[116]. Therefore, this body was charged with writing a report in which it had to clarify the accusations found in the suspension proposal by gathering the necessary data that would prove the President's actions and statements had grave consequences and to identify those constitutional provisions which had been violated.

The membership in the Commission was established according to their share of mandates so that each party had a proportional number of representatives[117]. The fact that its president was named Dan Voiculescu, a staunch critic of the President, only prompted accusations of political partisanship from the parties that voted against the Commission. Regarding these charges, Voiculescu assured public opinion in a press conference that the Commission's activity will be public and objective since "a political vendetta is out of the question". In addition, he pointed out that the Commission's mandate is "complex", i.e. even though its mandate is to examine if the President's actions violated the Constitution, criminal charges may also appear during the investigation, in which case they will be annexed to the final report and transmitted to the High Court of Cassation and Justice[118].

[116] The Romanian Parliament, "The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President", http://www.ziua.ro/pics/2007/03/21/1174650600.pdf (accessed May 20, 2009).
[117] The Commission members were the following: Şerban Nicolae, Doru Ioan Tărăcilă, Eugen Nicolicea, Mihai Tudose, Florin Iordache (PSD); Norica Nicolai, Crin Antonescu, George Scutaru (PNL); Valentin Dinescu, Nicolae Iorga (PRM); Dan Voiculescu (PC); Mate Andras (UDMR) and Ibram Husseim (national minorities).
[118] Realitatea TV, "Dan Voiculescu: Comisia de anchetare a presedintelui va fi obiectiva" ("Dan Voiculescu: The president's investigatory commission will be objective"), March 1, 2007, http://www.realitatea.net/dan-voiculescu--comisia-de-anchetare-a-presedintelui-va-fi-obiectiva_46009.html (accessed May 18, 2009).

The Commission's existence was a matter of legal and political debate between all the parliamentary parties and the PD, which in addition to the fact that it refused to name its representatives to the 15-member Commission, it also contested its legality at the CC, but lost the case[119]. The Court was summoned to settle not merely a legal, but a heavily political issue whose aim was to "invalidate or sanction the effort of the anti-presidential majority to certify the Parliament's institutional dominance over Traian Băsescu"[120].

The case presented on March 6th by the PD members was based on the fact that an earlier ruling of the Court (Decision 87/ 1994) ruled that "the message" is the method through which "the President transmits to the Parliament his/ her opinions regarding the main political problems of the nation", such as the initiation of the suspension procedure against the holder of the presidential office. Therefore, the President, if he/she so wishes, is entitled to give explanations as to the charges brought against him/ her "only via the constitutional institution of the message as it is stipulated in Article 88 of the 2003 Romanian Constitution" and not to a parliamentary commission. In addition, it was argued that the presidency is not subject to the procedure of parliamentary control through a commission since this right was limited to the institutions set down in Article 111 of the 2003 Constitution, i.e. the Government and other bodies of public administration. Also, the Constitution itself does not provide for the creation of such a commission since it states that the joint Chambers of Parliament shall decide to suspend the President based on Article 95. The CC rejected these arguments by asserting that the Parliament, in conducting its duties, such as the one under Article 95, is entitled to form investigatory or special commissions. Moreover, the establishment of such a commission is not expressly forbidden, while the seriousness of the situation actually imposes

[119] Cristina Stefan, "Comisia Voiculescu cere suspendarea Preşedintelui Traian Băsescu " ("The Voiculescu Commission asks for President Traian Băsescu 's suspension"), *Ziua*, March 21, 2007.
[120] Ioan Stanomir, "Parlamentul, preşedintele şi comisia de anchetă", ("The parliament, the president and the investigation committee"), *Revista 22*, March 9, 2007.

its creation since the charges brought against the head of state must be heavily corroborated by evidence[121].

Despite the request forwarded by the PD representatives that the workings of the Voiculescu Commission be suspended until the CC's ruling, the members of the commission continued their activity. Throughout March, hearings were organized with government ministers and the heads of the secret service bodies, SRI and SIE. The PD declared that it does not approve its ministers being called to testify since it does not recognize the Commission's authority[122]. Consequently, the Commission announced in the final Report that it will inform Parliament that Minister Anca Boagiu violated the Law on Ministerial Responsibility[123], as well as Articles 111-1 and 112-2 of the Constitution[124] and was therefore subject to criminal charges that could amount up to three years in jail[125]. This particular occurrence is important since it constitutes an example of how legal and constitutional provisions can be used to favour the arguments of their occasional interpreters. In this specific case, the Commission brought about these charges[126] by misinterpreting both the Law on Ministerial Responsibility

[121] The Constitutional Court, *Decision no. 266/ 2007 regarding the constitutionality of the provisions under Articles 67, 68 and 70 contained in the Joint Sessions Rules of the House of Deputies and Senate*, March 21, 2007, http://www.legestart.ro/Decizie-nr-266-din-2007-(MjQ1NDA0).htm (accessed May 18, 2009).

[122] The PD ministers either motivated their absence from the hearings, such as Justice Minister, Monica Macovei, or refused to attend, such as European Integration Minister, Anca Boagiu, and former Transport, Construction and Tourism Minister, Gheorghe Dobre. Source: Realitatea TV, "Noi audieri în comisia Voiculescu" ("New hearings in front of the Voiculescu Commission"), March 14, 2007, http://www.realitatea.net/noi-audieri-in-comisia-voiculescu_48607.html (accessed May 18, 2009).

[123] The Law 115/1999 on Ministerial Responsibility, Article 2 states that the Government is politically responsible only to the Parliament. Also, each member of Government is politically accountable together with the others for the acts and activity of the Government. Article 3 states that Government members are obliged to answer the questions addressed by the MPs and to provide any information and documents so requested by Parliament. The full text of the law can be found at http://legislatie.resurse-pentru-democratie.org/115_1999.php

[124] Article 111, paragraph 1 stipulates that according to the right of parliamentary control over the Government's activity, the latter is obliged to provide the two Chambers of Parliament or a parliamentary committee with any information and documents so requested. Article 112 states that the Government and each of its members is bound to answer the questions or interpellations raised by MPs and that each of the Chambers of Parliament may express their position by carrying out a simple motion on domestic or foreign policy or on the subject of an interpellation. Source: Constitution of Romania, Title III "Public Authorities", Chapter IV "Relations between Parliament and Government", http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3#t3c4s0a111 (accessed May 18, 2009).

[125] ***, "Raportul Comisiei Voiculescu" ("The Voiculescu Commission's Report"), *Ziua*, March 21, 2007.

[126] Another objection to the Commission's act is that the Law on Ministerial Responsibility stipulates that the debates regarding the commencement of criminal charges against a minister are based on a report made by either a permanent or a special commission *especially* charged with investigating the activity of the Government or a ministry (Article 13-1).

and the constitutional provisions on the Parliament-Government relationship because these refer to the parliamentary control over the *activity* of the Government and public administration authorities[127].

Regarding the actual functioning of the Commission, an important aspect underlined in the final Report was its recognition of the fact that neither the Constitution, nor the specialized literature defines what is meant by "grave acts" which can be imputed against the holder of the presidential office. Therefore, the Commission, citing Ion Deleanu, considered that "the correct interpretation of infringement lies at the Parliament's disposal", which means that it "may consider as grave those concrete acts or actions, interventions, affirmations, recommendations which violate clear constitutional principles and texts and which, by their immediate results or state of potential danger, bring about grave prejudices to the functioning of democracy and the rule of law"[128]. In addition, the Report pointed out that the Commission considered that these statements and political opinions can be protected by the immunity clause "only insofar as they refer to his duties, are uttered during his mandate and they respect his status of head of state which obliges him to objectivity, impartiality, responsibility"[129].

On March 21st, the Commission presented its findings on the same day that the CC ruled on the legality of its establishment and activity. The final Report identified 19 charges against the activity of the President throughout the first two years of his mandate (see section 3.6.). The Report's conclusion supported the suspension proposal by arguing that the accusations brought against Băsescu are "real, corroborated by evidence and amount to

[127] The argument was that the holder of any ministerial office is accountable to the PM and the Parliament only in regards to the functioning of a certain ministry. In this sense, the Ministry of European Integration declared that the Commission violated the separation of powers principle in demanding information outside the procedure of parliamentary control and that it did not have the authority to establish individual accountability under criminal charges. Source: Realitatea TV, "Ministrul Boagiu acuza de calomnie comisia Voiculescu" ("Minister Boagiu accuses the Voiculescu Commission of slander"), March 22, 2007, http://www.realitatea.net/ministrul-boagiu-acuza-de-calomnie-comisia-voiculescu_50339.html (accessed May 19, 2009).
[128] The Romanian Parliament, "The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President", pp. 2-3.
[129] Idem.

violations of the Constitution, displaying utmost gravity"[130]. Moreover, the final remarks of the Report pointed to the fact that the President knew about the illegal phone tapings done by SIE without a warrant and argued that this constitutes a serious infringement of human rights which deserves the creation of a special parliamentary investigation committee. Another grave accusation was that Băsescu intervened in favour of certain private business interests both before and during his presidential mandate followed by the proposition to initiate criminal investigations by the High Court of Cassation and Justice and stated that it would present the necessary evidence in a supplementary report[131]. However, the Commission overstepped its mandate since it was not authorized to investigate Băsescu's acts before his presidential office, but to focus only on the first two years of his tenure[132]. Nevertheless, the press revealed the next day, citing internal sources from the Commission, that this additional report did not exist and that in any case the Commission is not authorized to address such a request to the High Court, but only to forward its final report to the Parliament[133]. The form of the final Report was voted upon and it received eight votes in favour and four abstentions from the PNL[134] and UDMR representatives.

