

THE PRIME MINISTER AND THE SUPREME COUNCIL OF NATIONAL DEFENCE

Associate professor Mihai Cristian APOSTOLACHE, PhD.

Petroleum-Gas University of Ploiesti

mihaiapostolache5@yahoo.com

Abstract

The Prime Minister is the fourth most important position in the state, after the President of Romania, the Chairman of the Senate and the Chairman of the Chamber of Deputies. According to the constitutional and legal provisions, the Prime Minister has the role of leading the Government and coordinating the work of the Government members, and they can not be revoked by the President of Romania. But the Prime Minister is also the vice president of the Supreme Council of National Defence. This article aims to analyze this quality of the Prime Minister conferred by the legislation in force and the constitutional and legal status of the Supreme Council of National Defence.

Key words: *the Supreme Council of National Defence (CSAT), Prime Minister, law, Constitution, Government.*

General aspects

According to Article 102 paragraph 3 of the Constitution of Romania, the Government consists of the Prime Minister, Ministers and other members established by the organic law. The organic law by which the Romanian Government is organized and operates is Law no. 90/2001, as amended and supplemented. Article 107 of the revised Constitution enshrines the constitutional status of the Prime Minister, giving him the power to lead the Government and

coordinate the activity of its members. The function of coordinating the activity of the government team stems from the role that the Prime Minister has in the formation of the Government. Regarding the prerogative of leading the Government, as highlighted in the doctrine[1], the Romanian constituent opted for a solution compatible with solutions from other European constitutions. Thus, it can be seen that despite its special legal position[2], so established by the constitutional provisions, as well as those of Law no. 90/2001, the Prime Minister leads the Government and coordinates the activity of its members, respecting the attributions of each function, without the power of injunction[3]. In the Romanian constitutional system, the Prime Minister holds similar position and responsibilities to that of a premier from other democratic countries with parliamentary systems of government[4].

The Prime Minister of Romania is also the vice president of the Supreme Council of National Defence, the president of that body being the Romanian president. The Supreme Council of National Defence is a fundamental institution of the Romanian state, a status conferred by Article 119 of the Romanian Constitution. The nature of the Supreme Council of National Defence as a fundamental state institution is emphasized both by its constitutional status, and by the fact that its organization and functioning, i.e. its legal regime, are regulated, under Article 73 paragraph (3) letter e) of the Constitution, by organic law.

An institution of tradition[5] in the Romanian constitutional system, the Supreme Council of National Defence has its origins in the interwar period, ranging in the Romanian Constitution of 1923, in Article 122, its legal regime being outlined by the Law of 14 March 1924.

The constitutional status of the Supreme Council of National Defence

Re-established by Law no. 39/1990[6], the Supreme Council of National Defence found, in 1991, the constitutional consecration, despite criticism from certain politicians and media[7], the material being initially comprised in Article

118, and after revising the Constitution of Romania in 2003, in Article 119. To understand both the legal nature of this body, and its role and place in the Romanian constitutional system, Article 119 should be read in conjunction with Article 65 paragraph 2 letters f) and g), Article 73 paragraph 3, letter e), Article 92 paragraph 1, Article 116 paragraph 2, Article 117 paragraph 3, a requirement that needs to be respected for the unrevised constitutional text as well[8]. We must not lose sight of the fact that Article 118 of the revised Constitution refers to the armed forces and, taking into account the mission of CSAT (the Supreme Council of National Defence) stated in Article 119, it is natural that this last article be examined in connection with Article 118. According to Article 119 of the revised Constitution of Romania, the role of the Supreme Council of National Defence is to unitarily organize and coordinate activities concerning national defense and security, to participate in maintaining international security and the collective defense in military alliance systems, as well as actions to maintain or restore peace. As outlined in the literature[9], if in its original form the Romanian Constitution only referred to the duties of the domestic nature of CSAT, following the revision of 2003 extended its attributions, including in its scope and tasks of external nature. Empowering the Supreme Council of National Defence is a consequence of our country acquiring the status of NATO member. In this new context, the functions of the armed forces have undergone significant changes to their internal defense function, adding also the collective defense in military alliance systems and participation in actions to maintain and restore peace. The latter function is exercised both in terms of the law, and the international treaties to which Romania is a party[10].

