

PRESIDENTIAL IMPEACHMENT IN SEMI-PRESIDENTIAL SYSTEMS

Case Study: Romania 2007

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Abstract

This article examines the institution of presidential impeachment in countries displaying a semi-presidential institutional design. It addresses the question whether the functioning of impeachment can be attributed to the particular institutional arrangement mirrored in the specific interactions between the institutional actors involved – the president, parliament and PM – or by non-institutional factors such as the president's actions conflicting with the constitutional text. The used method is the single case study of the 2007 impeachment of the Romanian president Traian Băsescu. The main result is the difficulty to point to a clear, mono-causal relationship between the tensions inherent to semi-presidentialism and the practice of impeachment since the latter is not a common practice in countries with dual executive. The Romanian case indicates a situation in which the ambiguity of the constitutional text allowed the parliamentary majority to sanction the President on loose charges. The institutional tug of war continued between the President, PM and Parliament because the Romanian Constitution does not provide for a reliable mechanism to resolve such constitutional conflicts.

Keywords: impeachment, semi-presidential, institutions, constitution.

Introduction

The topic of this article 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. More specifically, this study examines whether the functioning of the institution of impeachment can be accounted for by looking at 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 an illustrative example. 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. 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 of a national referendum on his dismissal.

The reason for which Romania was chosen is that it represents a case where the suspension procedure was used more than once and, in both cases, the Constitutional Court gave a negative ruling regarding the accusations. In 1994 this aspect was taken into consideration and Parliament rejected the suspension proposal. However, in 2007, a large parliamentary majority voted in favour of the President's suspension.

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.

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. The answer to this question points to whether the suspension procedure was the result of a violation of the constitutional text and abuse of power or a matter favoured by a tension-prone institutional design.

The practical relevance of this topic 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, in Romania, 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 these events point 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. 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 which is the prototype of semi-presidentialism (France backs constitution reform 2008, BBC)¹.

Research design

The research design chosen for the present article is based on the case study. This method deals primarily with a thorough investigation of a particular entity, be it a country, political system or regime, institution, event or phenomenon (Gerring 2004, 324). It is based upon three crucial elements, namely: 1) a specific subject; 2) a delimited geographic space

¹ 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 Constitution¹ in a manner that will generally "strengthen parliament and make the president more accountable". There are also a number of revisions regarding the presidency. First, the President's terms of office are limited to two consecutive mandates of 5 years each (Article 6). Second, 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).

and 3) a particular period of time (Lim 2006, 45). Therefore, this 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.

The used research methods fall generally under the category of qualitative research which entailed the collection and examination of data, such as official documents produced by the state authorities - the Constitution, official reports, public statements, parliamentary debates or Constitutional Court decisions - or private 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 and the legal acts issued by the Romanian Parliament concerning the suspension proposal (Proposal for the suspension from office of the Romanian President 2007, The Report of the Joint Investigation Commission of the Romanian Parliament as a result of the suspension proposal against the Romanian President 2007). Also, we examined the Constitutional Court's ruling on the suspension proposal against Traian Băsescu and we concentrated on were those regarding the president's formal powers vis-à-vis the PM and the Parliament. 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.

Theoretical Framework

Defining 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. In the Federalist No. 65, Alexander 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" (Hamilton, 1788).

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 design², we notice that all display a rather low degree of clarity when it comes to listing these impeachable acts.

Defining 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 (1990, 166) in characterizing the 1958 French Fifth Republic that displayed three characteristics embedded in the constitutional framework: 1) the president of the republic is elected via universal suffrage; 2) he has “quite considerable powers” and 3) he faces a PM that possesses executive and governmental power but whose stay in office is conditioned by the vote of confidence given by parliament. In addition, Duverger (1990, 167-177) 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”.

Complementary to Duverger’s characteristics, Giovanni Sartori (1994, 132) identified five more traits: 1) the head of state is elected by a direct or indirect popular vote for a fixed term of office; 2) 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; 3), the head of state does not depend on the parliament’s support and he/she cannot rule alone or directly; 4) the PM and the cabinet depend on the parliament’s vote of confidence and the support of a parliamentary majority; 5) 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.

