President’s Messages – a method of communication between Romania’s President and the Parliament

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Abstract: The current constitutional system gives an important role to the main functions of the state – legislative, executive and judicial, assigning a series of essential prerogatives to the three state powers, exercised by distinct, separate bodies (Parliament, President, Govern, judicial courts), which do not operate isolated, communication, permanent collaboration and mutual control existing between them. As it results from the provisions of the constitutional rules, one of the communication methods between Romania’s President as a representative of the executive power and the Parliament as a legislative supreme for, is the message as an instrument by which the head of the state informs the Parliament on important political problems of the nation. In this study, we propose to reveal the role that the President’s message has, on one hand, as a communication method between the President and the Parliament and on the other hand as a method by which the President draws attention on the people’s representatives on some national problems that the state institutions have to solve.

Key-Words: message, communication means, political act, head of state, legislative for, constitutional regulations.

1. Short introductory views on the role and importance of the institutions of the head of state and the Parliament established by the current regulations of the Romanian constitutional system

The Romanian Constitution [1], as a fundamental, democratic and modern law, expressly mentioning the principle of powers separation and balance between the main functions of the state – legislative, executive and judicial – which are at the basis of its organisation, in Title III “Public Authorities” dedicated to the Parliament (Chapter I), to Romania’s President (Chapter II), to the Government (Chapter III), to Judicial Authority (Chapter VI) establishes the organization and operation means of the three state powers.

A constant concern of constitutional and administrative law theoreticians has been the way in which the essential prerogatives of the three powers are exercised (legislative, executive, judicial), prerogatives established by the fundamental law starting from the conception that powers separation supposes the exercise of attributions by distinct and independent bodies, with mutual communication and control.

The father of the principle of state powers separations, Montesquieu, in his paper “On the spirit of laws” clearly expressed this need: “In order not to have the possibility to abuse the power, it has to be defeated by power. When one hand has both the legislative and executive power, there is no longer freedom.” For these reasons, powers separation provides a guarantee in the normal functionality of relations and the balance
between them, being one of the fundamental principles of the state of law [2].

Belonging to distinct powers, meaning that Romania’s President according to the current constitutional system exercises the executive power together with the Government, and it accomplishes all the essential prerogatives of this power and the Parliament exercises the legislative power, being, according to the Constitution, the supreme representative body of the Romanian people and the sole lawful authority of the country (art. 61), nonetheless there are certain institutional connections between the two public authorities, each of them having an established competence, traced by the current constitutional regulations.

The mention of the Parliament in the first chapter of Title III of the Constitution reveals the importance of this institution in the Romanian political system, practically underlining its priority in relation to the other public authorities, including that of Romania’s President [3]. This interpretation is also supported by the literature that mentions that Romania’s Constituent Assembly has placed the Parliament, a traditional institution in democratic states, the first place among public authorities. This placement of the legislative power is the natural result of rational organization of state institutions whose form of government is the republic and of the representative nature of this authority, of the ancient roots of the institution in the political and state practice [4].

When assigning the supreme representativeness body of the Romanian people, the lawmaker considered several reasons like: the exclusive legislative competence, the Parliament being the sole legislative authority of the country; wider representative structure. Therefore, the force of the parliamentary system consists in the principle of national sovereignty, in the idea that the Parliament represents the people itself, and parliamentarians are its representatives, who have to consider the people’s will without any influence from the outside of the legislative for [5].

As far as the role and the functions of Romania’s President that result from constitutional provisions, art. 80 par. 1 of the Constitution stipulates that the Romanian state also guarantees for the national independence, of the territorial unity and integrity of the country and par. 2 of the same article stipulates that Romania’s president watches the compliance with the Constitution and the good operation of public authorities. For these purposes, the President exercises the mediation function between the state powers, as well as between the state and society.

Analysing the provisions of this articles, the role of Romania’s President as a head of state and of the executive power, the following functions result: of representation of the state and of the Parliament who is the representative the electoral body – being elected through universal, direct, secret and free vote; to guarantee the independence of the state, territory unity and integrity, as well as of the Constitution, acting for its compliance, of mediation between state powers – legislative, executive and judicial – according to art. 1 par. 4, as well as between the state and society, which involves significant segments of the political or civil society, in relation to the importance of the problem, aiming to provide social peace, based on its popular legitimacy, at the level of the entire country [6].