[130] The Romanian Parliament, "The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President", 3.
[131] Ibid, 6.
[132] It was argued that the hearings and the documents sent by "various private and juridical bodies" indicated Băsescu's involvement in a scandal about the privatisation of a major state-owned enterprise, which occurred during Emil Constantinescu's mandate (1996-2000), as well as his support for private economic interests. During the Vasile and Isărescu governments, Băsescu was the Minister of Transport and head negotiator in a program initiated by the World Bank for the privatisation of state-owned enterprises. The scandal revolved around an undervalued privatisation of Romania's sole aluminium plant, ALRO Slatina. Băsescu was accused of abusively placing this enterprise on the privatisation list, thus undermining national economic interests. For more information on this particular aspect, see: George Tarata, Marian Ghițeanu, "Negociatorul zero" ("The first negotiator"), *Ziua*, May 18, 2007.
[133] The promised request for a criminal investigation against European Integration Minister, Anca Boagiu, was also not forwarded to the two Chambers of Parliament. Source: Adriana Duțulescu, "Cacealmaua lui Voiculescu" ("Voiculescu's bluff"), *România Liberă*, March 23, 2007.
[134] The reason behind these abstentions was their objection as to some of the Report's conclusions, especially the one regarding the President's abusive appointment of Călin Popescu-Tăriceanu, PNL's president, as PM (see section 3.6.).

3.3. "The 322"

The Voiculescu Report was forwarded to the Permanent Bureaus of the two Chambers of Parliament and to the CC on March 22nd. On April 17th, the Court issued a negative ruling regarding the suspension proposal against President Băsescu by stating that the acts committed during his mandate cannot be considered through their content and consequences so grave as to necessitate a suspension[135]. On the same day, Băsescu declared that if the suspension proposal passes in the Parliament, he will resign after five minutes so as to prompt early presidential elections[136] and "bring in front of the electorate those who generated the constitutional abuse". In addition, he underlined that the CC's ruling argued in favour of a president "who has the obligation to be politically active" and this constitutes a "certificate of well behaviour"[137]. The presidency supported Băsescu's statements by declaring that the parliamentary vote was now a merely political act since the Court's ruling on the suspension procedure left it "without a constitutional basis"[138].

The scandal continued the following day when Mircea Geoană, president of the PSD, accused Băsescu of using the SRI to blackmail some of the CC members with delicate information extracted from their former political police, i.e. Securitate dossiers. Consequently, he demanded the President's and the secret service heads' resignation in addition to the re-examination of the Court's "vitiated" decision on the suspension procedure. As would have been expected, the President, the SRI and the CC categorically rejected any attempt to exert political pressures on the Court's judges[139].

---

[135] For the full e-text of the ruling, see The Romanian Juridical Portal, http://www.e-juridic.ro/stiri/-decizia-curtii-constitutionale-in-cazul-suspendarii-presedintelui-traian-Băsescu -1135.html (accessed May 15, 2009).
[136] Article 97, paragraph 2 of the Romanian Constitution states that three months after the presidential office fell vacant – due to resignation, removal from office, impossibility to discharge his powers and duties or death –, the Government must organize early presidential elections.
[137] Adriana Dutulescu, Romulus Georgescu, Iulia Vaida, "Voi demisiona în 5 minute" ("'I will resign in 5 minutes'"), *România Liberă*, April 18, 2007.
[138] ***, "Reacția președintiei la decizia Curții Constituționale" ("The presidency's reaction to the Constitutional Court's decision"), *BBC Romania*, April 5, 2007.
[139] Realitatea TV, "Geoană: Președintele a cerut SRI informații despre judecători" ("Geoană: The President asked for information on the judges"), April 18, 2007, http://www.realitatea.net/geoana--presedintele-a-cerut-sri-informatii-despre-judecatori_56039.html (accessed May 23, 2009).

The parliamentary debates on the suspension proposal took place on April 19th and the MPs voted with a large majority in favour of the President's suspension from office[140]. Băsescu declined to attend these parliamentary debates by declaring the following: "I was not elected by the Romanian Parliament […] I was elected by the Romanians. I answer to them for my political opinions, not to the leaders of some parliamentary parties"[141]. This statement is reminiscent of President Iliescu's position in 1994 when he was invited by the parliamentary parties to explain the charges brought against him (see sub-section 2.7.)[142]. The vote in Parliament was followed by a request forwarded to the Government for the organization of a national referendum on the President's dismissal on May 19th. Following this decision, Băsescu immediately "turned to the people" and went to the city centre to speak to his supporters[143]. On the same day, similar protests numbering hundreds of people occurred in major cities around Romania[144], the PD later denying any involvement in their organization.

On April 20th, the President of the Senate, Nicolae Văcăroiu, was named interim President for 30 days until the referendum. On the other side of the political battlefield, Traian Băsescu declared that he reconsidered his decision to resign and declared that this act would have only aggravated the political crisis at a time when the national interest demands

[140] 235 votes were needed in order for the suspension procedure to pass in the Parliament. The results of the vote were the following: out of 440 MPs who were present, 322 voted in favour, 108 against and 10 abstained. Source: Lucian Gheorghiu, Cristian Oprea, "Băsescu , suspendat din funcție" ("Băsescu , suspended from office"), *Cotidianul*, April 19, 2007.

[141] Realitatea TV, "Băsescu : Nu am de ce să merg în parlament" ("Băsescu : I have no reason to appear before Parliament"), April 18, 2007.

[142] Constitutionally, the President is not obliged to be present at the parliamentary debates regarding the suspension procedure (Article 95, paragraph 1).

[143] In his speech at the University square, he reignited the use of a populist rhetoric whereby he urged the people to remain calm and to convey their views by voting. Underlining his special connection to "the people", he declared that "I love you as well! I'm returning to you. I will still be your president, the president of the Romanian people". He assured the people present that he will win the referendum and return to Cotroceni Presidential Palace since he did not violate the Constitution, but respected "the obligation to protect the interests of those who chose me" Source: Realitatea TV, "Traian Băsescu : Voi fi în continuare preşedintele vostru, preşedintele românilor" ("Traian Băsescu : I will still be your president, the president of the Romanian people"), April 19, 2007.

[144] Traian Băsescu 's supporters gathered in Brasov, Iasi and Cluj on April 19th to protest against the suspension procedure. In Cluj, some protesters even burned the pictures of PSD leader Mircea Geoana and PC president, Dan Voiculescu. Source: Realitatea TV, "Sute de oameni au ieşit în stradă pentru Traian Băsescu " ("Hundreds of people took to the streets for Traian Băsescu "), April 19, 2007.

stability[145]. Băsescu and the Liberal Democrats (PLD)[146] also argued that the so-called parliamentary "anti-presidential coalition" formed by the PSD, PNL, PRM, UDMR and PC will follow the Lithuanian example in modifying the electoral law so as to prevent a suspended or impeached president from running in subsequent elections[147]. Mircea Geoană and the president of the Chamber of Deputies, Bogdan Olteanu, both denied the accusations. This yet another scandal was seen by some commentators as indicating the low quality of Romanian political actors who preferred to intensify the institutional conflict rather than cooperate to solve it[148].

3.4. Changing the rules of the game during the game

There is one aspect of this political imbroglio that deserves closer attention, namely the Court's ruling on May 3rd 2007 that the changes brought to the Referendum Law are constitutional after having rejected another version of the same law twice, i.e. in February and April. The initiator of this project was the PSD who sought to increase the probability of accomplishing their political aim by openly modifying the laws in Parliament specifically against the holder of the presidential office. The problem was, as Mircea Geoană himself declared, that the existent law generated a "target impossible to reach", i.e. nine million votes in favour of dismissal, and there was a need to change it so as to equalize the chances in the political "match"[149]. This statement indicates the manner in which the PSD intended to play, namely to change the rules of the game during the actual game.

---

[145] Realitatea TV, "Traian Băsescu : Cea mai buna solutie este sa ma prezint la referendum" ("Traian Băsescu : The best solution is for me to attend the referendum"), April 20, 2007.

[146] The PLD was established in December 2006 after increasing tensions between Tăriceanu and Theodor Stolojan resulted in a faction within the PNL. In December 2007, the PLD merged with Băsescu's PD and formed the Democratic Liberal Party (PD-L), which managed to win most seats in the November 2008 legislative elections. Surprisingly, the PD-L accepted a coalition government – under PM Emil Boc (PD-L) – with its former enemy, the PSD.

[147] In May 2004, the Lithuanian CC ruled that an impeached president for breaking the constitutional oath may not never run for an office demanding an oath. Source: Zenonas Norkus, "The Case of the President's Impeachment in Lithuania", *East European Politics and Societies*, Vol. 22, no. 4, (November 2008): 796.

[148] Cristian Pîrvulescu, "Preşedintele interzis" ("President Forbidden"), *Revista 22*, April 27, 2007.

[149] D. Galantonu, "Mircea Geoana: In foma actuală a legii-un referendum cu o țintă imposibil de atins" ("Mircea Geoana: The present form of the law-the referendum is a target impossible to reach"), *Hotnews*, April 24, 2007.

In the following lines, we will present the legal and constitutional arguments of both sides involved, as well as all of the CC's arbitration of the political conflict between the majority and Băsescu's supporters in Parliament. The reason for which the Court's February ruling is analyzed in such detail is that subsequent changes to this new law on the referendum rules have been made by the MPs after the Court's first identification of several unconstitutional elements.

Initially, on January 12th, President Băsescu returned the new law on changing the existent referendum rules to the Parliament for re-examination because of two provisions that will be presented below. However, on January 29th, the Judicial Committee of the House of Deputies voted in favour[150] of modifying Article 10 of the Referendum Law which stated that in order for the dismissal referendum of the head of state to be valid, the majority necessary is 50% + 1 of the total number of voters present on the electoral lists. The change decided on by the deputies provided that if the President was elected in the runoff between the two main candidates – which was Traian Băsescu's situation –, he can be dismissed by 50% + 1 of those who actually cast the vote at the referendum. Therefore, the implication was that the turnout would not be taken into consideration in deciding the validity of the referendum. What needs to be clearly understood regarding this issue is that this provision would have been applied *only* for the referendum on the President's dismissal. The argument used to legitimate this act was based on the judicial symmetry principle[151], as well as Article 81-3 of the Constitution, which refers to the election of the President and stipulates that in the eventuality of a runoff, the candidate receiving the simple majority of votes cast shall be elected. Another change brought to the referendum rules was the provision that a referendum may not take

[150] The modifications of the Referendum Law received ten votes in favor from the PSD, PNL, PC and PRM and five abstentions from the UDMR, PD and the minorities, while the PLD representatives left the debates. Source: L. Parvu, B. Blagu, "Deputatii din Comisia juridică au modificat Legea referendumului" ("The deputies from the Judicial Committee modified the Referendum Law"), *Hotnews*, January 29, 2007.