²The 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”.

Matthew Shugart (2005, 5) 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 endurance depends on the vote of confidence given by the parliamentary majority. 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. In analysing the dynamic between the president, PM and government ministers³, Robert Elgie (Elgie, Griggs 2000, 34-47) 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.

Along the same lines, Cindy Skach (2006, 15) argued that the “tensions between the president, the prime minister and the legislature are inherent in the structure of semi-presidentialism, and are therefore permanent”. 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.

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 (Siaroff 2003, 291). Also, Robert Elgie (1999, 13) argues that if Duverger’s criteria would be followed in full, there would be no commonly accepted inventory of semi-presidential systems since this

³ 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 influence between the two actors; 4) ministerial government where the ministers are the actual drivers behind the decision-making process.

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”.

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 (Shugart 2005, 7-8)⁴ 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 a constitutional deadlock in case of conflict between the president and the PM since the latter cannot be dismissed by the head of state. 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 used by Shugart are the following (2005, 1-22): 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

⁴The “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.

assembly. We can also add the right of legislative initiative, referendum calling and referring legislation for judicial review (Shugart, Carey 1992, 23-24). 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 (1999, 15-16) 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.

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 (Elgie 1999, 17-18)⁵. 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 (Elgie 1999, 19)⁶ 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.

Romanian semi-presidentialism

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). The result of the 1990 elections was that Ion Iliescu, an ex-Party official, won the presidency with 85% of the popular vote while the FSN obtained a 2/3 majority in the Parliament (University of Essex, Political Transformations

⁵ Duverger identified three common types of environments or rationales which were conducive 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.

⁶ 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).

and the Electoral Process in Post-Comunist Europe, Romania-election results)⁷. Consequently, the former apparatchiks were able to control the constitution making process and to tailor the fundamental law according to their political and institutional interests. 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) (PCUN, Law Decree 92/ March 14, 1990).

The 1991 Constitution

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. 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.

In the first years after 1989, Ion Iliescu was “able to impose himself as the principal element of stability in the context of unstable parliamentary majorities, with government action otherwise paralyzed by the absence of a clear majority and deprived of leading political personalities” (Frison-Roche 2007, 72-73). 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 (van der Meer Krok-Paszowska in Elgie 1999, 179)⁸.

The 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. Article 2 of the “Country Communiqué” 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

⁷ The FSN had 263 seats (66.31%) in the Chamber of Deputies and 91 seats (67%) in the Senate.

⁸ 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.

by not respecting the democratic principles put forward by the Communiqué, an act endorsed by the revolutionaries' will in 1989 (Mihai 1993, 9). Regarding this issue, Ion Deleanu, a member of the Drafting Committee, has 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 only one, therefore it is not divisible." (Focșeneanu 1998, 159)⁹ 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 (Focșeneanu 1998, 160). 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 (Sartori 1994, 101-117; Skach 2006, 12). 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.

The constitutional powers and duties of the major political actors

The framers of the Romanian 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 (Călinoiu, Duculescu, Duculescu 2007, 216). 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.

⁹ 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".

Giovanni Sartori followed the same lines by stating that “the Romanian political system is parliamentary characterized by a strong head of state (but who is not strong enough to change the parliamentary nature of the system) and whose strength derives from popular legitimacy, but also from several reinforcing constitutional provisions” (Sartori 2002, 10)¹⁰. 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 (Sartori 2003, 618). In analysing the impact a semi-presidential design has on democratic consolidation, Robert Elgie (2005, 98-122) categorized the Romanian form of government as a balanced design of powers between the President and the PM¹¹. Shugart has characterized the result of the Romanian Constitution 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 (Shugart 2005, 9). 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” (Mungiu-Pippidi 2002, 42-46). An example would be the slow

¹⁰ 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.

¹¹ 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.

passage of laws in the bicameral Parliament. In the 1991 Constitution, the problem was that there was no clear delineation of Chambers' competencies since these were designed to balance and check each other, a situation which only created a weak parliament and a negative popular perception. Consequently, one of the 2003 modifications aimed to clarify the competencies of each Chamber 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 (Stanomir 2006, 161-165). 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 (de Waele, Soare, Gueorguieva 2003, 141-161). This situation is prompted by the executive's above-mentioned tendency to dominate the legislative via the practice of issuing emergency ordinances.

