

THE NATIONAL INTEREST AND THE COOPERATION BETWEEN THE ROMANIAN PRESIDENT, THE PARLIAMENT AND THE GOVERNMENT IN THE FIELD OF EUROPEAN AFFAIRS

Associate Professor Mihaela Adina APOSTOLACHE, PhD.

Petroleum-Gas University of Ploiesti

mihapostolache@yahoo.com

Abstract:

The paper deals with the issue of national interest, analyzed from an internal perspective, with implications on the manifestation of the state at European level. Internally, at the level of the state, the most common phrase is “national interest”, but at regional level, the term “general interests” is employed. In practice, national interest may vary from one state to another, being influenced by the changes occurring on the international scene. Relevant for the support, promotion and defense of the national interest is the cooperation between the President, the Government and the Parliament in the field of European affairs. The paper also tackles the parliamentary control over Romania’s representation at the European Council meetings, as a way of supporting and defending the national interest.

Keywords: *national interest, European affairs, national security, monitoring, information.*

1. Introduction

The concept of *national interest* has a wide scope of coverage; however it can be restricted to two components, with a certain interdependence: one which contains the priorities of the internal policies of any state, and one that brings together certain imperatives of its foreign policy.

Although it is established that the national interest is what determines the actions of the states on the international scene, and that the primary interest of every state is to survive and ensure national security, we must bear in mind that the national interest does not have a unique content, as it varies from state to state, according to the power that they hold, and also in time, often influenced by the changes occurring in the international environment [1].

The broader perspective of the phrase “national interest” includes its internal dimension, not only the internationally valid one, concerning the place of the

state analyzed globally, among other international actors. It can be established that the security and defense strategies developed by most countries refer to their national interests, but, in addition, there are other national interests, which are secondarily treated by the documents addressing the topic of security.

Usually, we talk about “national interest” only in the singular. In the Romanian Constitution, the concept of “national interest” is mentioned four times: in paragraph 1 of Article 87 (the participation of the President at Government meetings), in Article 90 (referendum called by the President) in Article 135 paragraph 2 letter d) (Economy) and in Article 136, paragraph 3 (Property), and Article 135 paragraph 2 letter b) (Economy) we find the phrase “national interests”.

In the present context, since the idea of “national interest” is used increasingly more often in the political, administrative and academic environment, this requires a conceptual distinction between the terms “*national interest*” and “*public interest*”. [2] For example, it can define “the preferences of the decision-makers at central level”, “goals that need to refer to the overall aims of the society, which are perennial and of cardinal importance, which justify their classification as national interests” [3]. In this view, national interests may include the satisfaction of the psychological need of knowing a welfare growth, weakening the opponents, acquiring territories or law enforcement.

When analyzing the national interest of a state authority, we must take into account the following *factors* [4]:

- the general characteristics of the international security environment;
- the power level of the state concerned (the sources of power that can be identified for the respective state);
- the position of the state on the geopolitical map of the world;
- the instruments of power that the state benefits from to promote its interests at international level.

2. The national interest – a selection criterion in the procedure for monitoring the activities and documents submitted by the European institutions

Following the major axes of the national interest and of the European Union interests, it can be seen that, in many respects, they coincide, such as, for example, “the economic and social progress of the European peoples” – an objective of the Union interest and “harnessing the economic and human potential of the country in order to guarantee a decent life for all Romanians” – an objective of the national interest [5]. That is why, in drafting the European legislation, both national and European institutions are obliged to harmonize these interests.

Romania’s active participation in developing European policies and the influence of our country in the Union depends mainly on the institutional system of coordinating the process of decision-making and adoption of its positions in the field of European affairs. Starting from the fact that the target of this system is the preparation of the national position for the meetings that occur in the European institutions, it is necessary to bring into the discussion several terms from this domain. Thus, according to Article 2 letter e) of Law no. 373/2013 [6], *the mandate* represents Romania’s negotiating position for the themes on the agenda of the Council, including the draft legislative acts at EU level. The *general mandate* is defined at letter f) as the negotiation position of Romania, elaborated by the Government, for the Council agenda, including for the draft legislation from the European Union, where the economic, social or environmental implications of the draft legislative acts from the European Union are of major importance or concern several sectoral areas.