[151] In the arguments presented by the president of the Chamber of Deputies, the use of the judicial symmetry principle in this case refers to the fact that both the choice of the head of state and his/her dismissal must be symmetrical regarding the voting majority needed to validate these two instances of democratic popular will.

place at the same time or less than six months earlier than any other type of election (Article 5)[152]. The consequence was that the President could not call for a referendum during a year when other elections were to be scheduled. Therefore, in the year 2008, when local elections were set to take place in June and parliamentary elections in November, the citizens could not be called upon to participate in a referendum.

The PD contested this new law by arguing that it violates several articles in the Constitution relating to the exercise of national sovereignty through a referendum (Article 2-1) and the President's right to call upon a referendum (Article 90). Regarding the issue of the number of votes, the criticism was that it "basically creates two types of presidents [...] and two types of legitimacy" whereby the candidate chosen in the runoff is being blatantly discriminated against during the dismissal referendum. In addition, it was argued that this provision had a retroactive character since "it regulates a new method of dismissing the President other than the one in place at the moment he was chosen by popular vote". Consequently, this violated Article 15-2 of the Constitution stipulating that the law shall only be applied for the future except for criminal or administrative laws[153]. The presidents of the two Chambers of Parliament responded that, according to Article 73-3 of the constitutional 2003 version, the legislative has the right to pass organic laws which regulate the organization and holding of referenda and that there is no prohibition as to its ability to decide on the rules according to which a referendum is to be held[154].

The CC concluded on February 21st that the changes brought to the Referendum Law were unconstitutional. Concerning the provision about the referendum not being organized simultaneously with other elections, the Court decided that the Constitution does not prohibit

[152] The types of elections this new provision was referring to were the presidential, parliamentary, local and European Parliament elections.

[153] The Constitutional Court, *Decision No. 147/2007 regarding the constitutionality of the Law on the modification and completion of Law no. 3/2000 on the organization and holding of the referendum*, February 21st, 2007, 2, http://www.ccr.ro/decisions/pdf/ro/2007/D147_07.pdf (accessed May 23, 2009).

[154] Furthermore, they both asserted that by holding a referendum at the same time as other elections would be confusing for the citizens, as well as "absurd and against any democratic logic" since representative and direct democracy cannot be expressed simultaneously. Source: Ibid, 3-5.

its organization and holding in the sense argued for by these changes. Hence, the legislature *cannot* add to the constitutional text and impose through ordinary law such an interpretation that limits the above-mentioned right to call for a referendum (Article 90)[155]. More importantly, this change would have affected the principles of balance and separation of powers between the President and the legislative since "the complex position of the head of state cannot be affected through an organic law"[156].

Another crucial aspect pointed out by the Court is that the judicial symmetry principle does not apply in the case of public and constitutional law, the latter being "by essence asymmetrical"[157]. This means that the electoral choice and the dismissal of the President cannot be equated or placed on the same judicial level. In the same vein, the discrimination between a president chosen in the first ballot and one chosen in the runoff prompted the argument that one cannot apply the same sanction against a president in a different manner according to the way in which he/she was elected via popular vote or whether he/she was named as interim. Nevertheless, the Court decided that the legislature can modify the Referendum Law only if it applies the same judicial treatment regarding the dismissal of the president irrespective of the manner in which he/she was chosen or appointed.

In accordance with the Court's decision, on March 21st, the MPs voted for a new version of the law[158] which kept the provision regarding the majority needed to dismiss the President at the referendum, but erased the mention of the runoff and added to Article 12,

[155] Also, another motivation for rejecting the law was that this specific provision would forbid any referendum because it "can cause constitutional deadlocks (since) the date of other elections becomes dependent on the date the referendum is organized". The Constitutional Court, *Decision No. 147/2007 regarding the constitutionality of the Law on the modification and completion of Law no. 3/2000 on the organization and holding of the referendum*, February 21st, 2007, 6.

[156] Ioan Stanomir, Radu Carp, *Limitele Constituției. Despre guvernare, politică şi cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania),* (Bucharest: C.H. Beck Publishing House, 2008), 256.

[157] Ibid 155, 7.

[158] The changes to the new law on the referendum were made in accordance with the Constitutional Court's decision on February 21st and received 198 votes in favour, 46 against and two abstentions from a total number of 256 MPs. Source: ***, „Legea referendumului adoptată în Parlament" („The Referendum Law was adopted in Parliamnet"), *BBC Romania*, March 21, 2007.

which listed what issues that can be considered of national interest and that calling for a referendum on changing the Constitution does not constitute such an issue. Also, the new version changed the prohibition to hold referenda at the same time or less than six months earlier than any other type of election by lowering the number of months to three. The Liberal Democrats appealed again to the Court, which, on April 4th, accepted all the objections raised and rejected the modifications brought to the new law on similar grounds of unconstitutionality[159]. The reasons were the same as those present in its February decision regarding the referendum's timetable, but also the fact that the President's right to call upon a referendum on whichever issues he/she considers as important cannot be limited by the legislative[160].

On March 26th, the PD representatives again brought their objections to the CC on the same grounds as before: the unconstitutional and retroactive nature of the provision added to Article 10 whereby the majority needed to dismiss a suspended president in the national referendum. The provisions regarding the timetable and the prohibition of calling a referendum on changing the Constitution had been removed from the re-re-modified version of this new law. The interesting aspect is that the Government's opinion concurred with the PD's line of reasoning about the problematic nature of this new law. The conclusion of these four-month long appeals to the CC occurred on May 3rd, when the new law was deemed constitutional. The Court pointed out that the legislature has the right to make such changes as long as they are not discriminatory. Also, it argued that the law does not produce retroactive effects since these changes of procedure "do not affect previous judicial circumstances, but

[159] The full text of the Constitutional Court's *Decision No. 355/2007 regarding the constitutionality of the Law on the modification and completion of Law no. 3/2000 on the organization and holding of the referendum*, April 4th 2007, can be found at http://www.ccr.ro/decisions/pdf/ro/2007/D355_07.pdf (accessed May 22, 2009).

[160] In addition, the CC pointed out that the MPs also added and changed other provisions than the ones identified by the President when calling upon a re-examination in January, thus violating Article 77-2 of the Constitution which states that the President can return a law to Parliament for re-examination only once, i.e. the MPs have to reconsider only those provisions identified by the President as problematic. The President had drawn attention to the provisions concerning the referendum's timetable and the prohibition to hold a referendum on changing the Constitution.

only those which will occur after the law is validated"[161]. Hence, the Referendum Law was modified in accordance with the PSD's main aim: to lower the majority needed to dismiss Traian Băsescu.

3.5. The referendum

The campaign for the referendum on the President's dismissal was also marred by accusations of lack of fair play on the part of the "anti-presidential majority" in Parliament. The most heated scandal started on April 24th, the cause being the decisions taken in Parliament at the PSD's initiative and voted on by the PNL, PRM, PC and UDMR. The latter political parties made a controversial move in issuing "Decision 21/2007 on the subject and date of the national referendum on the dismissal of the Romanian President"[162] which stipulated in Article 3 that if the Constitutional Court decides that the referendum is not legally valid, i.e. if the turnout does not reach 50%+1 of those eligible to vote, then the Parliament will decide on the "necessary procedure"[163]. The idea given to the press was that the Parliament will decide if the referendum is to be repeated[164]. It must be noted that a parliamentary decision cannot be contested at the CC.

Apart from the fact that it does not mention what exactly can Parliament decide and what is the actual procedure to be followed, this legal act was clearly political since Article 95 of the constitutional text does not provide the legislative with the right to settle the consequences of an invalid dismissal referendum. Another divisive issue was the decision to

[161] The Constitutional Court, *Decision no. 420/2007 regarding the constitutionality of the Law on the modification and completion of Law no. 3/2000 on the organization and holding of the referendum*, May 3rd, 2007, at http://legislatie.resurse-pentru-democratie.org/420_2007.php (accessed May 22, 2009).

[162] Decision 21/2007 received 238 votes in favour, one against and four abstentions because the PD and PLD representatives left the debate. Source: Andreea Nicolae, "Suspendat la nesfârşit" ("Perpetually suspended"), *România Liberă*, April 25, 2007.

[163] The Romanian Parliament, *Decision 21/2007 on the subject and date of the national referendum on the dismissal of the Romanian President*, April 24, 2007,http://legislatie.resurse-pentru-democratie.org/21_2007.php (accessed May 22, 2009).

[164] For more information on the declarations regarding this issue both during and after the parliamentary debate and the referendum, see: Andreea Nicolae, "Suspendat la nesfârşit" ("Perpetually suspended"), *România Liberă*, April 25, 2007; Marinela Daju, „Referendum pentru demiterea preşedintelui in data de 19 mai" („Referendum for the President's dismissal on May 19"), *Polemika: Saptămânal de Analiză Politică şi Actualitate culturală*, April 26, 2007; ***, "Traian Băsescu s-ar putea întorce joi la Cotroceni" ("Traian Băsescu might return to Cotroceni on Thursday"), *BBC Romania*, May 21, 2007.

create a parliamentary commission charged with monitoring the airtime for each political party during the referendum campaign. This commission settled that because the referendum will deal exclusively with him, Traian Băsescu was to have less airtime on national radio and television than his opponents, thus forcing him to use his own party's allotted time[165].

The referendum took place on May 19th with a 44, 45% turnout, out of which 74, 48% of those who participated voted against Traian Băsescu's dismissal, while 24, 75% voted in favour[166]. On May 23rd, the Constitutional Court validated the referendum results, thus putting an end to the fear that Parliament would prolong the suspension and Văcăroiu's temporary mandate.

The public debate which had started in February on the question whether Parliament should be dissolved if the referendum results show that its dismissal proposal had been rejected was reignited after Traian Băsescu was reinstated as president. The arguments presented in favour were that the citizens' disapproval of the legislature's initiative indicated the latter's loss of legitimacy. In order to support this line of reasoning, a quote from Antonie Iorgovan's[167] "Treaty on Administrative Law" (2006) was brought to the public's eye by the PD. The motive was that it offered a solution to this particular type of President-Parliament institutional conflict by referring to Article 60-6 of the Austrian Constitution which stipulates that if the dismissal proposal against the head of state is rejected through the referendum, then

[165] During the debates, the President of the Romanian Radio Broadcasting Company (SRR) cautioned the MPs that they were "overstepping their parliamentary mandate" when discussing the possibility of limiting Băsescu 's airtime as well on private radio and television. The airtime for the referendum campaign was allotted according to the number of mandates each party had in Parliament. Source: L. Parvu, "Băsescu , lasat fără timpi de antenă în campania pentru referendum" ("Băsescu , left without airtime in the referendum campaign"), *Hotnews*, April 25, 2007.