Acting as a factor of legality, balance and moderation, mediation between state powers, the President expresses its role as an arbitrator between the legislative, executive and judicial power accomplishing the function of good offices subordinated to the increase of state powers efficiency, of the state of law mechanism for public interest [7]. With this view in mind, in order to exercise its functions appointed by the Constitution in good conditions, the President has to keep a permanent connection, an institutionalized connection with the other public authorities in order to solve problems of national interest and one of the communication means between the President and the Parliament is addressing messages to the Parliament, as it results from the constitutional rule (art. 88).

2. The message of Romania’s President – an institutionalized means of communication between the head of state, as a representative of executive power and the Parliament, the legislative body of the country

For the first time in our country, the institution of head of state message towards the Parliament has found expression with the application of the Constitution from 1866. This
Constitution provided that at the opening of the parliamentarian session, which took place every year on November 15th, the head of state presented the state of the country in a “message”, to which assemblies had to answer (art. 96), but this right of the head of state was limited by the obligations of signing the message by the minister [8].

Romania’s Constitution from 1991, revised in 2003, gives a new meaning to the president’s messages, meaning that they do not have to be signed by the prime-minister or by ministers like in the period 1866-1938, and this is why, through their content, they will be considered, at least in principle, as being the exclusive and unilateral expression of the political conceptions of the President of the Republic which does not draw the Government’s liability in any way [9].

Starting from the fact that the President cannot be indifferent to the activity of the Government and the other authorities of public administration, if it appreciates that certain aspects regarding the improvement of the governmental activity, the activity of the ministries or of some authorities of the local administration or that the settlement of some national problems belong to the legislative process or parliamentarian control, it is natural to have a communication “channel” with the Parliament, more specifically to have the possibility to send a message to the Parliament [10]. Art. 88 of Romania’s Constitution stipulates the possibility of the head of state to address messages to the Parliament, the constitutional text, in a concise form, making the indication: “Romania’s President addresses messages to the Parliament regarding the main political problems of the nation”.

From the point of view of this article, the message has a double role: it is an institutionalized communication message between the President and the Parliament and at the same time it is a means by which the President draws attention of the people’s representatives on some problems that state institutions have to solve or which concern the citizens [11].

Because the subject of the messages can be different, as it results from art. 88 and art. 92 par. 3 of Romania’s Constitution [12], and the conditions for exercising this procedural means are regulated depending on its subject, we can differentiate between two categories of acts [13]: - facultative messages, like the ones that have the subject of the main political problems of the nation.

The facultative character of these messages is the consequence of the fact that their presentation is not stipulated as an obligation which has to be accomplished by the President within certain terms or periods stipulated in advance, but their use shall be decided by him;

- compulsory messages, like the ones stipulated by art. 92 par. 3, in their case the President having to present them to the Parliament, if certain circumstances occur.

Starting from this classification of the messages made by some authors [14], a separate analysis has to be made from the point of view of the judicial regime and their effects.

As far as the messages from the first category are concerned, the facultative ones, they are political acts, as they are included in the specialized literature [15], acts that comprise an expression of will meant to produce effects at social level, because they do not produce obligations that be punished through the coercive force of the state, this essential feature differentiating the messages of the President from its judicial acts – decrees.