The Parliamentary Review System (Scrutiny) [7] includes the mechanisms or procedures established by national parliaments in order to influence, to control and hold governments accountable for their activities in the EU Council, the European Council and in the European Commission committees or subcommittees. Addressing the complex issue of national interest within the

scrutiny system brings up two aspects. The European stake of this type of control of national parliaments on European affairs considers *legitimizing the common European interest* - member legitimacy, namely the democratic control of the European Union Council, since any European institution is responsible before the citizens through its representatives. The national stake aims *to promote the national interest, legitimizing the government activity in European affairs* – the parliamentary control over the government, as the parliament is the direct representative of the citizens.

As a general rule, national parliaments or parliamentary chambers monitor all types of activities and documents transmitted by the European institutions. One of the selection criteria in prioritizing various activities or documents is, above all, *the national interest*, and then the relevance of the problems, the concerns of regional entities represented in parliaments or only in certain chambers thereof.

In practice, the competence of monitoring the European affairs by national parliaments from the EU member states has been delegated to the Committee on European Affairs (CEA), conceived as a structure with expertise and which must issue an opinion to inform the plenum of the Parliament, in the event of a common CEA, or just a Chamber of it, if there is one CEA for each chamber of the legislature. “The final product” of the parliamentary control system is an opinion or a parliamentary mandate, and not a law. The parliamentary opinion/mandate represents the option for a European policy communicated to the government.

The current trend is to delegate almost complete competences to the Committees on European Affairs, an aspect that leads to the existence of stronger monitoring systems and a more active involvement of the national parliament. It should be taken into account the fact that the system of parliamentary control in the field of European affairs must be rapid, simple, and distinct from the other activities of the parliament and have a high capacity for fast access to information and credible expertise. It does not exclude the

participation of the other sectoral committees and other parliamentary members to the consultations on European affairs, but this should be done under the supervision of CEA.

The examination of the European acts and the decision on the opinion/mandate is usually centralized, based on a relatively simple procedure, different from the classic legislative one. The Committee on European Affairs is a standing committee, which helps to reinforce the position of national legitimacy against a European act, and also strengthen the political influence of the national parliament.

3. Cooperation within the triad President - Government - Parliament in the field of European affairs

The issue of national interest must prevail even *over the cooperation between the Romanian President, the Parliament and the Government in the field of European affairs*. Romania's position as a member state of the European Union has represented for the Romanian Parliament both a challenge and an opportunity: the challenge of remaining sufficiently influential, and the opportunity to be, by exercising new powers, a relevant component in the European policy-making act, something which is closely linked to the position taken by Romania in the field of European affairs.

If a European act disadvantaged certain national interests of Romania, the solution could only be that of carrying out certain diplomatic measures likely to allow the synchronization of the harmed national interest with European interests. Community practice has shown, moreover, that there is enough flexibility in such situations to give satisfaction to specific points of view of interest to some countries [8].

In Romania, Law no. 373/2013 regulates the cooperation between the Romanian Parliament, or one of its Chambers, and the Romanian Government concerning the country's participation in the decision-making process within the

European Union, as well as monitoring the harmonization of national legislation with the European legislation.

The normative act includes provisions that permit, first, to fully inform the Parliament about the developments registered in the EU decision-making process. Under these provisions, the Romanian Parliament may request extensive information on the draft legislative acts under negotiation in the European institutions.

The normative framework was also developed as a result of institutional practice. The debates on the draft of this normative act lasted for more than six years. There was initially a legislative proposal [9] drafted by counselors and experts in the Committees on European Affairs of the Romanian Parliament, initially debated only by the Senate, and then returned for amendments. Subsequently, a series of informal discussions were held with the representatives of the Ministry of European Affairs and certain adjustments were made.

