

THE ROLE OF STATE POWERS IN THE DEVELOPMENT OF BUSINESS ENVIRONMENT

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Abstract

The purpose of this paper is to provide a thorough analysis of state powers in the context of today's business environment both nationally and internationally. The authors use the SWOT management method using structured interviews, in certain key areas, of a group of 30 experts from both legal and academic and that of the SMEs, in order to analyze and to form a guide of best practices for workers in local government in Bucharest, which directly influences the foreign investments in the Romanian economy and local development of national administrative territorial units. This article is part of a more complex work of the authors on improving social relations that occur in the work of state administration in relation to the Romanian business environment and represents the partial results of this ongoing study. Partial results of the study are presented and analyzed for future studies and represents a platform for academic discussions open to the public in order to improve relations with local administrative authority relating to facilitating and supporting investments that bring added value to the consumer.

Keywords: *business environment, development, powers, state, SWOT*

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1. Introduction

The theory of separation of powers has a special, decisive role in promoting the representative system, namely the democratic improvement of the relationship between the sovereign owner of power (the people, the nation) and the state organization of political power in the search, the very organization and functioning of state power, the guarantees of exerting the human and citizens' rights. It is a theory that represented the foundation stone of drafting the constitutions, the statements from the Declaration of the Rights of Man and of the Citizen from France in 1789³, standing as a testimony on these lines. Thus, as per the mentioned declaration: „a society in which the guarantee of the human rights is not assured, it is not a constitutional state”.

In Romania the state organization of the exercise of national sovereignty is standardized through article 2 of the Constitution. The owner of the sovereign power is the Romanian people and exerts this power through the representative bodies and referendum. From the analysis of the respective article several findings are resulting. Thus, to the representative bodies are being assigned just the exercise of power, hence certain authorizations and not the power itself. It is not devolution but the delegation of certain functions of the power. The power holder is and remains only the Romanian people, and hence significant legal consequences, including those relating to the responsibility of public authorities in front of it.

The question whether in the Romania's Constitution the expression of the classical principle of separation of the state powers can be found, a principle that characterizes „the rule of law”. This principle was strongly emphasized during the 1989 Romanian Revolution. The correct answer can be stated only through the systematic and logical interpretation of the constitutional stipulations. These stipulations use terms as: powers and authorities, but not the one of separation. Avoiding the term separation which can evoke the breaking of powers, their rigid separation, giving the term „powers” correct meanings from scientifically perspective, the present juridical doctrine and of course the Constitution harnesses the balance of powers.

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³ Document of the bourgeois revolution from France, adopted on August 26th 1789 by the National Constituent Assembly, the document is available at: <http://www.assemblee-nationale.fr/histoire/sur%20la-declaration-des-droits-de-l-homme.asp>

The authors, analyzing the different versions of the Constitution of Romania, a number of open questions have been enounced, but also how to choose the correct variant, and during the structured interviews a study on the improvement of the social relations that appear in the activity of the state administration in relation with the Romanian business environment have been realized. The answers have been analyzed, and based on a SWOT analysis of Romania in the first phase, and in the second phase of the study of each power in the state, different strategies have been drawn, where the weak and the strong points of each power in the state were taken in consideration, as well as the opportunities and the challenges that might appear in the socio – economical environment in which Romania is.

The aim of the study is to analyze the role of state power in the economic development of the Romanian state and thus on the Romanian and international business environment. The authors consider that a viable long-term economic development needs to be supported primarily by state powers at the highest level up to the local ones and legal and administrative reforms should be primarily analyzed in terms of profitability and labor productivity growth.

This article presents the partial results of the above mentioned study and wants to shed light on state powers and how the legal entity is organized, with the duties in force, from economic point of view, considering the state as an entity, as a company, in a EU market with free trade, where maintaining products on the market (the laws and decisions of the inter-governmental) and market segment (consisting of state residents and community space that positively affect the economic and social the decisions of the state) is directly influenced by the views of management on the company and how it is perceived in the international business environment the company operates.

2. The State powers in Romania

The three traditional powers are found expressed in the Constitution: the legislative rules on Parliament (art. 61 and following) the rules on executive president of Romania and the Government (art. 80 et seq); Justice rules on judicial authority (124 et seq).

Order regulating powers in the Constitution is the classic natural order. Constitution gives legal expression relations and political activities their natural state in the sequence.