An aspect which is not regulated by the fundamental law is the one regarding who has to present the messages in front of the Parliament, if their presentation has to be made in person by the head of the state, or through his spokesperson, a presidential advisor or a member of the legislative body, various opinions occurring in this meaning. Therefore, supporting the idea of personal transmission of the message, professor Tudor Drăganu makes the following observations: “Without being based on a constitutional text, the shapes of this function were expressed through an almost daily practice which risks to transform it into a common law institution. But, in the absence of any constitutional provision, nobody knows whether and to what extent the political statements or mentions of the President’s spokesperson engages him or not. This is because, strictly judicially speaking, everything established by the Constitution is an unipersonal state body: Romania’s President. According to it, nothing authorizes this body to assign some attributions, even those exercised through exclusive political acts to another body”[16]. In the opinion of
another author [17] “it is not an assignment of power, but rather a practice of the Romania’s President (which has to accomplish so many important functions in the state) to call a clerk in order to express his position towards the social-political events which are in a permanent dynamics, and if limits have been exceeded, in the meaning that statements and mentions do not match the real attitude of the President the spokesperson can be held liable.” Another author [18] considers that there are three situations for addressing the message, all three being equally possible: a) direct presentation of the message in front of the Parliament by the President himself; b) reading the message of the President by his representative; c) sending the message of the President to the Parliament under the form of an open letter, in this case the presentation of the message being made by a member of the Parliament. Although the practice has proved that messages have been sent to the Parliament, in person by the head of the state, considering the high position in the state of the supreme representative body of the country, nonetheless in the absence of an express constitutional regulation, the President can call another person that he can appoint in order to deliver his message, which, being a political act, a mere information instrument of the Parliament, lacking judicial consequences, does not require the compulsory participation of the President nor debates on the problems raised by it.

Regarding the content of the message, the doctrine appreciated that the range of problems that are the subject of the message is relatively determined being left at the President’s appreciation, who can decide on its content, being a discretionary power he disposes of in choosing the content of the message which has to be of the Parliament’s competence [19]. The Constitution also stipulates that “The President addresses messages to the Parliament in relation to the main political problems of the nation”, which are not comprised in the messages content and social, economic problems, the text leaving the President decide on what there are “the main political problems of the nation”. Another gap of the Constitution consists in the fact that it does not establish a certain period for presenting the messages, leaving it to the President to decide if and when to exercise this prerogative [20]. Analysing these aspects, we notice a certain similitude, meaning that the President has both the possibility to choose the content of the message and the possibility to establish the moment of its delivering as long as the constitutional provisions do not make an express provisions in this meaning.

The presentation of messages by Romania’s President is not executive power interference in the activity of the legislative body of the country, because this does not suppose the obligation of the Parliament to debate and approve them, being an exclusive act of the President. The message can be an official beckoning of the Parliament, a reason for reflection and meditation for the parliamentarian political forces, without breaching the principles of powers separation, because it does not cause or direct towards a certain decision of the legislative power [21].

The President’s right to a message corresponds, according to art. 65 par. 2 letter a) of the Constitution, met in common assembly to receive the message. The Parliament can undertake debates on one of the problems comprised in the message or can even adopt possible measures, but this is a phase which comes after the message is received to which the President does not have to take part [22].

Therefore, the Decision of the Constitutional Court no. 87/1994[23] stipulates that “the message is an exclusive and unilateral political act of Romania’s President which, the Chambers joined in common assembly, according to art. 62 par. 2 letter a) of the Constitution (become art. 65 par. 2 letter a), have only the obligation to receive. Through his place and role, derived from the direct election by the people – which gives it an equivalent level of legitimacy with the Parliament -, Romania’s President cannot take part in a parliamentarian debate, because this would mean to engage political liability, which is contrary to his constitutional position, placing him in a situation similar to that of the Government which, according to art. 108 par. 1 of the Constitution (at present art. 109 par. 1), shall be politically liable in front of the Parliament.”

In relation to the exercise of this constitutional task, the fundamental law differentiates between the message per se, associated with the obligation of the Parliament to receive it and the problems comprised in the message which are discussed only if the Parliament considers to be necessary
and not because it has a constitutional obligation, the constitutional obligation of the Parliament being to legislate and it exists whether the President addresses messages or not [24]. As established by the Constitutional Court in its jurisprudence, nothing prevents certain parliamentarians to ask for parliamentary debates regarding the problems presented by the head of the state in his message addressed to the legislative for, but these debates will not be considered consequences of the President’s message, but rather distinct actions of parliamentarians by virtue of their representation right [25].