Basically, the adoption and promulgation of this normative act was a major step, offering a legal basis for what had been achieved as a “common practice” that allowed the monitoring system in European affairs to fit in the scrutiny typologies from the other member states of the European Union. Law no. 373/2013 was an *absolutely necessary tool that introduced a mechanism meant to ensure an extensive involvement on behalf the Parliament in the process of formulating and supporting the positions and interests of Romania in the European Union*, an aspect also supported in the doctrine [10]. Thus, it regulates the procedure of consultation between the Parliament and the Government regarding their activity, considering that the negotiations at European level have direct implications on Romania’s internal policies and, consequently, on the national interest.

The information of the Parliament by the Executive involves the transmission, immediately after delivery, of all draft European Union legislative acts to be entered on the Council agenda, as well as the accompanying documents. In addition, based on Article 5, paragraph 2, at the request of one of

the two Chambers, the Government transmits the draft legislative and non-legislative acts of the European Union, and the accompanying documents which have not been already submitted by the European Commission, as obliged under Protocol no. 1 on the role of national parliaments in the European Union, annexed to the Treaty of Lisbon.

Periodically, according to Article 8, the Government should make available for the parliamentary Chambers reports on the results of participation in the European Council, periodical reports on the activity and results of Romania's participation in the decision-making process at the European Union, in the Council, and quarterly reports on the fulfillment of the transposition obligations of the EU law into national legislation.

In terms of representation and support of Romania's interests at the European Council meetings, this was brought before the Constitutional Court, with objections of unconstitutionality made by the Romanian President, under Article 146 letter a) first sentence of the Constitution, Article 11 paragraph (1) letter a) and Article 15 of Law no. 47/1992 on the organization and functioning of the Constitutional Court. In motivating the objection of unconstitutionality it is alleged that Law no. 373/2013 does not stipulate the role the President of Romania in the process of drafting and adopting the mandate at the European Council. Further, it is appreciated: "Given that Romania's representation is an ordinary right of the Romanian President, the latter may delegate, by an act of express will, the attribution to attend the meetings of the European Council, when necessary, developing and approving the mandate. Therefore, it is considered that the mandate proposed by the Government and its amendment by the Parliament are unconstitutional, contrary to the Constitution and to the jurisprudence of the Constitutional Court".

Article 18 paragraphs 1-3 of Law no. 373/2013 refer to the case in which the duty of the Romanian President to participate in meetings of the European Council is delegated to the Prime Minister, then the parliamentary control shall be exercised only on the content of its mandate, while Article 18 paragraph (4) of the

Law refers to the possibility of the Romanian President to inform the Parliament about the content of the mandate he himself prepared, if he decided not to delegate the task of participating in European Council meetings. These are two distinct situations: 1) when the President of Romania has decided to participate himself in the meetings of the European Council, having the opportunity to present his mandate to the Parliament, with a content established exclusively by the President; 2) when he delegates the task of participating in the meetings of the European Council, the Romanian President can not formulate or determine the content of the mandate, and the prime minister is obliged to address before the Parliament a “project or mandate draft” to be approved by the latter.

According to Article 10 paragraph (2) the second sentence of the Treaty on the European Union [11], “The Member States are represented in the European Council by their Heads of State or Government, and in the Council by their governments, which are themselves democratically accountable either before the national parliaments, or before their citizens”. This principle text stipulates the responsibility of the Member States representatives in the European Council either to their national parliaments, or to their citizens, without specifying aspects of the order and constitutional traditions of the states. It can be thus concluded that the member states are obliged to establish, on the basis of the national constitutional texts, their national representative at the European Council (the President or Prime Minister) and to determine a national legal framework regarding the relations between national authorities in order to ensure a democratic representation.