[166] The official results of the referendum can be found on the site of the Romanian Electoral Commission (BEC), at http://www.becreferendum2007.ro/document3/rez%20finale.pdf (accessed May 23, 2009).

[167] Antonie Iorgovan (1948-2007) was a jurist, law professor and politician. He was surnamed "the Father of the Constitution" because from 1990 to 1991 he was the coordinator of the commission charged with writing the new Romanian Constitution. This office brought him numerous criticisms regarding the final form of the fundamental law. He was also part of the commission dealing with the 2003 revision of the Constitution. From 1992 to 1996 he was a judge in the Constitutional Court, which attracted the accusation that he unlawfully supported Iliescu during the 1994 suspension procedure.

the legislative is automatically dissolved[168]. It was argued that according to Article 2 of the Romanian Constitution, which enshrines the sovereign will of the people, "a possible refusal by the people to vote for the President's dismissal is equal to a 'vote of censure' against the Parliament, namely to the withdrawal of support"[169], but Iorgovan pointed out that this idea was only a "theoretical hypothesis" and that the conclusions he reached were "equal to zero" since they referred to the 1991 Constitution[170].

All in all, the Romanian Constitution does not provide for the dissolution of Parliament since any interpretation outside the constitutional text itself cannot be accepted. Consequently, the President-Government-Parliament tug of war continued until the November 2008 parliamentary elections. A striking example is the intra-executive constitutional crisis over the appointment of Justice Minister in February 2008. After Tudor Chiuariu's resignation, Tăriceanu proposed PNL vice-president Norica Nicolai. President Băsescu refused to accept this appointment[171], prompting Tăriceanu to appeal to the CC for arbitration. Surprisingly, the CC's February decision was opposite to that given in 2007 regarding the Cioroianu case[172] by ruling that the President has the right to refuse a nomination only once

[168] Constitution of Austria, Chapter III Federal Execution, Part A Administration, Title 1 The Federal President, Article 60, paragraph 6 states the following: "Before expiry of his term of office the Federal President can be deposed by referendum. The referendum shall be held if the Federal Assembly so demands. […] By such a House of Representatives vote, the Federal President is prevented from the further exercise of his office. Rejection by the referendum of the deposition works as a new election and entails the dissolution of the House of Representatives". Source: Constitution of Austria, Ace Electoral Knowledge Network, Electoral Materials, Austria, http://aceproject.org/ero-en/regions/europe/AT (accessed May 24, 2009).

[169] George Florea, "Daca referendumul nu-l demite pe preşedinte, trebuie dizolvat Parlamentul?" ("If the referendum does not dismiss the President, should the Parliament be dissolved?"), in *Hotnews*, February 8, 2007.

[170] For more information, see: George Florea, "Dacă referendumul nu-l demite pe preşedinte, trebuie dizolvat Parlamentul?" ("If the referendum does not dismiss the President, should the Parliament be dissolved?"), *Hotnews*, February 8, 2007; Realitatea TV, „Boc: Dacă referendumul este câştigat de preşedinte, trebuie ales un nou Parlament" („If the President wins the referendum, then a new Parlaiment must be chosen"), February 6, 2007.

[171] The President argued that there was a negative public perception regarding her activity as senator and evidence that she had made legal mistakes in her career as a prosecutor. Also, he underlined that he will refuse any nomination if he considers that person professionally and morally unfit to serve in the Governmnet. Source: Public Communication Department, *Romanian President, Traian Băsescu 's press statement*, January 11, 2008, at http://www.presidency.ro/index.php?_RID=det&tb=date&id=9554&_PRID=search (accessed May 24, 2009).

[172] In March 2007, after Traian Ungureanu resigned as Foreign Affairs Minister, the PM nominated PNL member Adrian Cioroianu. The President refused to accept his nomination by arguing that he did possess enough experience in foreign affairs. Consequently, the CC was asked to solve this constitutional conflict and decided that the President did not dispose of a veto right in appointing government ministers, but that he/she may ask the

after providing solid motives, thus obliging the PM to seek another person for the office of Justice Minister[173].

3.6. Charges brought against the President

This section will present the accusations brought against the President by the 182 deputies and senators on February 12th, as well as the CC's April 5th ruling. The indictments in the suspension proposal were listed and arranged into six chapters, each denoting a category of acts and statements that Băsescu had made in his constitutional relationship with the Parliament, the Government, the judicial system and his role as President. In the following lines, we shall focus on the charges related to the President's relationship with the other state institutions in order to see if the conflicts that arose were favoured by the semi-presidential institutional design.

Before proceeding to this presentation, it must be noted that a very important clarification made by the Court in its ruling regarded the definition of the notion of "grave acts" since Article 95 of the Constitution does not provide any indication of what these may comprise. Therefore, it stated that grave acts are those "decisions or the refusal to make a mandatory decision through which the Romanian President would hinder the functioning of public authorities, would suppress or restrict the citizens' rights and liberties, would disturb the constitutional order or would seek its modification or other similar acts which can or would have similar results"[174]. The Court also pointed out that some of the charges brought against the President were not accompanied by the necessary evidence that would lead to their

---

PM for another nomination if, based on solid grounds, the President shows that person is legally unfit for the office. The source of this conflict was Article 85-2 of the Constitution, which states that in the case of a government reshuffle or vacancy of office, the PM nominates new ministers to the President who has the right of dismissal and appointment. The Court clarified that this is different from paragraph 3 of the same article which provides that if there is ample change in the Government structure, Parliament's decides on the nominations, thus obliging the President to comply. Source: Ioan Stanomir, Radu Carp, *Limitele Constituției. Despre guvernare, politică și cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania),* (Bucharest: C.H. Beck Publishing House, 2008), 285-286.

[173] Ibid, 287.

[174] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , p. 2, http://www.ccr.ro/deciziitotal/pdf/2007/ro/avizconsultativ.pdf (accessed May 22, 2009).

conformation because the proposal suggests that these are publicly known. Consequently, the Court examined the indictments "hypothetically", leaving it up to the two Chambers in Parliament to decide on their gravity[175].

3.6.1. The President-Parliament relationship

In the first chapter, the President is accused of breaking the rule of law, the political pluralism principle, and the rules governing the relations between the presidency and the legislative and in ignoring the role of the Parliament as supreme representative body. Also, he was accused of undermining the Parliament's authority by accusing it of being controlled by corrupt interest groups. More precisely, at the beginning of this chapter the reproaches against Băsescu were that 1) he did not consult the parliamentary political parties at moments when there was a need for mediation, as well as after the 2004 general elections when he appointed Călin Popescu-Tăriceanu as PM without consulting the party holding the parliamentary majority, i.e. the PSD, thus disregarding the electorate's will; 2) he violated the constitutional neutrality clause in openly controlling and politically supporting the PD, while treating all other parties with disdain and making accusations that have lead to deadlocks and conflicts within the Parliament and on the political scene, especially between the PM and the President.

The Court pointed out that the Constitution does not oblige the President to meet with the Government or the parliamentary parties, but he/she "may consult with the Government about urgent, extremely important matters" (Article 86) which are deemed as such by the head of state. Regarding the PM's appointment, the Court rightly observed that after the 2004 elections, the parliamentary parties gave the vote of confidence to the Tăriceanu Government without any political objections. About Băsescu's relationship with other bodies, the CC underlined, as it had done in 1994 suspension case, that the President's attitude, opinions and declarations towards any political party cannot be considered as grave violations of the

[175] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , p. 2.

Constitution since the latter does not oblige the head of state to cut off all political ties with his/her political party or with any other parliamentary party. The incompatibility and immunity clause prescribes that the President may not hold any other public or private office and that he/she may not be a *member* of any political party (Article 84-1), but this does not entail absolute objectivity since "this would be against the spirit of the Constitution"[176]. The idea behind this interpretation of the constitutional text is that the President is entitled to seek majority support in the Parliament in order to carry out the enactment of the policies present in the political program of his/her party or coalition. In addition, regarding the accusations made by the President against several public figures, such as the PM, MPs, former president Ion Iliescu, as well as acting and former ministers, the same Article 84-2 gives the President legal immunity[177] as to the political opinions, judgements and declarations made during his mandate[178].

Another type of charge referred to is the President's relationship with Parliament. Băsescu was accused of violating the legislature's autonomy by asking the post-2004 parliamentary majority to change the Parliament's Regulations so as to dismiss the presidents of the two Chambers[179], namely PSD members Nicolae Văcăroiu and Adrian Năstase. It was

[176] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , p. 3.

[177] The Court stated in an earlier ruling that immunity is a "constitutional guarantee, a legal protective measure of the mandate which ensures the holder's independence from any outside pressures or abuses" and that the body in charge of establishing the President's legal responsibility is the Romanian Supreme Court. Source: The Constitutional Court, *Decision no. 435/ 2006 on the request forwarded by the C.S.M. President to solve the constitutional judicial conflict between the judiciary and the Romanian President and PM.*

[178] The President's opinions and statements were considered by the CC as having a political character, thus refuting the arguments presented in the Proposal and in the Voiculescu Commission's Report that these cannot fall under the immunity clause because they refer to other entities or persons without respecting the obligation of political objectivity. Source: Idem.