This President’s prerogative to send messages to the Parliament is circumscribed to the exercise of the mediation function, the president being a factor of good offices, and when required, based on the competences given by the Constitution and within its limitations, he is a regulating factor in the state mechanism as well as in the relations between the state and society [26]. With this view in mind, on one hand, the President watches the good operation of public authorities and, on the other hand, he allows collaboration with public authorities, eases or prevents tensed relations between them or between them and society.

As far as the second category of messages is concerned, the compulsory ones, they have another judicial regime, as it results from the provisions of art. 92 par. 3 of Romania’s Constitution, meaning that in the case of armed aggression against the country, Romania’s President takes measures for rejecting the aggression and inform the Parliament immediately by means of a message, a prerogative which is comprised in the exercise of the guarantee function of national independence of the territorial unity and integrity of the country.

In compliance with constitutional provisions, the Chambers have to meet not only for receiving the message but in order to debate on it as well; the President takes part in the debate and, in this situation, the message is materialized in a decree signed by the prime-minister, being of a complex nature, both political and judicial [27], its presentation and debate being concomitant as retained by the Constitutional Court in the Decision no. 87/1994[28]. We notice that this category of compulsory messages has certain distinct characteristics, as compared to the category of facultative messages both regarding their nature which has a political and judicial character and regarding their delivery, in person by the head of the state, by taking part in the debate, the message being materialized in a presidential decree.

Regarding the practice after 1990, regarding messages delivery by the head of the state to the Parliament, we agree with the opinion of some authors [29] who have noticed that the number and themes of the messages have increased constantly, becoming an instrument which the President uses frequently.

Through messages delivery, the head of the state has the possibility to draw attention to the legislative for and to other state bodies in general, on problems that have special importance for the nation: maintaining public order and peace, the imminence of some dangers regarding territorial integrity, problems regarding foreign politics, the stage of reforms implementation by the Government and others.

Having a certain decision authority and responsibility within the limits established by the Constitution and exercising important functions, namely the representation function, of guarantor and mediation, it has to maintain a permanent connection, an institutionalized communication with the other public authorities in order to solve problems of national interest, the message of the head of the state revealing the idea of collaboration between the President as an exponent of the executive power and the Parliament as a legislative body in a democratic system based on the principles of powers separation.

References:
[4] Ibidem
[9] Tudor Drăganu, op.cit, p. 246
[12] art. 92 par. 3 stipulates that: „In case of aggression against the country, Romania’s President takes measures for rejecting the aggression and informs the Parliament immediately, through a message. If the Parliament is not in session, it shall be called within 24 hours from the start of the aggression.”
[14] Ibidem
[16] Tudor Drăganu, op. cit., p. 285
[18] Ştefan Deaconu, op. cit., p. 325
[19] Mihaela Codrina Levai, Camelia Tomescu, op. cit., p. 87
[21] Mihaela Codrina Levai, Camelia Tomescu, op.cit., p. 87; Antonie Iorgovan, op.cit., p. 302
[22] Mihaela Codrina Levai, Camelia Tomescu, op. cit., p. 88; Tudor Drăganu, op. cit. p. 248; Antonie Iorgovan, op. cit. p. 302
[23] See the Decision of the Constitutional Court decision no. 87 from September 30th, 1994 regarding the constitutionality of art. 7 of the Regulations of the common assemblies of the Chamber of Deputies and the Senate published in the Official Gazette no. 292 from October 14th, 1994; The constitutional Court was informed by the presidents of the two Chambers for checking the constitutionality of art. 7 of the regulations of common assemblies in relation to the provisions of art. 88 of the Constitution; the Court decided that the provision from the art. 7 par. 1 of the Regulations regarding the compulsoriness of debating on the messages presented by Romania’s President, is not constitutional, except for the situations referred to in art. 92. par. 3 of the Constitution; see also the decision of Romania’s Parliament no. 13/1995 regarding the amendment and completion of art. 7 of the regulations of the common meetings of the Chamber of Deputies and of the Senate published in the Official Gazette no. 136 from 05.07.1995
[27] Mihaela Codrina Levai, Camelia Tomescu, op. cit., p. 88
[28] See Antonie Iorgovan, op. cit., p. 303