

**The presidential institution in the Republic of Moldova: judicial nature,  
evolution and daily experience**

*Andrei Smochină,*

*PhD in Law,*

*university professor, ULIM*

Any process of social and political government aimed at the realization of an objective of a general interest, i.e. for the „common good” of a nation, assumes the specialization of state activities, in other words, the establishment of bodies vested with power to implement permanently and properly certain methods, practices, rules, or other types of such activities. This demand of an objective character is necessarily imposed on any state to make the process of government more efficient on the general level.

The actual application of the principle of separation of state powers consists in the collaboration of legislative, executive and judicial authorities to exercise their functions in order to create the equilibrium and to prevent the eventual abuse of power.

I am convinced I will not exaggerate if I say that one of the most important and febrile problems in the scenario on the resolution of Transdnestrian conflict that causes the split of public opinion resides in the specificity of the standard diplomatic method of the Russian Federation referring properly speaking to the process of reintegration of the Republic of Moldova. The so-called project on the federalization of the Republic of Moldova is surely a political ambition more than vital necessity imposed by the present situation. The motivation is univocal: the intention of the Russian Federation to hold a tacit control, direct or indirect, over the Republic of Moldova. The fragmentation of the Republic of Moldova represents a clear contradiction. The creators do not offer to avoid the crisis emerged between

Chisinau and Tiraspol. If we counterbalance advantages and disadvantages, failures suffered, it becomes clear that there is no viable foundation in favor of this kind of “document”.

To support this hypothesis the precedent „realizations”, insistently promoted by the Russian school of thought, are relevant and not only „realizations”, there are also lobby concept that let applying new stratagems, including international law and giving new connotations to before existed meanings. Consider the following examples: „the doctrine of common state”, „the right to protect nationals”, „spheres of influence”, „negotiated sovereignty”, etc. Every time various elements proposed by the states – guarantors, being concomitantly mediators, aimed at the achievement of the most possible harmonious consensus. In 10 years these efforts finally seemed to achieve the goal. It is useless to hope that such a behavior towards Chisinau changed in essence or it will improve de facto. Still, this time the project of the plan memorandum, (called Kozak) referring to the reintegration of the Republic of Moldova, brought by the Ambassador of Moscova in Chisinau admiral Yuri Zubacov lacks the principle of limits in attributing too many favors to Transdnistriean separatists, to bureaucratic elites willing to preserve financial, extremely profitable positions.

In this case the authors of the political process are convinced in the correctness of the ideas from the memorandum. They do not recognize the fragility of the concepts of behavior they proclaimed and imposed on other people. The Transdnistriean problem can only be resolved on the basis of respect to the principles of sovereignty and territorial integrity of the Republic of Moldova through granting autonomy with the special status to regions on the left bank of the river Dniestr. (Art. 11 of the Constitution) The present day experience testifies to the fact that it is an unpublished

element of the evolution. The Russian Federation cannot allow “luxury” of being isolated from the policy of the European Union.

The renewal of the current situation concerning the transdnestrian problem is the major issue of judicial and diplomatic character. The Republic of Moldova can maintain peace and assure prosperity only if the left bank of the river Dniestr contemplates the current situation through the prism of non-violence towards Chisinau.

- The transdnestrian conflict was devised by the Kremlin during the last years of existence of the Soviet Union, it aimed at the preservation of the Republic of Moldova as the Kremlin’s sphere of influence;
- Under the difficult conditions of building a democratic state the change of constitutional regime in the Eastern regions of the Republic of Moldova caused terrible violence;

It is easy to understand that from the very beginning Chisinau launched the present experience in order to find the ways to unite // to return the territories on the left bank of the river Dniestr to the Republic of Moldova, but Transdnestria counted on the adjudication of an independent state.

From these points of view the analysis made on the initiative to regulate transdnestrian conflict offer the following conclusions, recommendations and vivid suggestions:

The eventual success in adopting the decisions referring to the vital national problem depends on political, economic and social factors; but it more depends on the capacity of the „producers” of the political process to permeate in the essence of the idea of federalization, to grasp its fundamentals, principles, variants and conditions of implementation. This very difficult problem demands the support of all people of the country and a clearly elaborated, lucidly motivated, well – argued strategy. At that social

instability that dominates the country should be taken into consideration. Still, political forces of the Republic of Moldova are inclined to give vast autonomy to the territories on the left bank of the river Dniestr.

In this report we will try to reveal in general terms the role of the institution of the chief executive in the parliamentary republic. The topic was not chosen randomly. It was provoked by the fact that during restructuring of the presidential institution in the Republic of Moldova in July, 5, 2000, an issue on the character and nature of the doctrine of balance of powers in the country was not given proper attention. It generated confusions, controversial interpretations stipulating the wish to become a part of the western democratic institutions.

