

# **POLITICS AND ITS CONSTITUTIONAL WISHES: ROMANIAN CASE OF PRESIDENTIAL ABEYANCE**

*MARIUS VACARELU*

Faculty of Public Administration, National School of Political and  
Administrative Studies Bucharest, Romania

## **Abstract in original language**

Anul acesta Romania a fost cap de afir al stirilor: aspecte interesante, o atitudine ferma a unor oameni politici, o campanie dura pentru a demite presedintele statului si, din pacate, o lupta dura pentru controlul Curtii Constitutionale. Tot acest conflict a aparut deoarece dispozitiile legii fundamentale romane nu sunt foarte clare.

Textul nostru va descrie – sine ira et studio – vara constitutionala romaneasca, incercind sa arate cum se poate apara un sistem legal, atunci cand singura speranta pentru protectia acestuia raman doar cetatenii.

## **Key words in original language**

Constitutie, control, interes, politicieni, suprematia legii.

## **Abstract**

This year Romania was on the top of the news: interesting facts, a strong attitude of few politicians, a great campaign to dismiss state president and, unfortunately, a great struggle for Constitutional Court loyalty. All this conflict appeared because some of constitutional settlements are not so clear and a lot of people preferred to interpret them only according with their interest.

Our text will try to describe – sine ira et studio – Romanian constitutional summer, trying to offer some ideas for every lawyer: how it can be defended a legal system against legislators, when only population remain the last obstacle not passed by the politicians.

## **Key words**

Constitution, control, interest, politicians, rule of law.

**1.** This year Romania was on the top of the news: interesting facts, a strong attitude of few politicians, a great campaign to dismiss state president and, unfortunately, a great struggle for Constitutional Court loyalty.

We want to show only one text, written by a famous professor, Krugman: “Now it’s Romania’s turn to worry those of us who care about constitutionalism, democracy and the rule of law.

A political crisis has gripped Romania as its left-leaning prime minister, Victor Ponta, slashes and burns his way through constitutional institutions in an effort to eliminate his political competition. In the last few days,

Ponta and his center-left Social Liberal Union (USL) party have sacked the speakers of both chambers of parliament, fired the ombudsman, threatened the constitutional court judges with impeachment and prohibited constitutional court from reviewing acts of parliament – all with the aim of making it easier for Ponta to remove President Traian Basescu from office. They hope to accomplish that by week’s end.

In just a few months in office, Ponta’s government has caused a great deal of political damage. Setting its sights on the next election, Ponta’s government passed an election law (later rejected by the constitutional court) that would make it much easier for the government to stay in power. The government has already neutralized the legal effects of decisions of their key opponents – the constitutional court and the president – by taking control over the publication of the official gazette that determines when laws and decisions come into force. If the government fails to publish the decisions of the constitutional court and the decrees of the president, they are simply not law. To top it all off, Ponta launched a culture war. ....

Ponta’s government is now moving fast to remove Basescu from office. By neutralizing the constitutional court, firing the ombudsman, and sacking the presidents of both the Senate and the Chamber of Deputies, there is no institution of state that could stand in the way of a vote to impeach.”<sup>1</sup>

2. All this conflict appeared because some of constitutional settlements are not so clear and a lot of people preferred to interpret them only according with their interest. Of course, the most dangerous interpretation is made by the politicians and their supporter, because “purpose excuse any instrument”, as Machiavelli teaches us.

What are the dispositions of Romanian Constitution, able to create such a tremendous situation for state and society?

ARTICLE 95: Suspension from office

(1) In case of having committed grave acts infringing upon constitutional provisions, the President of Romania may be suspended from office by the Chamber of Deputies and the Senate, in joint sitting, by a majority vote of Deputies and Senators, and after consultation with the Constitutional Court. The President may explain before Parliament with regard to imputations brought against him.

(2) The proposal of suspension from office may be initiated by at least one third of the number of Deputies and Senators, and the President shall be immediately notified thereof.

(3) If the proposal of suspension from office has been approved, a referendum shall be held within 30 days, in order to remove the President from office.