Placing the Supreme Council of National Defence in Title III, Chapter V - Public Administration Section 1 - The specialized central public administration confers this collegial body the legal status of central public administration authority of autonomous specialization. The corroboration of Article 119 with the other articles mentioned leads to the conclusion, also highlighted in the doctrine[11], that we are in the presence of a specialized central public

administration authority of autonomous character, established by organic law, chaired by the president and subject to parliamentary scrutiny. This status is also emphasized by the Romanian Constitutional Court, which, in Decision No. 1008/2009 notes that CSAT “is an authority of central public administration with autonomous character, which, according to Article 65 paragraph (2) letter g) and Article 111 paragraph (1) of the Constitution, is under direct parliamentary control”.

Comparative law

Such a collegial body is found covered in the constitutions of other countries within the European Union. Moreover, *“the collegial formula as a way of organizing autonomous administrative authorities represents the most widely adopted solution, the number of the members of the college varying from one authority to another”* [12]. The Constitution of the Italian Republic, in Article 87, states that the “President of the Republic is the president of the Supreme Defence Council established under the law”. The Constitution of the Republic of Bulgaria, in Article 100, paragraph 3, refers to the Advisory Council for National Security, adding that this body is chaired by the President of the Republic and its status is established by law. The Estonian Constitution, in Article 127 paragraph 2, provides that “the President of the Republic is assisted by a National Defense Council” defined as an advisory body whose structure and responsibilities are stipulated by law. The French Constitution does not expressly regulate such a body, but states in Article 15 the fact that the president is the Supreme Commander of the Armed Forces, and in this capacity, he chairs the higher councils and committees of national defense. The State Defence Council is covered in the Constitution of Lithuania in Article 140. According to this article, “the main issues in national defense matters are discussed and coordinated by the State Defense Council”, a body chaired by the President of the Republic and where the President of the Republic enters, the Prime Minister, the Chairman of the Parliament, the Minister of National Defence and the Commander of the

Armed Forces. The method of forming this body, together with its activities and competencies, are established by law, according to Thesis 2 of the Article 140. The Polish Constitution, in Article 135, regulates the National Security Council, an advisory body for the President of the Republic in the field of internal and external security. According to Article 144 paragraph 3 of the Constitution of Poland, the President of the Republic is empowered to appoint and dismiss members of the National Security Council. In Portugal, the Constitution regulates, in Article 274, the Supreme Council of National Defense. This body is chaired by the President of the Republic, aspect emphasized both by Article 274 paragraph 1 of the Constitution of Portugal, and by Article 133 letter o). The competence to appoint members of the Supreme Council of National Defence belongs to the Assembly of the Republic, and as a legal status, it takes the form of an advisory body specific for issues related to national defense and the organization, functioning and discipline of the armed forces, exercising administrative powers conferred by law. In the Hungarian Constitution, in Article 45, there is mentioned the National Defense Council, whose structure and competence are regulated in Article 49.

From the above information, it can be seen that bodies similar to the Supreme Council of National Defence of Romania are regulated in the constitutions of other European countries, having taken into account the constitutional tradition of the respective states and the particularities of the constitutional systems of those states. Not a new institution in the Romanian constitutional landscape, or in the European constitutional one, this public authority with a constitutional rank^[13] is organized and operates under its organic law, Law no. 415/2002. This legislation is complemented by the provisions of Law no. 51/1991 on the national security of Romania.

The legal status of the Supreme Council of National Defence

The normative act that develops the constitutional norms regarding the CSAT is Law no. 415/2002^[14] on the organization and functioning of the

Supreme Council of National Defence, which repealed the pre-constitutional Law no. 39/1990.

Unfortunately, this normative act has not been linked with the constitutional provisions resulting from the revision of the Constitution, the first article of the law being different both in terms of content regulation, and the terminology of the constitutional text contained in Article 119 of the Romanian Constitution, fact which prompted the doctrine[15] to appreciate that it is necessary to amend this law so that the legal role of CSAT be made consistent with that established by the constitutional text, and terminology used in the Constitution be taken in the law so as to eliminate any terminological differences. Based on its constitutional and legal status, CSAT is not subordinated to the Government or any other public institutions, its autonomy excluding any form of subordination[16]. However, this independent entity, like all autonomous administrative authorities, can not act in contradiction with the government decisions or ordinances [17].