From this perspective we will state that the status of the president of the republic depends on the form of government and current social political situation in the country. The history of the country and law demonstrated that judicial nature of the law state derives, in this case, from the answers to the questions on the way of establishment of political power, its methods and objectives. In this sense the questions appear: what is the character of the presidential institution within the branches of state powers, what is it closer to, is there the support of Parliament and Government, or is it placed beyond the pyramid, is the president a representative of the people of the state.

First of all, thanks to the fact that the institution of the president in the Republic of Moldova was established on the basis of the constitutional post – Soviet doctrine, it developed dynamically. Then, from the start, there was registered an experiment with diverse models and attractive doctrines of the institution of the president. Thus, an explicit commitment emerged to create a modern state – the Republic of Moldova – on the basis of the doctrine -

Parliament – President – Government where the main chain of the whole political system would be the President of the republic.

This tendency was and is preserved in our country: the experiment is seeking for a new model of the chief executive institution that would be close to the parliamentary regime. Hence, the President of The Republic of Moldova, according to the article 78 of the Constitution, cannot be chosen by the electoral body through the universal suffrage, the President is chosen by the Parliament. From this point of view, he/she is not equal with the Legislative body because it makes competition between Parliament and President senseless; still, Parliament vested him/her with the chief of the state, function of guarantor (art. 77), and representative of the state. We can easily observe that the Constitution of the Republic of Moldova confers the president a separate judicial status according to the fundamental principle of executive bodies under the parliamentary regimes. In conclusion, it is easy to identify what the place of the president within the executive body is because the powers of the President and Government are indicated in and limited by the Constitution.

The fact seems to be interesting and worth mentioning that based on the above premise the place of the chief of the Republic of Moldova in the hierarchy of powers is superior to that of the Government. In this context the Constitution of the Republic of Moldova stipulates for some aspects dealing with the special powers of the President. Here we accentuate that according to article 87 of the Constitution of the Republic of Moldova the President is the Commander in Chief of the Armed Forces, he/she can declare complete or partial mobilization, he/she can declare war in case of aggression against the country, he/she can take other decisions that would ensure national security and public order, within the limits of the law.

Before making a brief description it is necessary to give a more precise definition of the reform. According to the data of the sociological survey conducted by the Institution of Public Policy in January, 2001, that is before the Communist Party won the Parliamentary Elections, the confidence of the people in the state institutions was so low that it posed a question who they existed for. 15% of the population believed or strongly believed in the President, 19% - in Government, 10% - in Parliament, 26% - in justice, 23% - in the police. The results of the survey made in November, 2001, showed an improved attitude of the citizens of Moldova towards the institutions of public power. The population began feeling more sympathy towards the bodies of the state government, especially, towards the President of the country. 58% of the number of respondents cherished confidence / very much confidence in the President, 22% did not have confidence in the President, 16% completely distrusted him.<sup>1</sup>

The above mentioned data testifies to the fact that the form of organization of the political system in our country that was stipulated by the Constitution of the Republic of Moldova July 27, 1994 did not justified the hopes of the citizens of the country and quickly damaged the image. Officials of that time failed to contribute to the development of a democratic constitutional climate in the semi – presidential country where individual and collective liberties would enjoy certain triumph. There were a number of governmental crises. There is no single answer or totally acceptable explication to the situation. Finally, there are many interpretations still the lucid analysis of the activities of the executive power of that time gives us a

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<sup>1</sup> Roșca A. Factorul etnic în contextul vieții economico-sociale și politica din Republica Moldova || materiale ale Conferinței teoretico-științifice internaționale “Statul de drept și problemele minorităților naționale” 11-12 ianuarie 2002 (mun. Bălți), Chișinău 2002 p.29.

chance to say that it was necessary to amplify the executive, to restructure it and introduce new mechanisms of its balance.

Thus, the lack of consensus and clarity of the functions of the chief executive institution as well as disdain towards executive authorities manifested themselves. The way, the institution of the Chief of the state in the Republic of Moldova was established and evaluated, was not taken into account. The fact, that parties, power bodies and leaders were clearly dependent on public opinion was not given proper attention.

You may find that we deviated from the topic while giving these facts but they are very useful for revealing the second motive that contributed to the constitutional reform. Political system based on the semi – presidential doctrine under the conditions of competition between many and varied parties proved to be unreceptive to the crisis phenomena of our society, it manifested political ambition when Parliament adopted the Law on revision and amending the Constitution of the Republic of Moldova in July 5, 2000. The “gauntlet” was thrown by the President and taken by the Parliament in a very exotic manner.