ARTICLE 96: Impeachment

---

<sup>1</sup> <http://krugman.blogs.nytimes.com/2012/07/05/guest-post-romania-unravels-the-rule-of-law/>, consulted on 20<sup>th</sup> of November 2012

(1) The Chamber of Deputies and the Senate may decide the impeachment of the President of Romania for high treason, in a joint session, based on the votes of at least two thirds of the number of deputies and senators.

(2) The impeachment proposal may be initiated by a majority of deputies and senators and shall, without further delay, be notified to the President of Romania, so that he can give explanations about the facts he is being held accountable for.

(3) From the impeachment date and up to the dismissal date, the President is under de jure suspension.

(4) The jurisdiction for judging such cases shall belong to the High Court of Cassation and Justice. The President shall be dismissed de jure on the date the court decree impeaching him is final.

#### ARTICLE 97: Vacancy of office

(1) Vacancy of the office of President of Romania shall be due upon his resignation, removal from office, permanent impossibility to discharge his powers and duties, or death.

(2) Within three months of the date when the Presidency of Romania fell vacant, the Government shall organize elections for a new President.

#### ARTICLE 98: Interim of office

(1) In case of vacancy in the office of President, or if the President is suspended from office or is temporarily incapable to exercise his powers, the interim shall devolve, in this order, on the President of the Senate or the President of the Chamber of Deputies.

(2) Powers provided under Articles 88-90 shall not be exercised by the Acting President during the interim of the presidential office.

#### ARTICLE 78: Coming into force of laws

The law shall be published in the Official Gazette of Romania and come into force 3 days after its publication date, or on a subsequent date stipulated in its text.

#### ARTICLE 126: Courts of law

(1) Justice shall be administered by the High Court of Cassation and Justice, and the other courts of law set up by the law. ....

(5) It is prohibited to establish extraordinary courts of law. By means of an organic law, courts of law specialized in certain matters may be set up, allowing the participation, as the case may be, of persons outside the magistracy.

(6) The judicial control of administrative acts of the public authorities, by way of the contentious business falling within the competence of administrative courts, is guaranteed, except for those regarding relations with the Parliament, as well as the military command acts. The administrative courts, judging contentious business have jurisdiction to solve the applications filed by persons aggrieved by statutory orders or, as the case may be, by provisions in statutory orders declared unconstitutional.

#### ARTICLE 142: Structure

(1) The Constitutional Court shall be the guarantor for the supremacy of the Constitution.

(2) The Constitutional Court consists of nine judges, appointed for a term of office of nine years, that cannot be prolonged or renewed.....

#### ARTICLE 146: Powers

The Constitutional Court shall have the following powers:

a) to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution; .....

e) to solve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the presidents of the two Chambers, the Prime Minister, or of the president of the Superior Council of Magistracy; .....

h) to give advisory opinion on the proposal to suspend from office the President of Romania;

i) to guard the observance of the procedure for the organization and holding of a referendum, and to confirm its returns; .....

As we can see, the dispositions are quite clear written, but the meaning is not so simple to be understood. To explain all of them means to have a course of Romanian history, mainly of the 1989 to 1991 period. This part of history is revolutionary, but a lot of the people involved on those days in high level of Romanian politics are still on strong position in political parties of Romania. The dimension of the problem is so big, that we cannot tell just few words about this – but it will exceed the space offered for this text.

**3.** The main problem is the article 95 of the Constitution, who offers some problems:

Here is not defined what means “grave violation of Constitution”

Is not settled the public law procedure who must be observed to see if the fact of president was made, if these facts represents a violation, who is the judicial institution able to implement the criminal procedure for these facts, there are not any dispositions able to assure the right to defense for the president and there are not dispositions able to describe how it can be judged the state president: only in first instance or it can be accepted the recurs, how much time must be spent with this process.

All of this, because the specific of public law is different by the private law:

For private law, you can do everything which is not prohibited, but for public law, what is not settled on a legal text cannot be fulfilled, no matter if is a positive action or an abstention – no disposition, nothing to do more.