The autonomous central authorities doctrine are qualified by the doctrine[18] as field bodies with a special status and are classified according to their purpose and object of activity in bodies of synthesis, coordination and control. The Supreme Council of National Defence falls in the category of bodies of coordination. The emergence of these authorities in the institutional system is the result of the democratic practice[19].

Law no. 415/2002 develops the constitutional norms and broadly regulates the duties of CSAT. According to Article 4 of law, the competence of the Supreme Council of National Defence includes the following:

a) analyzes and/or proposes, according to the law, to promote the strategy of National Security of Romania and the national strategy for national defense, the military strategy of Romania and the strategies of public order and national security of Romania, in relation to the responsibilities of authorized institutions; data, information and assessments provided by intelligence services and other structures with responsibilities in national security;

- b) if requested by the President of Romania, analyzes and proposes measures for the establishment of the state of siege or state of emergency throughout the country or in some localities; declares partial or general mobilization of the armed forces; rejects armed aggression against the country; declares a state of war and its cease; initiates, suspends or terminates military actions;
- c) proposes for approval the implementation of the mobilization plan of national economy and state budget execution, for the first year of war; the measures necessary to defend and restore the constitutional order;
- d) approves the draft normative acts initiated or issued by the Government on national security; generally organizes the armed forces and other institutions with responsibilities in national security; organizes and operates the Supreme Council of National Defence; trains the population, economy and territory for defense; budget proposals of institutions with responsibilities in national security; budget allocations for ministries and services with attributions in the field of defense, public order and national security; conditions of entry, passing or stationary on the Romanian territory of foreign troops; appointments stipulated in the organizational states with the rank of Lieutenant General, Vice Admiral, similar and superior to these;
- e) submits for approval to the commander of the armed forces the plans for use of forces in peacetime, in crisis and in war;
- f) approves: basic orientations in international relations on national security; draft international treaties and agreements on national security or with incidence in this field; establishes relations with similar bodies abroad, with the institutions and structures with responsibilities in national security; the completion of military structures, according to the states of organization in peacetime; the execution of battle alarm to bring military structures in the state that allows them the passage, on order, to fulfill combat missions; the action plans to declare mobilization and to declare a state of war; the action plans when declaring the state of siege and state of emergency; the project for the mobilization of national economy and the draft state budget for the first year of war; the verification plan for the population

preparation stage for defense through mobilization drills and exercises; the distribution of the number of recruits set in the institutions involved in national security; the objectives of territory preparation to ensure the operational needs of the national defense forces; the nomenclature and levels of reserve mobilization; the multi-annual programs on equipping the national defense forces; the militarization, under the law, of economic operators whose business is directly related to providing the resources necessary for defense; the joint plan of intervention units of the Ministry of Defense and Ministry of Internal Affairs to limit and eliminate the effects of disasters on the national territory; the regime of special telecommunications networks and equipments and the criteria for allocating the subscriber stations for the users of such networks; the organizational structure and powers of the General Staff; setting the position of military commander subordinated to the General Staff and its responsibilities for providing unitary leadership in wartime; the people and objectives that benefit from protection and guarding of the Protection and Guard Service and the rules concerning antiterrorist protection of Romanian and foreign dignitaries as well as other officials; the reports and information submitted by the heads of government bodies, relating to national security; general plans to search for information submitted by the institutions and organizations with responsibilities in national security; the main directions of activity and general measures necessary to remove the threat to national security; the organizational structure, personnel and operating regulations of the Romanian Intelligence Service, Foreign Intelligence Service, the Special Telecommunications Service and Guard and Protection Service; the expenses destined to achieve national security; the norms regarding planning, registry, use, justification and control of operational costs for achieving national security for institutions with responsibilities in this area; the annual accounts of budgetary execution of operational expenditure for achieving national security, of the institutions responsible for national security, after the approval of the reports on the work performed by them; setting up, closing, deployment and redeployment, in peacetime, on the national territory of large military units, from

the brigade rank upwards; proposals to grant the rank of marshal, general, admiral and similar ones;

g) coordinates the integration into European and Euro-Atlantic security structures, monitors the adaptation of the armed forces to NATO requirements and formulates recommendations in accordance with the standards of the Alliance;

h) appoints and revokes to/from office, in the cases and under the conditions established by law;

i) exercises any other attributions provided by law in the field of state defense and national security.