Given the legitimacy of Parliament powers, large and widely representative composition, its Constitution provides certain preeminence in relation to other state authorities. Thus it is the only legislative authority of the country (art. 61), it has functions of training, selection, appointment, investing other state authorities and of course other control functions. Even the structure of the bicameral Parliament express legislative power balance performance. In fact it is the only solid argument that bicameralism Parliament from Romania is a unitary national state. Constitutional relations between public authorities are characterized by mutual involvement of some of the other areas of activity, which signifies balance collaborative involvement and control.

As relations between the legislative and judicial power they must be assessed taking into account the principle of independence of judges and their obedience only to the law. So the intervention of other powers in the sphere of justice contrary to constitutional principle. This does not exclude certain constitutional ratios resulting naturally from the system power state organization.

2.1. Local public administration

Local government (Article 120 and following) is a local administrative structure that allows to solve local problems through their own authorities, under the control of state / local public centrale. Administratia, like other industries, is in the process of reform by placing them in the rule of law - local autonomy, decentralization of public services, eligibility, legal and consulting public cetatenilor. Administrația administrative units is based on the principles of decentralization, local autonomy and devolution of public services.

The local council (municipal, city, municipal and county) is composed of local councilors elected by universal, equal, direct, secret and freely expressed, as determined by law for the election of local authorities.

Powers of local:

- (1) The local council has the initiative and act according to the law in all matters of local interest, except those assigned by law to other local authorities or central government.
- (2) The City Council exercises the following categories of tasks:
 - a) tasks for the organization and operation of specialized mayor, institutions and local public services and companies of local interest and self;
 - b) tasks for economic and social development and environmental development of the city;
 - c) tasks of public and private administration of the municipality;
 - d) responsibilities on the management of local public services provided to citizens, such as education, social services, child protection, persons with disabilities, the elderly, family and other individuals or social groups in need, health, culture, youth, sport, public order; emergencies, protection and rehabilitation, conservation, restoration and enhancement of historical and architectural monuments, parks, public gardens and nature reserves, urban development, track people, bridges and public roads, public utilities services: Food water, gas, sewerage, sanitation, heating, public lighting and local public transport, as appropriate emergency services type mountain rescue, lifeguard and first aid, social-community administration activities, social housing and other housing units located owned by local government unit or its management, highlighting the interest of the local community, natural resources across administrative unit, territorial;
 - e) responsibilities on interinstitutional cooperation internally and externally, cooperation or association with Romanian or foreign legal entities to finance and implementation of joint actions, works, services or projects of local public;

2.2. The Government and Prime Minister

The government is headed by the Prime Minister and coordinates activities of its members, subject to their respective legal duties (Article 102 et seq.). Prime Minister represents the Government in its relations with Parliament, the President of Romania, the Supreme Court, the Constitutional Court, the Court of Auditors, the Legislative Council, the Public Ministry, other public authorities and institutions, political parties and alliances, trade unions and other NGOs, and international relations.

The Prime Minister is the deputy of the Supreme Council of National Defence and exercise all powers derived from the quality.

Prime Minister appoints and dismisses:

- Heads of specialized bodies under the Government, except for those who have a member of the Government, according to art. 3. (1);
- Secretary-General and Assistant Secretaries-General of the Government, the use of these functions;
- The staff of the Prime-working machine;
- Secretaries of State;
- Other persons who perform public functions in the cases provided by law.

Prime Minister presents Chamber of Deputies and Senate reports and statements on Government policy and answers the questions or interpellations addressed to the deputies or senators.

The Prime Minister may appoint a member of the Government to answer questions and interpellations to the Government by the deputies or senators, according to the activity that forms the subject of interpellation.

Prime Minister countersigns decrees issued by the President of Romania, where the Constitution requires their countersignature.

2.3. Judicial authority / justice

The Ministry of Justice is the specialized body of the central public administration, with legal personality, subordinated to the Government, which ensures the development, coordination and implementation of government strategy and program for the proper functioning of the judiciary as a public service and ensure the strict application of the law, accordance with democratic principles of rule of law⁴.

Justice is administered in the name of law and is achieved by the following courts: the High Court of Cassation and Justice, courts of appeal, courts, specialized courts, military courts and judges.

High Court of Cassation and Justice is the only Supreme Court operating in Romania.