Politicians forget this or they never know – however, they had a big purpose of their life – to escape by jail, because in last few years, under president patronage, the judicial power started to be more active, including a some of members of Parliament and a former prime-minister are now in jail; mainly 2012 was a full year for the prosecutors.

In this case, the interpretation offered by politicians and journalist – those who are connected with political parties – was in a single direction: if a good part of the population voted on the referendum (organized to dismiss

the president), and this number is more than 50% of the population who really exist on Romanian border – because few million people live abroad, but they are on electoral lists – the president is dismiss.

#### 4. Here we must underline few ideas about the rule of law.

The rule of law is one star in a constellation of ideals that dominate our political morality: the others are democracy, human rights, and economic freedom. We want societies to be democratic; we want them to respect human rights; we want them to organize their economies around free markets and private property to the extent that this can be done without seriously compromising social justice; and we want them to be governed in accordance with the rule of law<sup>2</sup>.

We want the rule of law for new societies — for newly emerging democracies, for example — and old societies alike, for national political communities and regional and international governance, and we want it to extend into all aspects of governments' dealings with those subject to them — not just in day-to-day criminal law, or commercial law, or administrative law but also in law administered at the margins, in antiterrorism law and in the exercise of power over those who are marginalized, those who can safely be dismissed as outsiders.

Getting to the rule of law does not just mean paying lip service to the ideal in the ordinary security of a prosperous modern democracy; it means extending the rule of law into societies that are not necessarily familiar with it; and in those societies that are familiar with it, it means extending the rule of law into these darker corners of governance, as well<sup>3</sup>.

The thinnest formal version of the rule of law is the notion that law is the means by which the state conducts its affairs, “that whatever a government does, it should do through laws.” A more apt label for this version is “rule *by* law.” One extreme version holds that “all utterances of the sovereign, because they are utterances of the sovereign, are law.”<sup>4</sup>

Understood in this way, the rule of law has no real meaning, for it collapses into the notion of rule by the government. “It has been said that the rule of law means that all government action must be authorized by law . . . If government is, by definition, government authorized by law the rule of law seems to amount to an empty tautology, not a political ideal.”<sup>5</sup> Every modern state has the rule of law in this narrow sense.

All substantive versions of the rule of law incorporate the elements of the formal rule of law, then go further, adding on various content specifications. The most common substantive version includes individual rights within the rule of law.

---

<sup>2</sup> Jeremy Waldron: The rule of law and the importance of procedure, in James E. Fleming: Getting to the rule of law, New York University Press, pg 3

<sup>3</sup> Jeremy Waldron: The rule of law and the importance of procedure, in James E. Fleming: Getting to the rule of law, New York University Press, pg 4

<sup>4</sup> Brian Z. Tamanaha: On the rule of law: Cambridge University Press, 2004, pg. 92

<sup>5</sup> Brian Z. Tamanaha: On the rule of law: Cambridge University Press, 2004, pg. 94

5. In Romanian Constitution, this concept is expressed by the formula “the supremacy of Constitution and laws”, in the first article, paragraphs 3 – 5:

ARTICLE 1: Romanian State

(1) Romania is a sovereign, independent, unitary and indivisible National State.

(2) The form of government of the Romanian State is a Republic.

(3) Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.

(4) The State shall be organized based on the principle of the separation and balance of powers – legislative, executive, and judicial – within the framework of constitutional democracy.

(5) In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory.

As we can see, the legal text is clear – in fact, Romanian Constitution is one the best of the world in its part of legal principles, fundamental rights and fundamental obligations.

In fact, the debate of Romanian constitutional summer was based to a continue attack – made by politicians and press – against Constitutional Court and its legal role in Romanian legal system.

Is true, from the political point of view, it will be very interesting to note that a character (Romanian president) was able to create such a gap on the society, but the legal concepts are the same.

We don't want to discuss here all the arguments brought by the politicians to fulfill their purpose, the political science analysts must work on this; we want to underline the bad consequences of this behavior:

A) “Romania's Constitutional Court has accused leftist Prime Minister Victor Ponta of trying to dismantle it and said it has notified EU authorities of threats to its independence.