The acuteness of contradictions President – Parliament – Government contributed to the identification of new ways of establishing institutions able to govern the country. We will analyze some of the most important aspects not because they were not treated at all, but because it was done otherwise. A parliamentary republic is the republic where the only institution of power, that is Parliament, is elected through universal equal secret suffrage that is directly and freely expressed and Parliament<sup>2</sup>, in its turn, elects the

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<sup>2</sup> In the situation when the Parliament of the Republic of Moldova is chosen from the party lists, the meaning of the legal principle of the right to vote directly and freely stipulated by the doctrine of proportional representation in elections is not clear.

President. As a consequence, the Republic of Moldova joined the classic system of parliamentarism with some original modifications being a regime of political party.

This event provoked controversial polemics. Some mentioned the advantages of constitutional reform being the most perfect reform of the epoch, while the opponents of the reform affirmed that the reform was a cataclysm, they underlined the perils of establishing too weak executive. The elections of the President of the Republic of Moldova and establishment of the new Government were devoted to the enforcement of the modified and amended Constitution of the Republic of Moldova of July 5, 2000.

It should be mentioned that art.6 of the Constitution of the Republic of Moldova that institutionalize the principle of separation of powers as a legal basis of the construction of state power and powers of its institutions stipulates „In the Republic of Moldova the legislative, executive and judicial powers are separated and function according to the prerogatives that are given them by the Constitution”. The problem is that judicial nature of the chief executive institution is rather complex, because it is not enshrined in the „trunk” of the separation of powers doctrine, it pretends to occupy a separate place. Here we can question if we should accept the idea of granting the chief executive of the state a right to have power placed above powers of three branches of power.

While discussing the issue we will mention that according to the Constitution (art. 60, p. 1) the only legislative authority of the state is the supreme representative body – Parliament, but the implementation of internal and external policy and the general exercise of public administration are the responsibilities of the Government (art.96, p. 1). Judicial power is exercised in the name of the law by judicial authorities (art.114).

We see that the President of the Republic of Moldova does not belong to any branch of power. We can state that the role and place of the institution of the chief executive of the Republic of Moldova is stipulated by art. 79 of the Constitution: „The President of the Republic of Moldova is the chief of the state, he / she represents the state and is the guarantor of the sovereignty, national independence, territorial unity and integrity of the country”. Here the constitutional provision (art. 116, p. 6) can be given: „Judges of the judicial authorities appoint the President of the Republic of Moldova on the recommendation of the Superior Council of Magistrates”. The place and role of the president derive directly from the constitutional provisions, the motive that creates presidential institution.

In continuation we find another specification: constitutional provisions on the status of the president of the Republic of Moldova are concentrated in a separate chapter (Chapter V, art. 77 - 95) of the Constitution. The Chapter makes part of title III, „Public Authorities”, placed between Chapter IV „Parliament” and Chapter V „Government”.

It is true that the powers of the president are extended in many directions of activities:

- Referring to the formation of the Government, art.98 (1) “the President of the Republic of Moldova having consulted parliamentary fractions nominates the candidate for the post of Prime Minister”, but basing on the vote of confidence the President of the Republic of Moldova appoints members of the Government; in case of governmental reshuffles or a vacant post the President dismisses or appoints on the advice of the Prime Minister some members of the Government;
- Referring to the dissolution of Parliament, art.85 foresees “In case of impossibility to form the Government or hindering the procedure of law

- passing for 3 months, the President of the Republic of Moldova can dissolve the Parliament after consulting the parliamentary fractions”;
- Referring to the procedure of bringing the President to account – cannot be done without the Parliament. Consider that these powers of the Parliament are absolutely necessary. The procedure is specified in art. 89, it stipulates „In case of activity infringing the Constitution the President of the Republic of Moldova can be dismissed by the Parliament with two thirds votes of the elected deputies. The proposal on the dismissal should be initiated by at least one third of the deputies and the President should be immediately informed about it. The President can provide the Parliament and the Constitutional Court with the explanations of the facts he is imputed to”;
- Taking into consideration the fact that the President of the country is vested with function of the guarantor that assumes guaranteeing respect of the Constitution and of the fundamental human rights, guarantor of the sovereignty, national independence and territorial unity and integrity of the state; this is one of the most important functions of the President of the Republic of Moldova, consider that to fulfill these function the President should have a right to initiate the revision of the Constitution and constitutional referenda.
- In the Republic of Moldova according to art. 84 p.1 the President can participate in the discussions of Parliament. The mode of participation is specified in the Parliamentary Regulations. Thus the President being at the Parliamentary meeting can be given the floor at any stage of the discussions.
- The participation of the President of the Republic of Moldova in the final stage of law-making procedure through publication of the law is rather

important. **The unpublished law cannot produce judicial effects.** In the Republic of Moldova according to the Law “On the mode of publication and coming into force of official documents” the laws promulgated by the President and decrees for promulgation are remitted by the President, within three days from the date the document was signed, to the National Press Agency „Mold - Press” to be published in „Monitorul Oficial”.