Since 2012, by Decision no. 683 [12], the Constitutional Court has established that “in the exercise of constitutional attributions, the President of Romania participates in the meetings of the European Council as head of state. This duty may be delegated by the President, specifically, to the Prime Minister”. The political decision to delegate the participation in the meetings of the European Council should consider a consensus between the public authorities involved: the President of Romania, respectively the Prime Minister, the decision

must be based on the constitutional principle of loyal cooperation, and both have to be subsumed to the national interest.

Thus, the parliamentary control over Romania's representation at the European Council meetings occurs in the first case, under the form of information, and, in the second, the Parliament acquires a decision-making power in determining the content of the mandate due to specific relations with the Government (Article 111 of the Constitution).

As a conclusion, the parliamentary control over Romania's representation at the European Council meetings manifests as a *debate, information and collaboration between the Government, the Parliament and the President*. Moreover, the existence of a parliamentary control, in whatever form, on determining the content of the mandate of the head of delegation at European Council meetings is already an aspect established in all member states of the European Union. The absence of any information of the Parliament by the President would lead to the case where Romania would become the only European state in which the mandate of representation at the European Council would be developed by a single institution, an aspect also developed by the Constitutional Court in its jurisprudence.

In support of these claims, we can bring forth the examples mentioned in a study [13] prepared by the European Commission, which notes that 17 Member States have formal rules explicitly stipulating the European Council, either in the constitutional text, or in the regulations of the Parliaments (Belgium, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain and Sweden). These rules relate to the information of the Parliament about the decisions and procedures on the European Council and outline the obligation of the Government to provide different written documents regarding the European Council meetings (agenda, strategy documents, the Government's position, report on results), or to explain them orally. In Estonia, Latvia, Lithuania, Slovenia, Slovakia and Sweden there are procedural rules regarding the control over the work of the European Council,

which provide the option or even the need for the Government to consult the Parliament and to seek its opinion (in Lithuania it is mandatory) .

The general trend mentioned in the study and identified in the member states is, on the one hand, to directly involve the Prime Minister in the parliamentary procedure (where the representation attribute belongs to the Prime Minister) and, on the other hand, to concentrate the parliamentary control on the activity of the member state representatives in the European Council before the start of its sessions, as an ex ante control (France, the Netherlands, Ireland or Portugal).

Consequently, the Constitutional Court found, as was natural, by Decision no. 449 of 6 November 2013 [14] that the Romanian semi-presidential system can not rule out the parliamentary control over Romania's representation at European Council meetings, which manifests in the form of information in the first case, while in the second the Parliament acquires a decision-making power in determining the content of the mandate due to specific relations with the Government, based on Article 111 of the Constitution. As such, the Court rejected as unfounded the objection of unconstitutionality raised by the Romanian President, noting that the provisions of Articles 2, 3 and 18 of the Law on the cooperation between the Parliament and the Government in the field of European affairs are constitutional.

4. Conclusions

Currently, in practice, there is a tendency to find a dynamic balance between the promotion and the defense of the national interest of each state and the achievement of general interests by all the actors actively involved in international relations. There is also a desire to alleviate any tensions arising from the integration in terms of competition and cooperation, between competition and partnership, between individual competences of the state and the Union's exclusive ones, the fight against inequalities, between short-term and long term goals, in order to meet the national interest without prejudicing the

interests of the Union. More specifically, there is an aim to highlight the thesis with the value of principle at European level “unity in diversity”.

As stated, the term “national interest” has several meanings. The first one refers to the general theoretical level of the implications of this concept, the national interest following the need for survival of the state and national security. Although, in this view, the national interest is invariable in time and space, its content and the way it is expressed varies depending on the evolution of the international security environment, according to the power resources of that state etc. In other words, survival and national security may require different things over time and from state to state. Therefore, the cooperation between institutional actors becomes vital in order to promote and defend the national interest, both internally and externally. It thus becomes relevant the manner of achieving the parliamentary control over Romania’s representation at European Council meetings under the form of *debate, information and collaboration between the Government, the Parliament and the President*.