The Prime Minister as vice president of the Supreme Council of National Defence

Law no. 90/2001 on the organization and functioning of the Government establishes in Article 14 that the Prime Minister is the Vice president of the Supreme Council of National Defence, exercising all powers derived from this quality. Such a regulation is to be found also in Law no. 415/2002 on the organization and functioning of the Supreme Council of National Defence, in Article 5 paragraph 2. The President of the Supreme Council of National Defence is the President of Romania. If for the president, the quality of president of the Supreme Council of National Defence is established by the Constitution, for the Prime Minister, the quality of CSAT vice president is the result of the will of the organic legislature.

CSAT operates in secret working sessions which are convened by the President or by at least one third of CSAT, quarterly or whenever necessary. At the end of each session, a protocol is drawn up, signed by the president, the secretary and the members present at the session, a document that contains the findings and decisions adopted in the respective CSAT meeting.

Besides the president and vice president, the Supreme Council of National Defence comprises the following members: the Minister of National Defence, the

Minister of Administration and Interior, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Industry and Resources, the Minister of Public Finances, the Director of the Romanian Intelligence, the Director of the Foreign Intelligence service, the chief of General Staff, the presidential counselor on national security. The people who make up the Supreme Council of National Defence are aided in their work by a secretariat operating within the Presidential Administration and which is coordinated by the Secretary of the Supreme Council of National Defence.

In 2008, by Government Emergency Ordinance no. 224/2008[20] for the amendment of Article 5 paragraph 2 of Law no. 415/2002, there was introduced a second position of vice-president of CSAT, which was to be held by the Senate chairman. Practically, this legislative change allowed that in the structure of CSAT enter both representatives of the executive power, and also of the legislative power, which led to the violation of the principle of separation and balance of powers[21], governed by Article 1 paragraph 4 of the Constitution of Romania. This was also underlined by the Constitutional Court [22], declaring the unconstitutionality of the law approving the ordinance, and implicitly the normative act approved by the law. With the declaration of unconstitutionality of the ordinance, there was a return to the initial composition of the CSAT, the only vice president of this structure being the Prime Minister. The Supreme Council of National Defence operates under Article 10 of Law no. 415/2002, under the rules of procedure. The current rules of procedure of the CSAT were approved by Resolution no. 3 in the meeting on 10 February 2003.

The Supreme Council of National Defence adopts, by consensus, decisions which are signed by the president and are mandatory for the public authorities and public institutions referred to, CSAT gaining, under Article 3 of its law of organization and functioning, a regulatory power[23]. Being an authority under parliamentary control, CSAT must report annually to the Parliament, at the request of specialized standing committees of the Parliament or whenever necessary.

The Prime Minister, in his capacity as vice president of the Supreme Council of National Defence, leads the CSAT sessions in case the President is absent. Also, the prime minister is consulted by the president when the agenda is drawn up for the CSAT meeting. Last but not least, the prime minister approves the proposals of the ministries that are to be included on the agenda of the CSAT meeting. Therefore, *the prime minister, as vice president of CSAT, is the rightful replacement of the president, when absent from meetings of the Council*, is consulted when drawing up the agenda for the CSAT meeting and has the endorsement right for the initiatives coming from ministries.

Conclusions

Our analysis attempted to highlight the importance of the Supreme Council of National Defence within the state institutional mechanism, and especially the role of the Prime Minister in his capacity as vice president of this body. Usually, when discussing the position of head of government, the approach aims at the responsibilities of leadership and coordination of the government team, rather than the role of the Prime Minister within the entity vested by the Constitution with the prerogative of unitary organization and coordination of the activities relating to country defense and national security, participation in maintaining international security and collective defense in military alliance systems, as well as actions of maintaining or restoring peace. Starting from the constitutional role of the CSAT and its legal responsibilities, there results, unquestionably, that this quality of the Prime Minister as the Vice President of the Supreme Council of National Defence is highly important, especially when it becomes the replacement of the President of Romania in the CSAT.

