

# THE LIABILITIES OF THE PRESIDENT OF ROMANIA

Oana ŞARAMET\*

*Abstract: The paper presents the liabilities of the President of Romania as stated in the Constitution of Romania, namely the political liability and the juridical liability, as well as the procedures by means of which these liabilities are undertaken.*

*Key words: Liability*

During his term of office, The President of Romania, as stated in the article 84, paragraph 2 of Constitution of Romania, shall enjoy immunity in order to guarantee both the independence as the probity required by the role of the President, namely to guard the observance of the Constitution, to mediate between the Powers in the state, as well as between the state and society.

The immunity represents, in fact, a first aspect of the liability of President of Romania, and it means that the President shall not be liable to judicial proceedings for the votes cast, or political oppositions expressed in the exercise of his mandate. By the votes cast we understand only those forms of behaviour compatible with his role. In all the other cases, when the President of Romania appears as a physical person, he shall enjoy the protection that the law provides and guarantees to all the citizens,

The unliability of the President regarding the opinion or the votes cast during the exercise of the mandate is foreseen in the Constitution of France from 1958. Here is stated that the unliability regards the presidential actions no matter if they are civil, criminal or political, under the condition that they are cast during the exercise of his function or regarding it.

The President of France, as stated in art. 68, paragraph 1 from the Constitution of France shall be liable for the votes cast during his mandate only in case of high treason. He can be put under charge only by the two Chambers, which decide on identical vote, in public joint session, with absolute majority of their members. The President shall be judged by the High Court of Justice.

Up to this point, we can not conclude on the fact that the President of Romania shall not be liable for the way in which he exercise his mandate. I. Deleanu describes this situation as a "blank cheque" for an unliable exercising of the mandate.

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\* Law Department, Transilvania University of Brasov.

## The liabilities of the President of Romania

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The liability of the President is of two kinds:

- A) Political liability
- B) Juridical liability

The political liability appears when the President committed grave acts infringing upon Constitution of Romania. In this case, the President shall be suspended and removed from the office. Thus, "the political sanction" of the President contains two stages:

- 1) the suspension from the office
- 2) the discharge by a referendum

They are authors, as Cristian Ionescu, who choose another terminology to denominate these two stages, distinguishing between political liability and the liability regarding the people.

Although the two stages are distinctively separated, they overlap each other, being cumulative.

The procedure of imputation brought against grave acts infringing upon Constitution provisions may be initiated by at least one third of members of Deputies and Senators. The Constitution of Romania does not name the nature or the significance of these grave acts infringing upon Constitution provisions. There is no other definition of the term in the juridical literature, neither a distinct offence or a similar act. Under these circumstances, the gravity of the facts shall be appreciated by those who initiate the proposal of suspension from office.

The proposal of suspension from office shall be strongly motivated and may be initiated by Senators or Deputies, or by both Senators and Deputies, but they must represent at least a third of the members of Parliament.

The list of the members of Parliament shall be deposited at the General Secretary of a Chamber. At the very day the list is deposited the procedure of charging the President in order to be suspended is unleashed.

The President shall be immediately notified upon the list and the reasons of intimation.

The General Secretary of the Chamber, where the proposal of suspension was deposited, shall notify both Chambers upon the content of this proposal in order to debate and vote it in a joint session.

As regarded in art. 95 paragraph 1 and art. 144 letter *f* from the Constitution of Romania, the next procedure is to notify the Constitutional Court which gives advisory opinion on the proposal to suspend the President from office. As stand in the law, the Parliament must notify the Constitutional Court, but may not take into consideration the advisory opinion.

After the Constitutional Court gives the advisory opinion, the Parliament shall proceed to debate the proposal of suspension in a joint session where the President may participate.

The Constitution of Romania does not impose to the President to give explanation regarding the grave acts he is accused for. At this point one shall interpret that the President must not defend his position. This is totally contrary to the fundamental principles of juridical liability.

The advisory opinion of the Constitutional Court shall be communicated to the President, who may appear in front of the Court before the advisory opinion is given, in order to inform them upon the acts he is charged for.