[179] This particular issue deserves some clarification because it indicates the political maneuvering attempted by the PD and the PNL after winning the 2004 elections with the aim of gaining sole parliamentary majority. The background for this decision was Tăriceanu's refusal in 2005 to hand in his resignation as PM. The indictment made against the President referred to the fact that the new parliamentary majority comprising the D.A. Alliance, UDMR and PC signed a political collaboration protocol and managed to modify the Parliament's Regulations. The new provisions stipulated that the Presidents of the Senate and of the Chamber of Deputies could be dismissed also via the vote of 50%+1 MPs in each Chamber. The PSD contested this act at the CC which rejected the modification on grounds of unconstitutionality and underlined that the Presidents can only be dismissed at the request of their parliamentary group and be replaced with a member of the party which has the majority in that Chamber. Following this ruling, the Court was accused of favouring the PSD since the majority

argued that this act resulted in deadlock and a general "atmosphere of tension, distrust and adversity which affected both the Parliament's activity […] and its relationship with the Government"[180] at a crucial time when parliamentary stability was needed in order to pass reforms in view of EU membership. In the suspension proposal this particular judicial decision was used as an example of the material consequence the President's call has had on the Parliament's functioning. The Court pointed out that this act cannot be imputed against the President because it was ultimately the legislative majority's decision.

A similar argument was made in relation to the charge that the head of state broke the separation of powers principle and the constitutional provision that only the Parliament appoints – based on the President's proposal – the heads of the intelligence services (Article 65-2, h) by pressuring them to resign. Also, he was accused of blackmailing the Parliament into accepting his laws on national security by refusing to propose other directors[181]. The Court again argued that these resignations were acknowledged by the Parliament and that the President, in accordance with his constitutional powers in matters of defence, is entitled to request that the directors be changed if he/she deems it necessary[182].

The indictment of trying to force early legislative elections also referred to the fact that, as President, Băsescu publicly pressured PM Tăriceanu to hand in his resignation. This occurrence was highlighted as an abuse because there was no government crisis, i.e. no

---

of the judges had been PDSR/PSD members or named by Iliescu. For more information, see: Laura Ciobanu, "Eterni pe cadavrul Constituției" ("Eternal on the Constitution's corpse"), *Cotidianul*, November 22, 2005; Pavel Lucescu, "Președinții neatinsi, premierul bun de plată" ("Presidents untouched, the PM must pay"), *Cotidianul*, November 22, 2005; Armand Goșu, "Curtea Constituțională: arbitru sau jucător?" ("The Constitutional Court: arbitrator or player?"), *Revista 22*, November 23, 2005.

[180] The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 6-7.

[181] The scandal that prompted the resignation of the secret services directors, Radu Timofte (SRI) and Gheorghe Fulga (SIE), occurred after suspected terrorist Omar Hayssam fled the country in 2006. The two directors forwarded their resignations to the President, who took legal notice and then informed the Parliament about their decision. The Parliament acknowledged, but reinstated Timofte and Fulga as intelligence services directors by arguing the President violated Article 65, para. 2, h) whereby only the Parliament decides on their resignation based on the President's proposal. For more information, see: Adriana Duțulescu, "Reînscaunarea lui Timofte și Fulga" ("Timofte and Fulga's re-enthronement"), *România Liberă*, July 28, 2006; Doina Anghel, "Timofte și Fulga le-au explicat parlamentarilor ca au demisionat", *Ziarul Financiar*, August 2, 2006.

[182] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , 4.

legitimate reason that would impose the PM's resignation especially at a time when government stability was required for the above-mentioned reforms[183]. As a side note, it would have been very difficult for Băsescu to convince the legislature not to give a vote of confidence two consecutive times since the Romanian Parliament can only be dissolved if it rejects two other government proposals made by the President following the initial PM's resignation (Article 89).

Surprisingly, the Court did not comment on the accusation that unconstitutional pressures had been made on the PM to resign. The Romanian Constitution clearly states in Article 107-2 that the President may not dismiss the PM through a legal act, but it does not prohibit the former from asking the head of government, publicly or privately, to hand in a resignation. The same can be said about the 1958 French Constitution, which does not allow the President to terminate the PM's appointment since the latter must "tender the resignation of the Government" at his/her own will (Article 8). Nevertheless, in France, an informal political practice has been that the president may ask the head of government to resign. The reasons range from aiming at having the support of a parliamentary majority to the deterioration of the president-PM relationship[184] and even the PM's loss of popularity[185]. Therefore, "when the President of the Republic decided to part with the PM, the latter systematically resigned"[186]. Statistics show that in the French system the medium duration of

[183] The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 7-8.
[184] Differing political outlooks prompted a conflict between President Georges Pompidou and PM Jacques Chaban Delmas, which ended in the latter's resignation in 1973. Also, in 1976, Jacques Chirac resigned because of increasing number of clashes with Valery Giscard d'Estaing. Source: John Bell, Sophie Boyron, Simon Whittaker, *Principles of French Law*, (Oxford: Oxford University Press, 1998), 145.
[185] Francois Mitterand named as PM Edith Cresson in 1991, but the latter resigned in less than a year because of her widespread unpopularity. She was the first woman PM, but also the first with the shortest mandate in the French Fifth Republic. Source: ***, "Quelle est la duree de vie d'un Premier ministre en politique ?" ("What is a Prime-Minister's duration in office?"), *Politique.net*, August 14, 2007, http://www.politique.net/2007081401-duree-premier-ministre.htm (accessed May 26, 2009).
[186] Ibid 184, 144-145.

a prime-ministerial mandate is two years and a half and that only three PM managed stay in power more than five years[187].

The first reason for which the President may as the PM's resignation is important because it can be contrasted with the Romanian case where the President was accused of wanting to induce a "governmental crisis". In France, if faced with a poor or opposing parliamentary majority, the President may dissolve the National Assembly after "consulting" with the PM and the Presidents of the Houses of Parliament (Article 12) so as to prompt early elections. The goal of such an act is to attempt the coagulation of a solid legislative majority to ensure the support of the executive's policies. Such was the case in 1981 and 1988 when Francois Mitterand dissolved the National Assembly precisely to provide his government with legislative support[188]. Such a political move was also used by Jacques Chirac in 1997 in order to secure his party's parliamentary domination after the 1998 elections, but the result was the longest cohabitation period of the Fifth Republic between Chirac and Lionel Jospin[189]. A recent example from the post-communist space would be Polish PM Kazimir Marcinkiewicz's resignation in July 2006, a move that was attributed to the increasing tensions with President Lech Kaczynski who named his twin brother as the new PM[190].

In the former communist countries that adopted the French semi-presidential model such a tradition of dissolving the parliament in accordance with a political opportunity

[187] The three PM who managed to stay in office more than five years are the following: Georges Pompidou (1962-1968) under de Gaulle, Raymond Barre (1976-1981) under d'Estaing and Lionel Jospin (1997-2002) under Chirac. Source: ***, "Quelle est la duree de vie d'un Premier ministre en politique ?" ("What is a Prime-Minister's duration in office?"), *Politique.net*, August 14, 2007, http://www.politique.net/2007081401-duree-premier-ministre.htm (accessed May 26, 2009).

[188] In a televised appearance in 1988, Mitterand explained his act by stating the following: "[…] But the Prime Minister [Michel Rocard] has let me know that, due to the lack of necessary assistance, and in spite of his efforts, he does not deem it possible to reunite the kind of solid and stable majority which every government needs in order o conduct his business well […] I have the obligation, therefore, to deal with the consequences. Conforming with Article 12 of the Constitution […] I have just signed the decree pronouncing the dissolution of the National Assembly". Source: Francois Mitterand cited in Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, (New Jersey: Princeton University Press, 2006), 84.

[189] The social and economic policies implemented by the Alain Juppe Government at the end of the 1990s were increasingly unpopular among the electorate. Therefore, Chirac dissolved the National Assembly as an unwise "pre-emptive strike". Source: Ibid, 85.

[190] ***, Poland's prime-minister resigns", *BBC News*, July 7, 2006.

calculus has not taken a solid root. However, the Polish President Lech Walesa used his constitutional right of dissolving the legislature in 1993. The reason behind his decision was that the first post-communist Polish Parliament (Sejm) narrowly passed a censure motion against the Suchocka Government without proposing another PM. Walesa's move was based on the fact that the 1992 "Small Constitution" provided for a constructive vote of no confidence, but if the legislature makes no new nomination, then the President may choose to propose a new PM or to dissolve the Sejm (Article 66)[191]. The idea behind the Romanian Constitution was that no state institution is to receive too much power over the others so as to prevent undemocratic temptations. The Constitution does not proscribe the President's call for the PM's resignation, but only a forced dismissal without the latter's willingness to resign. This was the situation which led to the 1999 constitutional crisis in Romania (see section 2.5.2).

Another charge indicated that the President appropriated the right of legislative initiative in promoting a law on the intelligence services and national security and that he tried to force a referendum on transforming the Parliament in a unicameral body. The Court declared that the Parliament did not debate on such a law or on the organization of a referendum. These were proposals and political opinions, not legal acts[192]. Also, it has been noted[193] that according to the Constitution, any referendum called by the President has only a consultative character and the final decision on its legal effects are decided upon by the legislature. Therefore, the Romanian legislature has the upper hand against the President in

[191] Krzysztof Jasiewicz, "Poland: Walesa's legacy to the presidency", *Postcommunist Presidents*, ed. Ray Taras, (Cambridge: Cambridge University Press, 1997), 146-148.
[192] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , 4.
[193] Ioan Stanomir, Radu Carp, *Limitele Constituției. Despre guvernare, politică și cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania)*, (Bucharest: C.H. Beck Publishing House, 2008), 254.

contrast to the French situation where Article 11[1] provides that a decision taken by the citizens via a referendum is to be promulgated by the President[194].

3.6.2. The President-Government relationship

The second chapter dealt with the President's relationship with the Government and other bodies of public administration. In this section, Băsescu was accused of repeatedly criticising the Government's actions and programs, thus undermining its standing in the eyes of both the electorate and investors. Furthermore, he created ad-hoc parallel administrative organisms, such as "the Cotroceni crisis cell"[195] and the "National Intelligence Community" (CNI), the latter being subordinated to the Supreme Defence Council (CSAT) headed by the President. The Court replied that sufficient information about the crisis cell has not been provided so as to make a decision and that the CNI was established by the CSAT not as an administrative body, but as an internal structure charged with analyzing the information provided by the intelligence services and other bodies dealing with national security.