The President

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 counterpart¹². 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. Nevertheless, the President has the right after consultation with Parliament to call for referendum on issues of national interest (Article 90) and the interpretation

¹² The Romanian 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. 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.

of such issues is left up to the President¹³. Shugart (2005, 12) 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.

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. 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 to argue that based on this particular provision, the head of state displayed unconstitutional bias towards his party, the PD. 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”¹⁴. The dominant interpretation is that this particular aspect of the President’s duties entitles him/ her to act in such a manner that

¹³ 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 (Referendum for the uninominal vote on November 25th 2007. October 23, 2007).

¹⁴ 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).

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 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 (Borsa 2007, 94). 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 (Borsa 2007, 95).

Another analysis belongs to constitutional law expert and political scientist Ioan Stanomir (2006, 166), 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. 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 abusing his constitutional powers. The fundamental question would be: How much is mediation and how much is intrusion?

The PM and the Government

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]). 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 $\frac{1}{4}$ of the total number of MPs during a single parliamentary session (Article 112 [113])¹⁵.

The relationship between the Romanian President and PM in the post-communist period 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. In the Romanian context (Mungiu-Pippidi 2002, 42-43), the main issue in the conflicts between the Presidents and the PMs¹⁶ 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 powers. 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.

¹⁵ 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).

¹⁶ 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.

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 and Vasile was revoked from office while Alexandru Athanasiu was named as interim PM. The constitutional motives for dismissing the PM were Article 106-2 and Article 105¹⁷ 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).

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) <i>Gavril Dejeu</i> (PNȚCD) Radu Vasile (PNȚCD) <i>Alexandru Athanasiu</i> (PSDR) Mugur Isărescu (independent)
2000-2004	Ion Iliescu (PDSR)	Adrian Năstase (PDSR/ PSD) <i>Eugen Bejinariu</i> (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.

¹⁷ 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".

The Parliament

The consequences of the ambiguity of the separation of powers principle 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 character¹⁸. 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 diminished¹⁹.

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

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 thanks to the simultaneous organization of presidential and legislative elections that permitted the presidential candidate to influence the parliamentary majority²⁰. 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

¹⁸ 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 Palade 2005, 22-27.

¹⁹ 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. 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, 2007.

²⁰ The 2003 constitutional revision extended the President's term of office to 5 years (Article 83).

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 (Barbu 2004, 176).

Table 2: Types of parliamentary majorities and presidents (1990-2008)²¹

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

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

²¹ Taken and adapted for the case under study from Frison-Roche in Elgie, Moestrup 2007, 71.

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 mandate²². 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 reshuffle²³ resulting in a minority government between the PNL and the UDMR supported by the PSD. Thus, from April 2007 the first post-communist cohabitation period ensued in Romania between the former D.A. Alliance coalition partners.

The 1994 suspension case against Ion Iliescu

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 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 (Clej 2007).

The CC gave a negative ruling concerning the indictment against Iliescu by stating 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. 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 supposed to have any legal effects on the public authorities. Ultimately, the parliamentary majority at the time, formed by PDSR, PUNR, PRM, PSM

²² We would not consider the CDR as a truly balanced coalition since after the 1996 elections the PNȚ-CD held the dominant position within the alliance, a factor that only contributed to the frictions between the members.

²³ 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 (All eyes turned to Cotroceni 2007)

and PDAR, rejected by 242 votes the suspension proposal against Iliescu (Preda, Soare 2008).

The problem in the case presented here is that Iliescu's statements did produce legal consequences that have affected the Romanian state in the form of lawsuits filed at the European Court of Human Rights (ECHR). The explanation 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 houses²⁴. 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.

The 2007 suspension case

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. In 2007, the Parliament voted in favour of Băsescu's impeachment with a large majority voting for, namely 322 out of 465 MPs.