In other words, the President is, under the Fundamental Law, the holder of the right of representation of the Romanian state in international relations. By virtue of this law, the President determines the content and scope of the mandate that he plans to present at the European Council meetings, when deciding not to delegate the task of participation to the European Council, but with the possibility provided by Article 18 paragraph (4) of Law no. 373/2013 to inform the Parliament about the content of the mandate which he himself prepared. The second situation referred to in Article 18 paragraphs 1 to 3 concerns the task of representation, which may be delegated by the President, specifically, to the Prime Minister, the laws establishing the obligation of the Government to draft the mandate and submit it for approval before the Parliament, which thus acquires a decisional power in determining the content of the mandate. All these aspects highlight once again the essential role of the principle of separation and balance of powers in a state of law, closely linked to the principle of loyal

cooperation of state authorities in the promotion, representation and full satisfaction of the national interest.

References:

- [1] Petre Duțu, Cristina Bogzeanu, *Interesele naționale și folosirea instrumentelor de putere națională pentru promovarea și apărarea acestora. Cazul României*, "Carol I" National Defense University P.H., Bucharest, 2010, p.12.
- [2] Mihai Cristian Apostolache, *Despre stat, administrație locală, Constituție și realitatea europeană*, Universitara Publishing House, Bucharest, 2015, pp. 38-39.
- [3] Stephen D. Krasner, *Defending the National Interest. Raw material investments and U.S. Foreign Policy*, Princeton University Press, Princeton, New Jersey, USA, 1978, p. 13.
- [4] Petre Duțu, Cristina Bogzeanu, *quoted opera*, p.11.
- [5] See also Mihaela Adina Apostolache, *Rolul parlamentelor naționale în elaborarea și aplicarea dreptului european*, Universul Juridic Publishing House, Bucharest, 2013, p. 246.
- [6] Law no. 373 of 18 December 2013 on the cooperation between the Parliament and the Government in the field of European affairs, published in the Official Gazette, Part I, issue 820 of 21 December 2013.
- [7] Klara Szalay, *Scrutiny of EU Affairs in the National Parliaments of the new Member States – Comparative Analysis*, Hungarian National Assembly, Budapest, 2005, p. 7.
- [8] Victor Duculescu, "Rolul Parlamentului European și al parlamentelor naționale în procesul integrării europene", *Studii de Drept Romanesc*, no.3-4/2004, p.279.
- [9] See PL- x/01.02.2012, The Draft Law of cooperation between the Parliament and the Government in the field of European affairs, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12520, adopted by the Chamber of Deputies on 11 June 2013 and filed to the Senate, which, in this case, is the decisional chamber.
- [10] Costantin Mihai Banu, 2016, *Ghid pentru controlul parlamentar al respectării principiilor subsidiarității și proporționalității*, Direction for the European Union, Chamber of Deputies, Parliament of Romania, April 2011, updated in January 2016.
- [11] The Treaty on the European Union published in the Official Journal of the European Union series C issue 326 of 26 October 2012.
- [12] The Decision of the Constitutional Court of Romania no. 683 of 27 June 2012 on the legal conflict of constitutional between the Government, represented by the Prime Minister, on the one hand, and the President of Romania, on the other, published in Official Gazette issue 479 of 12 July 2012.
- [13] Wolfgang Wessels, Olivier Rozenberg, Mirte Van Den Berge, Claudia Heffler, Valentin Kreiling – Study, European Commission, the Directorate-General Internal Policies of the European Union and the Directorate for Citizens' Rights and Constitutional Affairs, 15 January 2013, available at: <http://www.europarl.europa.eu/committees/ro/supporting-analyses-search.html?action=6&organs=AFCO>, accessed on 26 October 2016.
- [14] The Decision of the Constitutional Court of Romania no.449 of 6 November, 2013 regarding the unconstitutionality of the provisions of Articles 2, 3 and 18 of the Law on the cooperation between the Parliament and the Government in the field of European affairs, published in Official Gazette issue 784 of 14 December 2013.