After the advisory opinion is given, the Parliament shall debate the proposal of suspension from office. In order to decide if the President is suspended from office, the majority vote of Deputies and Senators is required.

If the proposal for suspension from office has been approved, a referendum shall be held within 30 days by the Government of Romania, in order to remove the President from office.

The referendum recalls "direct democracy" and its role is to mediate and solve the political conflict between the Parliament and the President, authorities legitimated by the direct vote of the citizens.

The proposal of suspension being approved by the people, when the President was elected by means of universal vote, applies the principle of symmetry.

If the resignation of the President was voted by the referendum, than it occurs the vacancy of office.

In case of vacancy of the presidential office, the interim shall devolve. The suspension from office does not imply the interim of office for, as stated I art. 96 from the Constitution, this is due upon resignation, removal from office, permanent impossibility to discharge his powers and duties or death.

The notifying upon the circumstances under the interim of office is ascertained in the Decision of the Constitutional Court. Within three months from the day when the referendum was hold, as stated in art. 96 paragraph 2 from the Constitution, if the citizens voted for the resignation of the president, the Government shall organize elections for a new president.

As written in juridical doctrine, if the citizens did not decide the resignation of the President, elections for the Parliament shall be organized as this situation is commonly interpreted as a "vote of blame" on the parliamentarians.

The criminal liability. Taking into consideration that the President shall enjoy immunity, a special regim of liability is required for the penal deeds. The liability is stated in art. 84 in Constitution of Romania, article that consacrates the impeachment procedure for high treason.

The Constitution of Romania does not define the felony of "high treason", but it may be regarded as the most serious impeachment of the oath and of the interests of the citizens and of the country.

This concept is considered as belonging to Constitutional and Administrative Law and it also has a criminal significance.

The charging of the President for the high treason appears in other Systems of Law, and it is also notified by the Parliament at intimation of public authorities, of Parliament or of a number of Deputies and Senators.

According to the art. 84, paragraph 3 from the Constitution of Romania, the Parliament decides the impeachment of the President for high treason, by the vote of at least two thirds from the number of Deputies and Senators. This vote is in fact a "political appreciation", which shall take into consideration the Criminal Law.

The members of the Parliament must prove that the President committed a grave political act by means of which he compromised himself and brought a prejudice to the interests of the country and of Romanian nation. They do not

have to prove that the President committed a felony since this must be proved by Judicial Authority.

According to the principle of analogy, namely the analogy with art. 95 paragraph 1 from the Constitution, the President may come in front of the joint session to defend himself.

The resolution upon the impeachment of the President of Romania for high treason is adopted in a joint session of the Parliament by the vote of at least two thirds of the number of Deputies and Senators.

From the juridical point of view, this resolution has the significance of intimating the Juridical Authority, which has the competence of judging the case.

The President shall be charged or discharged only by the Public Prosecutor by means of an indictment and he shall be judged only by the Supreme Court.

If the Supreme Court decides that the President is guilty as charge with no other possibility to appeal, than he shall be removed from office *de jure* from the very day the final decision was pronounced. That means that the vacancy of office is instituted and within three months from that day, the Government shall organize new elections.

As in the case of committing grave acts infringing upon Constitution, where the vote of Parliament means the suspension from office, in the impeachment of the President for high treason the procedure must be the same, according to the principle of analogy, another argument being art. 105 paragraph 2 from the Constitution. According to this article, "if such criminal prosecution has been requested, the President of Romania may decree that the members of Government be suspended from office."

The criminal prosecution of the President requires two stages:

- a) the stage of being charge for high treason (political stage)
- b) judiciary stage

The two forms of liability shall be employed only if the conditions are accomplished, even in the case of an Acting President during the interim office.

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***Răspunderea Președintelui României***

**Rezumat:** *Lucrarea prezintă răspunderea politică și răspunderea penală ale Președintelui României, ambele fiind consacrate prin Constituția României de la 1991. Sunt prezentate și analizate pe scurt procedurile și consecințele care apar în cazul angajării uneia dintre aceste răspunderi.*

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**Recenzent:** *conf. univ. dr. Tănase JOIȚA.*