Courts of appeal are the district courts which operate several specialized courts and tribunals in the nature and number of cases, there are sea and river sections or other materials.

The courts are organized in each county (except Ilfov) and Bucharest and usually located in the county capital. In each court district includes all courts in the county and in Bucharest. In the sections tribunals or, where appropriate, specialized for civil, criminal, commercial, minors and family cases, administrative and fiscal, labor disputes and cases concerning social security and, in the nature and number of cases, sea and river sections or other materials.

Independence of the courts is devoted constitutional provision enshrined in art 126 of the Constitution. This implies that in the administration of justice, judges can not be influenced by the executive or legislative.

The independence of judges is reflected in paragraph 124.3 of the Constitution, which provides that judges are independent and subject only to law. Independently so understood, does not preclude judicial intervention from the courts of appeals procedures against judgments.

Independence of the magistrate is the premise of the rule of law and a fundamental guarantee of a fair trial. This means that no one can interfere in the decisions and the thinking of judges and prosecutors.

2.4. President of Romania

President of Romania (Article 80 et seq.) is the Romanian state is the guarantor of national independence, unity and territorial integrity of the country. President of Romania shall ensure compliance with the Constitution and the functioning of public authorities. For this purpose, he shall act as a mediator between the powers of the state and between state and society⁵.

Romanian President is elected by universal, equal, direct, secret and freely expressed. No person may hold the office of President of Romania but for two mandates. They may be successive⁶.

During the mandate, the president can not be a member of a party and can not perform any other public or private. Romanian President enjoys immunity. President can not be held legally liable for votes or political views expressed in their⁷.

In exercising its powers, the President of Romania shall issue decrees published in the Official Gazette. Publicity nonexistent decree. Decrees issued by the President on international treaties concluded on behalf of Romania, accreditation and recall diplomatic representatives of Romania, approval of the establishment, dissolution or change in rank of diplomatic missions, partial or general mobilization of the armed forces, rejecting armed aggression against the country, establishing a state of siege or state of emergency, and in terms confer decorations and titles of honor, granting the degree of marshal, general and admiral in regard to the grant individual pardon is contrasemnezază the Prime Minister⁸.

⁴ According to art. 1 (1) of Government Decision No. 83/3 February 2005 on the organization and functioning of the Ministry of Justice.

⁵ As per art. 80 from the Constitution of Romania.

⁶ As per art. 81 from the Constitution of Romania.

⁷ As per art. 84 from the Constitution of Romania.

⁸ As per art. 100 from the Constitution of Romania

President of Romania shall designate a candidate for prime minister and appoint the Government on confidence vote by Parliament. The Prime Minister, Ministers and other members of the Government shall individually to the President of Romania, Leap of Faith⁹. Romanian President can not dismiss the Prime Minister. If the Prime Minister ceases to be a member of the Government, unless revoked, or is unable to perform his duties, the President of Romania shall designate another member of the Government as interim Prime Minister to fulfill the duties of the Prime Minister to formation of new government¹⁰. President of Romania may consult with the Government on the urgent issues of particular¹¹. President of Romania shall address the Parliament messages related the main political issues of the nation¹².

The President concludes international treaties on behalf of Romania, negotiated by the Government, and submits them to Parliament for ratification within a reasonable time. President of Romania represents the state in international relations and, in this capacity, conclude treaties on behalf of Romania or give power in these end, Prime Minister, Foreign Minister, other members or diplomatic representatives of Romania.

President of Romania and the Government inform Parliament of any agreement, convention or other international agreements to be concluded and shall not be subject to ratification¹³. Romanian President, Prime Minister and Minister of Foreign Affairs of the Government may negotiate and sign treaties, agreements, conventions and other international agreements, without giving full powers¹⁴.

Ratification or accession, or denunciation of treaties on behalf of Romania, countersigned the instruments of ratification or accession, or denunciation, signed by the President, vested with the state seal and countersigned by the Minister of Foreign Affairs¹⁵. Romanian President is the supreme commander of the Armed Forces and Chairman of the Supreme Council of National Defence.

3. SWOT analysis

The realization of SWOT analysis was carried out in the first phase nationwide following that second part of the research project to analyze, using this method, each power of the state individually.