A severe accusation referred to Băsescu's pressures on the Ministers of Economy and Transportation to adopt legal acts in favour of private business interests, thus infringing the principles of a free market economy based on free enterprise and fair competition (Article 135-1 and 2) and the equality of rights before the law (Article 16-1)[196]. Again, the Court ruled that the president's interventions presented in the suspension proposal cannot be interpreted as

---

[194] Article 11 [1] of the French Constitution states the following: "Where the outcome of the referendum is favourable to the Government Bill or to the Private Members' Bill, the President of the Republic shall promulgate the resulting statute within fifteen days following the proclamation of the results of the vote."

[195] The "Cotroceni crisis cell" was established at the end of March 2005 after the news that three Romanian journalists had been kidnapped in Iraq. Băsescu stated in a press conference that this organism comprised analysts from all Romanian intelligence services who were charged with processing the information received about the case. Some commentators have accused Băsescu that he intentionally withheld communicating with the mass-media on a regular basis so as to increase the speculations in the press that the PSD had connections with terrorist groups through Omar Hayssam – a party member and financial supporter – who was accused of involvement in the kidnapping and of terrorist activities. For more information, see: Cornel Ivanciuc, "Dare de seamă despre şovăielile celulei de criză de la Cotroceni cu privire la soarta ziariştilor răpiţi în Irak", ("Account of the blunders made by the Cotroceni crisis cell regarding the fate of the kidnapped journalists in Iraq"), *Academia Caţavencu*, April 27, 2005; Ondine Gherghuţ, "Sirianul Omar Haymmsam pozează în victimă" ("The Syrian Omar Hayssam posses as a victim"), *Evenimentul Zilei*, November 9, 2004; ***, "Cheia rapirii e la Hayssam" ("The key to the kidnapping lies with Hayssam"), *Evenimentul Zilei*, March 31, 2005.

[196] The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 12-13.

favouring a certain economic interest and that any legal act coming from these ministries is an internal decision.

Another charge regarding the President's relationship with the Government was that Băsescu abused his right of participating in Government meetings which did not deal with what the Constitution establishes as issues of national interest "with regard to foreign policy, the defence of the country and insurance of public order" (Article 87-1). Because Article 86 of the Constitution states that the head of state can consult the Government about "urgent, extremely important matters" deemed as such by the President, the Court ruled that Article 87 does not limit the President's presence since he/she can choose to participate in any Government meeting[197].

3.6.3. The President-judiciary relationship

The third chapter deals with the President's relationship with the judiciary and the CC itself whereby Băsescu is accused of breaking the separation of powers principle and of infringing upon the judiciary's independence[198].

The Court's analysis of these particular accusations is important since it attempts to clarify the President's role within the system. Therefore, this institution's constitutional powers and its popular democratic legitimacy "oblige the Romanian President to have an active role, since his presence in political life cannot be subsumed under a symbolic and figurehead role". Furthermore, the correct interpretation of Article 80-1 should be that the President has "to carefully observe the functioning of the state, to vigilantly supervise the way

[197] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , 5.

[198] The examples given to corroborate these charges include the following: asking prosecutors to review some criminal cases which involve members of the parliamentary opposition; downgrading and intimidating the members of the Superior Council of Magistracy (C.S.M.) when presiding over its meetings; accusing prosecutors, judges and the whole justice system of being inefficient and corrupt; appropriating the right to judge criminal cases in giving three individual pardons; influencing the C.S.M. vote on its president; naming some judges and prosecutors proposed by the Justice Minister without consulting the C.S.M.; and of characterizing the CC's activity as being "against the national interest" following its ruling that some provisions of the justice reform package were unconstitutional. Source: The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 13-17.

in which the actors of public life act […] and to guarantee that the Constitutional principles and norms are respected". The Court again pointed out that the President is protected by the immunity clause and that he/she "can express political opinions and options, formulate observations and critiques regarding the public authorities' functioning, propose reforms and measures which he/she considers as upholding the national interest" seeing as these do not have any material legal consequences on the targeted bodies[199]. Nevertheless, the CC did state that even though the President's statements can be labelled as political views, it disapproves of the accusations brought by Băsescu against various public authorities since this disrespectful attitude only undermines the constitutional order[200].

Regarding the accusation of abusing the right to grant individual pardons, the Court ruled that the head of state is not obliged to motivate this decision since granting pardons is the President's traditional entitlement. This aspect can be contrasted to the Lithuanian case where the Court accepted the charge that Paksas unconstitutionally granted citizenship to Russian business man Yuri Borisov for the latter's financial support during the electoral campaign[201]. This was a controversial issue because Paksas accused the Court of displaying double standards and pointed out that over 700 people have been granted citizenship on unconstitutional grounds by his presidential predecessors throughout their mandates[202].

3.6.4. The President's mediation function and his role in matters of foreign policy

The indictments presented in the fifth chapter refer to Băsescu's statements which "overstepped his powers in matters of foreign policy" since they contradicted and obstructed

[199] The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu* , 5-6.
[200] Ibid, 6.
[201] Kestutis Lapinskas, "Some Aspects of the Influence of the Constitutional Court of the Republic of Lithuania on Society", report presented at the *World Conference on Constitutional Justice, Influential Constitutional Justice-Its influence on Society and on Developing a Global Jurisprudence on Human Rights*, (Cape Town, January 23-24, 2009), http://www.venice.coe.int/WCCJ/Papers/LTU_Lapinskas_E.pdf (accessed May 25, 2009).
[202] Although Article 12 of the Lithuanian Constitution does not allow the existence of dual citizenship, Article 84-21 permits the President to grant citizenship to foreign nationals. Source: Zenonas Norkus, "The Case of the President's Impeachment in Lithuania", *East European Politics and Societies*, Vol. 22, no. 4, (November 2008): 788.

the Government's official policies and undermined Romania's international image[203]. The Court judged that the President's political statements did not have any negative consequences on Romania's foreign relations and that these have not hindered the Government's ability to conduct its policies[204].

This particular charge points to one of the problems of semi-presidential systems, i.e. the overlapping functions in matters of foreign policy that is a reserved area for the head of state, but its implementation is shared with the Government. Therefore, the question would be: What happens if the President's statements and opinions do not follow the policy lines set by the Government? Technically, in case of a disagreement, the President, if he/she did not infringe on the Government's attributes in the execution of the country's foreign policy, cannot be accused of violating the Constitution for exhibiting a different political attitude. This intra-executive conflict would point to a lack of consensus and coherence in matters of foreign policy, but not to a grave violation of the constitutional text *per se*.

The sixth chapter of the suspension proposal accuses Băsescu of violating Article 80-2 by ignoring his presidential duties and his role of mediator between state institutions by being a biased critic in the conflicts between public authorities. More specifically, he was accused of not acting as a head of state should under the rule of law by actually provoking and fuelling strife[205]. The CC stated that this indictment was not accompanied by the required evidence –

[203] The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 19.
[204] Article 91-1 of the Constitution states the following: "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".
[205] The examples given in the suspension proposal include his passivity in solving the conflicts between the PM and the ministers of justice, education and foreign affairs; his non-intervention in the conflicts between the PM, the Minister of Justice and the C.S.M.; his lack of interest in preventing the referendum on the autonomy of the Szeklers' Land; his unwillingness to settle the conflict between the press and the political class. Source: The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu* , 21.

especially the legal, political and social outcomes of these conflicts and the necessity for the President's involvement[206].

3.7. Conclusion

The suspension scandal opposed the Parliament and the Government to the President and the CC. The actions undertaken by the parliamentary majority – the establishment of an investigation commission which overstepped its boundaries, the modifications brought to the referendum law and the limitation of Băsescu's airtime – were clearly intended to ensure the dismissal's success.

From the analysis of the CC's ruling on the suspension proposal against Traian Băsescu, we can conclude that the charges were either not substantiated by the necessary evidence or considered as giving a wrong interpretation of the constitutional text in order to argue for the gravity of the President's behaviour in relation to the Constitution. Ioan Stanomir has underlined that there is one aspect of the CC's ruling that is ambiguous, namely that although it recognized the President's right in adopting an active role on the political scene, it added that his political opinions and statements do not have legal consequence, therefore neutralizing the scope of this activism. Furthermore, he notes that the inability of the

[206] The CC underlined that the disagreement between the Government and the President against the C.S.M., which could have been included in the conflicts that need presidential mediation, was settled by the Court in its Decision no. 435/2006. This conflict was brought about by the C.S.M.'s claim that the effect of the "generalizing statements" made by the President along with the PM about the justice system being incompetent, corrupt and resistant to reforms is that they produce "an imbalance between the State's powers and even an institutional deadlock". In addition, these diminish both the citizens' and international trust in the Romanian judiciary and amount to a political interference in its activities. Regarding this case, the CC reiterated that political opinions coming from the executive do not generate constitutional deadlocks unless followed by concrete acts or legal decisions which infringe upon the judiciary's independence. Nevertheless, it emphasized that the public authorities must avoid producing a tense relationship between themselves through the statements of their representatives. Source: The Constitutional Court, *Decision no. 435/ 2006 on the request forwarded by the C.S.M. President to solve the constitutional judicial conflict between the judiciary and the Romanian President and PM*, May 26, 2006, http://www.legestart.ro/Decizie-nr-435-din-2006-(MjAwOTc5).htm (accessed May 25, 2009).

Romanian President to dissolve the legislature and to promulgate referendum-endorsed proposals has prompted a series of institutional conflicts that resulted in the suspension[207].

All in all, the 2007 presidential suspension made it apparent that Băsescu's own interpretation and practice of his duties as head of state, which antagonized the parliamentary majority, could be attacked by the opposition on the basis of a vague constitutional text. Therefore, following his reinstatement, he called for a constitutional debate which emphasized the need to establish clear borders between the institutional powers of the dual executive in order to have a reliable mechanism of resolving constitutional conflicts such as the one prompted by the 2007 suspension procedure.

[207] Ioan Stanomir, Radu Carp, *Limitele Constituției. Despre guvernare, politică și cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania)*, (Bucharest: C.H. Beck Publishing House, 2008), 283-184.

CONCLUDING REMARKS

The present paper has dealt with the issue of presidential impeachment in semi-presidential systems. More specifically, it has examined the place of impeachment within the institutional setup and its practice via a case study of the 2007 suspension of acting Romanian President Traian Băsescu.

The question posed in the introductory chapter referred to whether, in the Romanian context, the tensions between parliament, government and president, which are likely to occur in semi-presidential arrangements, favour the use of presidential impeachment as a method of dealing with political conflicts.