On February 12th, 2007, 184 MPs, belonging to the PSD and the PRM initiated the suspension procedure. On April 17th, the CC 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. On the same day, Băsescu declared that if the suspension

²⁴ 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 (The tax payers versus Romania, 2002).

proposal passes in the Parliament, he will resign after five minutes so as to prompt early presidential elections²⁵ 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” (Dutulescu, Georgescu, Vaida, 2007).

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 (Gheorghiu, Oprea, 2007)²⁶. 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” (Realitatea TV, 2007). Băsescu and the Liberal Democrats (PLD)²⁷ 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. In May 2004, the Lithuanian CC ruled that an impeached president for breaking the constitutional oath may never run for an office demanding an oath (Norkus, 2008, 796).

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 openly sought to modify the laws in Parliament specifically against the holder of the presidential office. The problem was,

²⁵ 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.

²⁶ 235 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.

²⁷ 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.

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” (Galantonu, 2007).

Article 10 of the Referendum Law was modified in such a way 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. Therefore, the turnout would not be taken into consideration in deciding the validity of the referendum. The conclusion of the four-month long appeals from Băsescu’s supporters to the CC occurred on May 3rd, when the new law was deemed constitutional (The Constitutional Court, Decision no. 420/2007). The Court pointed out that the legislature has the right to make such changes as long as they are not discriminatory. Hence, the Referendum Law was modified in accordance with the PSD’s main aim: to lower the majority needed to dismiss Traian Băsescu.

The referendum

The referendum²⁸ took place on May 19th and the public debate which had started in February on the question whether Parliament should be dissolved if the referendum rejects the proposal 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 “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 the legislative is automatically dissolved. 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”, 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 (Florea, 2007).

²⁸ The turnout was 44, 45%, out of which 74, 48% of those who participated voted against Traian Băsescu’s dismissal, while 24, 75% voted in favour (Romanian Electoral Commission - BEC 2007)

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.

Charges brought against the 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 the CC made a very important clarification regarding the definition of the notion of "grave acts" and stated that these relate to 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" (The Constitutional Court 2007, 2).

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 led to deadlocks and conflicts within the Parliament and on the political scene, especially between the PM and the President.

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 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” (The Constitutional Court 2007, 3). 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.

Băsescu was also accused of publicly pressuring PM Tăriceanu to hand in his resignation. This occurrence was highlighted as an abuse because there was no government crisis, i.e. no legitimate reason that would impose the PM’s resignation especially at a time when government stability was required. 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 (Bell, Boyron, Whittaker 1998, 145)²⁹ and even the PM’s loss of popularity³⁰. Therefore, in France, if faced with a poor or opposing

²⁹ 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 Valéry Giscard d’Estaing.

³⁰ 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 (What is a Prime-Minister’s duration in office? 2007).

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.

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 calculus has not taken a solid root (Jasiewicz in Taras 1997, 146-148)³¹.

The President-Government relationship

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. 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 (The Constitutional Court 2007, 5).

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 independence³².

³¹ However, the Polish President Lech Walesa did use 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).

³²The 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

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 in which the actors of public life act [...] and to guarantee that the Constitutional principles and norms are respected". 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 Bănescu against various public authorities since this disrespectful attitude only undermines the constitutional order.

From the analysis of the CC's ruling on the suspension proposal against Traian Bănescu, 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 an ambiguous aspect of the CC's ruling: 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 Romanian President to dissolve the legislature and to promulgate referendum-endorsed proposals has prompted a series of institutional conflicts that resulted in the suspension (Stanomir, Carp 2008, 283-184).

Conclusions

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

characterizing the CC's activity as being "against the national interest" following its ruling that some provisions of the justice reform package were unconstitutional (The Romanian Parliament 2007, 13-17).

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.

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 (2006, 17) 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". 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

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 (Pugaciauskas 1999, 6). 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.

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. Political science professor Algis Krupavicius (2009) has underlined that by taking into consideration the aspects of cohabitation and ambiguous separation of powers, “the impeachment procedures might be used to resolve political conflicts between the president-parliament more frequently in semi-presidential regimes”. 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 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 democratization³³.

³³ Recent presidential impeachments include Brazilian president Fernando Collor de Mello (1992), Venezuelan president Carlos Andres Perez (1993), Colombian president Ernesto

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

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