We could see from the analysis of the legal provisions for the organization and functioning of the Government and the organization and functioning of the Supreme Council of National Defence, that the Vice president of CSAT leads the session of this forum when the president is absent, is consulted by the president about preparing the agenda of the CSAT meeting and is the one who endorses

the proposals of the ministries that are to enter the agenda of the Council meeting. These powers require competence, experience in the conduct of public affairs, determination and spirit of sacrifice, and the lack of any vulnerabilities. These are qualities that need to be taken into account when designating the person who will exercise the function of prime minister because, beyond the eminently political character of the Government, the person in the forefront takes part in crucial decisions for the nation, or even imprints, through the CSAT meeting management, the meaning of those decisions. We are in a historical phase characterized by uncertainty and phenomena which are difficult to anticipate and counteract, some of which may affect national security, thus forcing us to ponder and to have professionals and spotless policy makers. As Mircea Djuvara appreciated, “each public service should be managed by a person to make a profession of it, and not to deal with it only by chance and sporadically, because otherwise we can not reach a good administration”[24].

References:

- [1] Antonie Iorgovan in Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tanasescu, *Constitutia Romaniei revizuita, comentarii si explicatii*, All Beck Publishing House, Bucharest, 2004, p. 180
- [2] Valentin Prisecaru, *Tratat de drept administrativ roman. Partea generala*, 3rd. ed., Lumina Lex Publishing House, Bucharest, 2002, p.133
- [3] Antonie Iorgovan in Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tanasescu, *Constitutia Romaniei revizuita, comentarii si explicatii*, All Beck Publishing House, Bucharest, 2004, pp. 180-181.
- [4] Bogdan Dima, *Conflictul dintre palate*, Hamangiu Publishing House, Bucharest, 2014, p. 47.
- [5] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C. H. Beck Publishing House, Bucharest, 2008, p. 1140
- [6] Published in the Official Gazette of Romania, issue 142 of 13 December 1990.
- [7] Victor Duculescu, Constanta Calinoiu, Georgeta Duculescu, *Constitutia Romaniei comentata si adnotata*, Lumina Lex Publishing House, Bucharest, 1997, p. 361.
- [8] Antonie Iorgovan in Mihai Constantinescu, Ion Deleanu et al., *Constitutia Romaniei comentata si adnotata*, Regia Autonoma “Monitorul Oficial”, Bucharest, 1992, p. 268.
- [9] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C.H.Beck, Bucharest, 2008, p. 1141
- [10] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C.H.Beck, Bucharest, 2008, p. 1134
- [11] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C.H.Beck, Bucharest, 2008, p. 1142
- [12] George Girsteanu, *Autoritati administrative autonome*, Universul Juridic Publishing House, Bucharest, 2011, p. 42.

- [13] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C.H.Beck, Bucharest, 2008, p. 1142.
- [14] Published in the Official Gazette of Romania, Part I, issue 494/10.07.2002
- [15] Verginia Vedinas in Ioan Muraru, Elena Simina Tanasescu et al., *Constitutia Romaniei. Comentariu pe articole*, C.H.Beck, Bucharest, 2008, pp.1145-1146.
- [16] Verginia Vedinas, *Drept administrativ*, 9th ed., revised and updated, Universul Juridic, Bucharest, 2015, p. 419
- [17] Emil Balan, *Institutiile administrative*, C.H.Beck, Bucharest, 2008, p. 92.
- [18] Antonie Iorgovan, *Tratat de drept administrative*, vol.1, 3rd ed., All Beck, Bucharest, 2005, p. 447; Verginia Vedinas, *Drept administrativ*, 9th ed., revised and updated, Universul Juridic, Bucharest, 2015, p. 419
- [19] Emil Balan, *Institutiile administrative*, C.H.Beck, Bucharest, 2008, p.91
- [20] Published in the Official Gazette of Romania, Part I, issue 899 of 31 December 2008.
- [21] Mihaela Adina Apostolache, *Rolul parlamentelor nationale in elaborarea si aplicarea dreptului european*, Universul Juridic, Bucharest, 2013, p. 17.
- [22] Decision of the Constitutional Court of Romania no. 1008 of 7 July 2009, published in the Official Gazette of Romania, Part I, no. 507 of 23 July 2009.
- [23] George Girlesteanu, *Autoritati administrative autonome*, Universul Juridic, Bucharest, 2011, p. 95.
- [24] Mircea Djuvara, *Teoria generala a dreptului*, All Beck, Bucharest, 1999, p. 100.