The answer to this question is not straightforward because we cannot univocally argue that *solely* the semi-presidential system, as it has been designed in Romania, prompted the suspension procedure against the President. Informal aspects, such as Băsescu's conflictive political style and his blunt accusations against the other state institutions have affected his relationship with the parliamentary majority and especially with the PM. Consequently, despite the fact that the CC ruled that the charges in the suspension proposal are not grave enough to justify the President's removal, the parliamentary majority, vexed by Băsescu's attitude towards the legislature and the PM and his own vision of his constitutional powers, decided to approve his suspension.

If we apply Skach's three subtypes of semi-presidentialism to Romania, we can say that after the 2004 elections, Romania was in a situation of "consolidated majority government" because the D.A. Alliance held parliamentary majority and both the PM and the President, despite belonging to different parties, were supported in the legislature. Nevertheless, although this is the least conflict-prone subtype, the relationship between Băsescu and Tăriceanu became increasingly hostile resulting in institutional conflict, an aspect pointed out in the suspension proposal. The semi-presidential design can account to a

certain extent for the deterioration of this relationship since the PM, supported by the Constitution, refused in 2005 to hand in his resignation at the President's request. Another breakpoint occurred in 2006 when the PC split from the government, which was left without parliamentary majority. In March 2007, at the time when the President was threatened by suspension, Tăriceanu ousted the PD from government. The result was a "divided majority government", i.e. a PNL-UDMR minority government supported by the PSD. As Skach underlines, this subtype is more prone to clashes because "if the president has her own agenda and is not willing to yield to the prime minister [...] or when the president is determined to exercise her powers fully, the tensions in the type may lead to conflict"[208]. This was the situation in Romania, where Băsescu declared from the beginning of his mandate that he will be a "player-president", which meant that he would actively use his constitutional powers to have a say on the political scene so as to push forward the necessary reforms in view of EU integration (see section 3.1.).

Regarding the actual powers of the Romanian presidency, these are balanced with those of the PM and parliament. The same Skach disagrees from Shugart and Carey in stating that the variation in using presidential powers over time is determined by the head of state's relationship with the parliamentary majority. Therefore, she argues the following: "it is often out of presidential impotence in the wake of a legislative minority, not out of a position of power *per se*, that presidents begin pushing beyond constitutional limits"[209]. This was the situation when Parliament accused Băsescu of breaking the separation of powers principle by asking the 2004 parliamentary majority to change Parliament's internal regulations in order to change the presidents of the two Chambers, although this move was ultimately considered as the Parliament's own decision.

[208] Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, (New Jersey: Princeton University Press, 2006), 17.
[209] Idem.

Regarding the president-parliament relationship in post-communist semi-presidentialism, Pugaciauskas points out in his examination of Lithuania and Poland that by using Shugart's model of presidential power, we can place the post-communist institutional design in an overall regime typology and in relation to the French model. From Shugart's analysis the estimates are that parliaments in Lithuania and Poland have greater estimates of "separate survival", i.e. the presidents have fewer powers to dissolve parliament in contrast to the French case[210]. The same can be said about Romania since it has been shown that it is very difficult for the president to make such a political move. Băsescu attempted to provoke early parliamentary elections by pressuring the PM to resign, but was confronted with the latter's refusal ensuing an institutional conflict which was among the charges brought against the President in the suspension proposal.

The frequency of constitutional crises, i.e. in almost every presidential mandate, points to a difficulty within the institutional design. The Romanian Constitution is problematic in the sense that it allows for the direct election of the head of state but falls short of providing the mechanisms necessary for a fruitful completion of the presidential mandate. The result is a conflictive relationship within the dual executive that leads to constitutional crises – some that are not settled by the advisory role of the Constitutional Court – and institutional deadlock. Therefore, the 2007 suspension case has shown more clearly that there is a disconnect between the so-called living constitution – according to which presidents may choose to adopt a dynamic attitude in making use of their powers – and the formal constitutional text which limits the president's room for political manoeuvre[211]. Political science professor Algis Krupavicius has underlined that by taking into consideration the aspects of cohabitation and

[210] Vykintas Pugaciauskas, *Semi-Presidential Institutional Models and Democratic Stability. A Comparative Analysis of Lithuania and Poland*, 1999, 6, http://www.geocities.com/Vykintas/ltupol.pdf (accessed May 26, 2009).
[211] *Ioan Stanomir, Radu Carp, Limitele Constituției. Despre guvernare, politică și cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania)*, (Bucharest: C.H. Beck Publishing House, 2008), 272.

ambiguous separation of powers, "the impeachment procedures might be used to resolve political conflicts between the president-parliament more frequently in semi-presidential regimes"[212]. This would happen because the political competition and conflict between the president and parliament increases once the head of state does not enjoy the support of a parliamentary majority and can adopt the tactic of free riding. Consequently, the legislature can stop the president via the institution of impeachment.

In conclusion, although the semi-presidential system is predisposed to conflicts between the president, parliament and government especially when the head of state has to carry out his/her mandate while having to deal with a hostile parliamentary majority, we cannot blame exclusively the institutional design for the occurrence of the 1994 and 2007 suspension measures. Therefore, we cannot point to a strict causal relationship between the tendencies of the semi-presidential form of government and the practice of presidential suspension. An alternative explanation is that the ambiguous constitutional text has offered the MPs a niche through which to accuse the statements and actions undertaken by the holder of the presidential office when the latter has displayed an intimidating behaviour and aggressive attitude towards Parliament.

Presidential impeachment has not received substantial scholarly attention since most such cases occurred in the United States, which displays a presidential institutional design, but as Lithuanian sociology professor Zenonas Norkus noted, there have been a series of impeachments in countries that had undergone the third wave of democratization[213]. Therefore, the field of comparative presidential impeachments is currently in a very early stage, but is an avenue for future research since one cannot ignore the importance of

[212] Algis Krupavicius, e-mail message to author, April 22, 2009.

[213] Recent presidential impeachments include Brazilian president Fernando Collor de Mello (1992), Venezuelan president Carlos Andres Perez (1993), Colombian president Ernesto Samper (1996), Joseph Estrada in the Philippines (2001), Albert Zafy in Madagascar (1996), Paraguayan president Raul Cubas (1999), South Korean president Roh Moo-hyun (2004). Source: Zenonas Norkus, "The Case of the President's Impeachment in Lithuania", in *East European Politics and Societies*, Vol. 22, no. 4, (November 2008): 789. Also, to this list we can add Lithuanian president Ronalas Paksas (2004) and Romanian president Traian Băsescu (2007).

conducting such studies especially with the increasing number of cases within presidential and semi-presidential systems.

BIBLIOGRAPHY

Primary resources

Constitution of Romania (1991), http://www.cdep.ro/pls/dic/act_show?ida=1&idl=2

Constitution of Romania (2003), http://www.cdep.ro/pls/dic/site.page?id=371

The Romanian Parliament, *Proposal for the suspension from office of the Romanian President, Traian Băsescu,* http://www.psd.ro/newsroom.php?newi_id=169

The Romanian Parliament, *The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President,* http://www.ziua.ro/pics/2007/03/21/1174650600.pdf.

The Constitutional Court, *Opinion no. 1, April 5th, 2007 on the proposal for the suspension from office of the Romanian president, Traian Băsescu,* http://www.ccr.ro/deciziitotal/pdf/2007/ro/avizconsultativ.pdf

Literature

Books:

Ball, John, Boyron Sophie, Whittaker Simon, *Principles of French Law,* Oxford: Oxford University Press, 1998.

Barbu, Daniel, *Republica absentă: politică şi societate în România postcomunistă (The Absent Republic: politics and society in post-communist Romania),* Bucharest: Nemira, 1999.

Bryman, Alan, *Social Research Methods*, Oxford: Oxford University Press, 2001.

Borneman, John, ed., *Death of the Father: An Anthropology of the End in Political Authority,* New York, Oxford: Berghahn Books, 2004.

Călinoiu, Constanța, Duculescu, Victor, Duculescu, Georgeta, *Drept Constituțional Comparat* (*Comparative Constitutional Law*), Vol. 1, 4th edition, Bucharest: Lumina Lex Publishing House, 2007.

Culic, Irina, *Câştigătorii: elita politică şi democratizare în România 1989-2000 (The Winners: political elite and democratization in Romania 1989-2000),* Cluj Napoca: Limes Press, 2002.

Elgie Robert, *Semi-presidentialism in Europe,* Oxford: Oxford University Press, 1999.

Elgie, Robert, *Political Institutions in Contemporary France,* Oxford: Oxford University Press, 2003.

Gallager, Tom, Viorel Andrievici, "Romania: political irresponsibility without constitutional safeguards", in *Semi-presidentialism in Central and Eastern Europe,* Robert Elgie, Sophia Moestrup (eds.), Manchester: Manchester University Press, 2008.

Elgie Robert , Griggs, Steven, *French Politics: Debates and Controversies*, London and New York: Routledge, 2000.

Frison-Roche, François, "Semi-presidentialism in a post-communist context", in *Semi-presidentialism Outside Europe: A Comparative Study*, Robert Elgie, Sophia Moestrup (eds.), (London, New York, Routledge, 2007). http://books.google.com/books?id=0hYXZODY2HkC&pg=PP1&dq=semi+presidentialism+outside+europe

Focşeneanu, Eleodor, *Istoria Constitutională a României: 1859-1991* (*Romania's Constitutional History: 1859-1991*), Bucharest: Humanitas, 1998.

Jasiewicz, Krzysztof, "Poland: Walesa's legacy to the presidency", *Postcommunist Presidents*, Ray Taras (ed.) , Cambridge: Cambridge University Press, 1997.

Krok-Paszkowska, Ania van der Meer, "Poland", in *Semi-presidentialism in Europe*, Robert Elgie (ed.), Oxford: Oxford University Press, 1999.

Lim, Timothy, *Doing Comparative Politics – An introduction to Approaches and Issues*, Boulder, London: Lynne Rienner Publishers, 2006.

Linz, Juan, Stepan, Alfred, *Problems of democratic transition and consolidation: Southern Europe, South America and Post-Communist Europe*, Baltimore & London: The Johns Hopkins University Press, 1996.