- In the Republic of Moldova according to art.48 p.2 C, The President addresses the Parliament with messages referring to the main issues of national importance – political acts of informative character that do not produce judicial effect.
- In the Republic of Moldova according to art.93 p.2.C, the President has a right to ask for reexamination of the law he / she has objections about. The reasons to reject the law can be varied „beginning with unacceptability of the text and ending with correction of some material errors”<sup>4</sup>. Practically the President can provide „any reason that makes the law completely or partially unacceptable”<sup>5</sup>.

The status of the President of the Republic of Moldova is surely very complex and contradictory being determined and influenced by a number of factors. The organizational structure of the presidential institution should satisfy, first of all, a number of pressures from diverse sides and have an influence on their activity.

There is a well – known rule – the Government will recommend the chief of the state confirmation and promulgation of the law, the law usually corresponds with the interests of the Government. Still its promulgation is a constitutional power of the chief of the state who states and certifies to the

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<sup>4</sup> See: the Decision of the Constitutional Court February 28, 1996 “On the interpretations of art. 74, line 1,2 art. 93, line 2 and art. 143 line 1 from the Constitution”

regularity of the law-making procedure; the chief is also responsible for the publication and enforcement of the law.

Analyzing the criteria of the evaluation of present day reality (it is often said that it has already demonstrated its viability) in the Republic of Moldova we can affirm that after the Communist Party won parliamentary elections in February, 2001 the officials have a comfortable majority in the Parliament: a president – a representative of the winning party, a situation of subjugation with the appointment of the prime minister, resolutions from the part of communist party, a purely formal procedure of forming the governmental team, a unique collective formula of circulation of ideas, inefficient opposition, lack of communication in the period of collaboration with other parties, but the cornerstone of the Constitution, the essence of which is the fact that each branch of power has a right to neutralize eventual abuses, errors, unconstitutional activities of two other branches – is not clearly expressed.

We have a strong believe that this brief description of the most controversial problems of the institution of the state chief, we have analyzed, is of great use for following the essence and revealing the fascinations of „obedient” power.

Thus, having made a theoretic – scientific analysis of the problems that deal with the constitutional reform of summer 2000 and activities of the governmental regime in the Republic of Moldova, we'd like to add that the reform was subjected to a number of attacks and developed in the discussions of the drawbacks of the Fundamental Law, that is a problem we should recognize and deal with exactness and precision.

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<sup>5</sup> See: ART. 73 LINE 3 from Parliamentary Regulations.

There are many more situations that should be taken into consideration while dealing with the problem: does the chief of the state need any additional powers or doesn't? To avoid the crisis of government, and legislative and political chaos it is necessary to modify the way of organization and implementation of presidential institution.

The Parliament and the President (apart from the Government) should “result” directly from the elections, but the Government – through the intermediary of the parliamentary majority.

The following procedure of the elections of the President is proposed: the electoral body of the people elects parliament and President through universal, equal direct and freely expressed suffrage.

It is necessary to improve the mechanism of balancing three branches of power, applying the principle of responsibilities.

A concrete argument in the support of our opinion would be the case with a multicolor, multiparty Parliament in power. If we are asked what we wait from the Presidential elections through the parliamentary majority, we should recognize that there might be an unprecedented crisis in the Republic of Moldova – a probable situation within the frameworks of a mixed regime – the parliamentary majority that forms the Government and the chief of the state who represents political formations might have contrary interests.

At the same time we should realize that there are enough arguments to revalue the necessity to modify the laws on Presidential elections.

The President of the country should represent, first of all, the people. We should come back to this idea and introduce it in the content of the Constitution.

The discussions over the issue of the place and role of the institution of the chief of the state in the Republic of Moldova could undoubtedly have

other dimensions if he / she was given the role of a mediator, of the arbiter of the state powers.

This vision could be constitutional in the period of transition of our country when the president would have supplementary powers in the function of the arbiter.

Thus, having examined our Constitution it was ascertained that the presidential institution in the Republic of Moldova is not simply an executive body. At the same time we try to argue our conclusion that it is necessary to take into consideration the evident importance of this institution in the conditions of implementation of the doctrine of balance of powers in a state.