Ponta, who is facing calls to resign over accusations of plagiarism, ignored a court ruling last week ordering that his political opponent center-right President Traian Basescu could represent Romania at a European Council meeting and traveled to Brussels regardless.

Ponta's ex-communist Social Democratic Party (PSD) has since threatened to replace some judges, accusing them of political bias.

The court said in a statement on July 3 that its judges "have noted the virulent attacks the court was subjected to by the government and other public institutions as well as propositions made to dismantle the court."

The statement said the court has appealed to a Council of Europe advisory body on constitutional matters. EU Justice Commissioner Viviane Reding on July 3 said she was "seriously concerned" about attacks on the court's independence.”<sup>6</sup>

---

<sup>6</sup> <http://www.rferl.org/content/romania-ponta-basescu-court-rule-of-law/24634313.html>, consulted on 20<sup>th</sup> of November 2012

B) “The war over who goes to Brussels is symptomatic of an internal fight between the Democratic Liberals and the Social Democrats. Mr Ponta was recently accused by *Nature*, a science magazine, of plagiarising his doctoral thesis, which he strongly denied. He accused Mr Basescu of being behind the allegations and asked an ethics commission to look into the accusations. No matter what the commission's findings will be, he is not willing to resign. In an interview with our correspondent Mr Ponta admitted that Romania is currently dealing with a credibility crisis at an international level. The quarrel at the political top is not helping. Mr Ponta believes that the fight will not end until parliamentary elections this autumn, when Romania is likely to change government yet again.”<sup>7</sup>

These two articles show just a little part of what is was known in Western Europe press about Romania; what it was not described here it was the main problem: the arguments used by Romanian politicians can be useful now to other politicians – just a short look to Hungary, where some people are in a complicate relation with human rights.

Constitutional Court of Romania was forced to explain more some unclear dispositions of Romanian Constitution, but the main problem was not the legal contain of their decisions for interpretation of fundamental law – the main problem was the politicians, mainly the prime-minister and the head of Senate who didn't wanted to respect them. Only strong pressures from USA and few other European states were able to stop them.

The legal system remains something more clear and coherent after this hot summer, but Romanian politicians had a great capacity to create new rules and new ideas. In this case, the main questions for us are:

- Can we condition the access to a political position by an exam of constitutional law, able to describe if those persons understood the rule or law and what is expected from their attitude on internal and external politics?
- Can we reduce the right to vote only to the people able to understand the basics of constitutional law, to prevent some people with not-legal propaganda and not legal attitudes (for human rights, as example)?

As a partial conclusion, the politician's needs and wishes are able to destruct in one week almost totally a public law system.

As general conclusion, the system can react against politicians, if the public servants and citizens are convinced to defend the state and the rule of law.

In Romania, the constitutional law and constitutional control of acts resisted, showing in the same time their limits of regulation and interpretation. We hope to not offer new bad ideas for future, but this is just a lawyer wish, for sure, not to a politician.

---

<sup>7</sup> <http://www.economist.com/blogs/easternapproaches/2012/06/romanian-politics-0?scode=3d26b0b17065c2cf29c06c010184c684>, consulted on 20<sup>th</sup> of November 2012

**Literature:**

- <http://krugman.blogs.nytimes.com/2012/07/05/guest-post-romania-unravels-the-rule-of-law/>, consulted on 20<sup>th</sup> of November 2012
- <http://www.rferl.org/content/romania-ponta-basescu-court-rule-of-law/24634313.html>, consulted on 20<sup>th</sup> of November 2012
- <http://www.economist.com/blogs/easternapproaches/2012/06/romanian-politics-0?scode=3d26b0b17065c2cf29c06c010184c684>, consulted on 20<sup>th</sup> of November 2012
- Brian Z. Tamanaha: On the rule of law: Cambridge University Press, 2004, pg. 92, 190 pg., ISBN-13 978-0-521-84362-1
- Jeremy Waldron: The rule of law and the importance of procedure, in James E. Fleming: Getting to the rule of law, New York University Press, 311 pages, ISBN 978-0-8147-2843-7

**Contact – email**

*marius123vacarelu@gmail.com*