Linz, Juan, "Introduction: some thoughts on presidentialism in postcommunist Europe", in *Postcommunist Presidents*, Ray Taras (ed.), Cambridge: Cambridge University Press, 1997.

Mungiu-Pippidi, Alina, *Politica după Comunism: structură, cultură şi psihologie politică* (*Politics after Communism: structure, culture and political psychology*), Bucharest: Humanitas, 2002.

Pavel, Dan, Huiu, Iulia, *„Nu putem reuşi decît împreună"- O istorie analitică a Convenției Democratice, 1989- 2000 ('We can succeed only together'- An analytic history of the Democratic Convention, 1989-2000)*, Bucharest: Polirom, 2003.

Preda, Cristian, *Modernitatea Politică şi Românismul*, (*Political Modernity and Romanianess*), Bucharest: Nemira,1998.

Sartori, Giovanni, *Comparative Constitutional Engineering: An inquiry into structures, incentives and outcomes*, Basingstoke: Macmillan, 1994.

Shugart, Matthew S., Carey, John M., *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press, 1992.

Skach, Cindy, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, New Jersey: Princeton University Press, 2006.

Stanomir, Ioan, Carp, Radu, *Limitele Constituției. Despre guvernare, politică și cetățenie în România (The Limits of the Constitution. About governance, politics and citizenship in Romania)*, Bucharest: C.H. Beck Publishing House, 2008.

Verheijen, Tony, *Constitutional Pillars for New Democracies: The Cases of Bulgaria and Romania*, Leiden University, the Netherlands: DSWO Press, 1995.

Verheijen, Tony, "Romania", in *Semi-presidentialism in Europe,* Robert Elgie (ed.), Oxford: Oxford University Press, 1999.

Weber, Renate, "Constitutionalism as a Vehicle for Democratic Consolidation in Romania", in *Democratic Consolidation in Eastern Europe Volume 1: Institutional Engineering*, Jan Zielonka (ed.), Oxford University Press, 2001.

Articles:

Baylis, Thomas, "Presidents versus Prime Ministers: Shaping Executive Authority in Eastern Europe", *World Politics*, vol. 48, no. 3 (April 1996): 297-1022.

Borsa, Gheorghe, "Quelques considerations sur le role du President de la Roumanie", *Curentul Juridic, the Juridical Current*, Petru Maior University, Faculty of Economics Law and Administrative Sciences and Pro Iure Foundation, vol. 3, (December 2007): 88-96, http://ideas.repec.org/a/pmu/journl/v3-4y2007p88-96.html

Clej, Petru, "Ce este suspendarea din funcție a Președintelui României" ("What is the suspension from office of the Romanian President"), *BBC Romania*, January 21, 2007.

De Waele, Jean Michel, Soare, Sorina, Gueorguieva, Petia, "Parlamentele din Europa Centrală și de Est" ("Central and Eastern European Parliaments"), *Studia Politica. Romanian Political Science Review,* vol. III, no.1, (2003).

Duverger, Maurice, "A New Political System Model: Semi-presidential Government", *European Journal of Political Research* 8/2, (1990).

Elgie, Robert, "Variations on a theme", *Journal of Democracy*, Vol. 16, no. 3, (2005): 98-122.

Gerring, John, "What is a case-study and what is it good for?", *American Political Science Review*, Vol. 98, No. 2, (May 2004): 341-353.

Lapinskas, Kestutis, "Some Aspects of the Influence of the Constitutional Court of the Republic of Lithuania on Society", report presented at the *World Conference on Constitutional Justice, Influential Constitutional Justice-Its influence on Society and on Developing a Global Jurisprudence on Human Rights*, (Cape Town, January 23-24, 2009), http://www.venice.coe.int/WCCJ/Papers/LTU_Lapinskas_E.pdf

Macovei, Monica, "The Procuracy and its Problems", *East European Constitutional Review*, Vol. 8, no. 1-2, (Winter-Spring 1999), http://www1.law.nyu.edu/eecr/vol8num1-2/feature/romania.html

Mihai, Lucian, "Separarea puterilor în stat: propuneri de modificare a Constituţiei" ("Separation of State Powers: Proposals to Amend the Constitution, *Revista română de drepturile omului*, Vol. 2, (1993): 8-13.

Mungiu-Pippidi, Alina, "Revisiting Fatalistic Political Cultures", *Romanian Journal of Political Science*, Vol. 3, No. 1, (Spring 2003): 91-121.

Norkus, Zenonas, "The Case of the President's Impeachment in Lithuania", *East European Politics and Societies*, Vol. 22, no. 4, (November 2008): 784-801.

Palade, Constantin, "The political character of the Government Emergency Ordinance within the Romanian transition context", *Curentul Juridic, the Juridical Current*, Petru Maior University, Faculty of Economics Law and Administrative Sciences and Pro Iure Foundation, vol. 3, (December 2005):17-24,http://ideas.repec.org/a/pmu/journl/v3-4y2005p17-24.html

Pîrvulescu, Cristian, "Preşedintele interzis" ("President Forbidden"), *Revista 22*, April 27, 2007.

Preda, Cristian, Soare , Sorina, "Un Executiv dualist-conflictual" ("A dualist-conflictive Executive"), *Revista 22*, May 28, 2008.

Pugaciasukas, Vykintas, "Semi-presidential Institutional Models and Democratic Stability. A Comparative Analysis of Lithuania and Poland", (1999): 1-26, http://www.tspmi.vu.lt/files/leidpubl/str061.pdf

Roper, Steven, "Are all semi-presidential regimes the same? A comparison of Premier-Presidential Regimes", *Comparative Politics*, vol. 34, no. 3, (April 2002): 253-272.

Sartori, Giovanni, "Sul Sistema Constituzionale Romeno" ("On the Romanian Constitutional System"), *Studia Politica, Romanian Political Science Review*, Vol. 2, no. 1, (2002): 9-12.

Sartori, Giovanni, "Alcuni Chiaramenti sul Semipresidenzialismo" ("Several clarifications on semi-presidentialism), *Studia Politica, Romanian Political Science Review*, Vol. 3, no. 3, (2003): 617-620.

Siaroff, Alan, "Comparative presidencies: The inadequacy of the presidential, semi-presidential and parliamentary distinction", *European Journal of Political Research* 42, (2003).

Shugart, Matthew S., *Semi-presidential systems: Dual Executive and Mixed Authority Patterns*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, (September 2005): 1-22.

Stancu, Oana, Iordache, Monica, "Băsescu se vrea preşedinte jucător" ("Băsescu wants to be a player-president"), *Jurnalul Naţional*, October 10, 2004.

Stanomir, Ioan, "După 1989. Câteva reflecţii asupra constituţionalismului românesc postcomunist" („After 1989. A few reflections on post-communist Romanian

constitutionalism"), *Studia Politica. Romanian Political Science Review*, vol. VI, no. 1, (2006): 159-170.

Stanomir, Ioan, "Crize politice şi perspective constiţutionale" ("Political Crises and Constitutional perspectives"), *Revista 22*, April 2006.

Tănăsescu, Irina, "The Presidency in Central and Eastern Europe: A Comparative Analysis between Poland and Romania", paper presented at the Conference entitled *The Contours of Legitimacy in Central Europe: New Approaches in Graduate Studies*, European Studies Centre, St. Anthony's College Oxford, (24-26 May, 2002): 1-21.

Renate Weber, "Memorandumul MAE: raportul Konig-Jansson" ("Memorandum of the Ministry of Forign Affairs: The Konig-Jansson Report"), *Revista română de drepturile omului*, no. 5, (1994): 52-59.

***, "Quelle est la duree de vie d'un Premier ministre en politique ?" ("What is a Prime-Minister's duration in office?"), *Politique.net*, August 14, 2007, http://www.politique.net/2007081401-duree-premier-ministre.htm

***, "Referendum pentru votul uninominal pe 25 noiembrie" ("Referendum for the uninominal vote on November 25th"), *BBC Romania*, October 23, 2007.

***, "President Iliescu faces impeachment", *The Free Romanian: The organ of the World Union of Free Romanians*, vol. 10, no. 7, July 1994.

***, "All eyes turned to Cotroceni", *Nice o'Clock*, March 20, 2007.

***, "France backs constitution reform", *BBC*, July 21, 2008.

Internet Resources

Adevărul online newspaper:
http://www.adevarul.ro/

BBC Romania:
http://www.bbc.co.uk/romanian/

Commission on Security and Cooperation in Europe, U.S. Helsinki Commission, Report on the Parliamentary and Presidential Elections in Romania, Bucharest, Bacău and Harghita Judeţ, Timişoara, Washington, May 30, 1990:
http://www.csce.gov/index.cfm?FuseAction=UserGroups.Home&ContentRecord_id=364&ContentType=G&ContentRecordType=G&UserGroup_id=83&Subaction=ByDate

East European Constitutional Review:
http://www1.law.nyu.edu/eecr/index.html

Gândul online newspaper:
http://www.gandul.info/

Joint Sessions Rules of the House of Deputies and Senate:
http://www.cdep.ro/pls/dic/site.page?id=748

Jurnalul Național online newspaper:
http://www.jurnalul.ro

National Democratic Institute and International Republican Institute, Report on Romania's Democratic Transition:
http://www.iri.org/europe/romania/pdfs/Romania%27s%201992%20Presidential%20and%20Parliamentary%20Elections.pdf

PSD Newsroom:
http://www.psd.ro/stiri.php

Realitatea TV:
http://www.realitatea.net/

Revista 22 online newspaper:
http://www.revista22.ro/

România Liberă online newspaper:
http://www.romanialibera.ro/
Romanian Chamber of Deputies:
http://www.cdep.ro/pls/legis/legis_pck.frame

Romanian Constitutional Court:
http://www.ccr.ro/

Romanian Presidency website:
http://www.presidency.ro/?lang=ro

The French Senate:
http://www.senat.fr/ej/ej_ordonnance/ej_ordonnance0.html#haut

The United States Senate:
http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm

The Avalon Project, Yale Law School:
http://avalon.law.yale.edu/18th_century/fed65.asp

University of Essex, *Political Transformations and the Electoral Process in Post-Communist Europe*:
http://www2.essex.ac.uk/elect/database/indexCountry.asp?country=ROMANIA&opt=elc