For developing and finding answers to the four fields of the SWOT method, namely: strengths, weaknesses, opportunities and risks, we created using the business and academic, in collaboration with Spiru Haret University and Technical University in Prague, of a group of 30 experts. Achieving this group study and putting in discussion their different concepts took very long, ie a year.

The experts were chosen randomly from the academic and business environments, and the choice was for both Romanian and foreign experts (in our case Czech experts) to cover a larger area of knowledge and to avoid the systematic errors that could appear after selecting the experts.

However the following aspects were taken in consideration:

- the proportion of Romanian experts must be equal to that of Czech experts;
- must have at least one legal expert in both teams (the Czech and Romanian);

⁹As per art. 104 from the Constitution of Romania

¹⁰As per art. 107 from the Constitution of Romania

¹¹As per art. 86 from the Constitution of Romania

¹²As per art. 88 from the Constitution of Romania

¹³As per art. 5 from Law no. 4/1991, issued by the Parliament and published in the MONITORUL OFICIAL No. 5 dated January 12th, 1991

¹⁴As per art. 8 from Law no. 4/1991, issued by the Parliament and published in the MONITORUL OFICIAL No. 5 dated January 12th, 1991

¹⁵As per art. 9 from Law no. 4/1991, issued by the Parliament and published in the MONITORUL OFICIAL No. 5 dated January 12th, 1991

- the proportion of experts from the business environment had to be higher with at least one more member than of the experts in other fields, but not to exceed 60% of the total number of experts in order not to obtain favorable data only for the business environment;
- the targeted SMEs in both countries, with links to the business and legal Romanian environments;
- the academic experts, even if they had direct knowledge of the Romanian legal background, assessed using the Delphi method, the state power and role given by the Romanian laws ;
- the Romanian experts reviewed the internal factors of the SWOT matrix, namely the strengths and weaknesses of powers in Romania and foreign experts analyzed the opportunities and risks making powers of the Romanian state in the EU context..

In the first phase, each working group from each country, in addition to having legal knowledge also had knowledge of: production management, macro and micro economic, finance company, controlling, marketing, human resource management, enterprise management, which helped SWOT matrix formation, as shown below.

These experts were considered representative for our study, following that in a next phase to increase the area of research, including other experts in other areas such as: social, philosophical, etc., this matrix is a continuous improvement.

This article contains some of the SWOT analysis which was performed for the Romanian state, as an entity that acts in the community with the “products” and the targeted market segment. The presented analysis was performed taking into account the theme of the conference, namely legal economic implications.

| | | |
|-------------------------|---|--|
| Internal factors | Strengths | Weaknesses |
| | <ul style="list-style-type: none"> - Delimitation of powers; - Signed by the Government of the IMF and World Bank loans to cover budget expenses; - Bicameral Parliament as the sole legislative authority of the country; - Introduction of mediation as a method of conflict resolution; - Institutional Collaboration Agreement between President and Prime Minister ¹⁶; | <ul style="list-style-type: none"> - Government issuance of various regulations by ordinance; - Non-existent long-term vision and a correlation between socio-economic problems and changes to the Tax Code; - State privatization; - Lack of implementing rules and / or lack of motivation of local public administration in fines for environmental protection especially in rural area; - Reorganization of administrative - territorial; |
| External factors | Opportunities | Threats |
| | <ul style="list-style-type: none"> - Accession to the Schengen area and establishing the rule of law and independence of judiciary. - EU funding programs for projects that promote the use of renewable energy; - Cheap labor and highly skilled compared to euro area countries zin; - Geo-strategic position in the EU; | <ul style="list-style-type: none"> - Romania's accession to the "Treaty on Stability, Coordination and Governance in Economic and Monetary Union" with effect from 1 January 2013; - Lack competitivatatii Romanian products for various reasons of marketing, management, PR, etc..; |

Fig. 1 – SWOT analysis for the Romanian state, as an entity at Community level (reduced version)

¹⁶ „Institutional Collaboration Agreement between President and Prime Minister“, available online at the address <http://www.politicaromaneasca.ro/files/documente/acordul-Basescu-Ponta.pdf> accessed on 02.10.2013.

The purpose of the SWOT analysis is to analyze and highlight the strengths and minimize the effect of state weaknesses. Meanwhile, the state must take into account the opportunities that it offers the community and take advantage of them, minimizing the possibility of risks that may negatively influence the development needs of the state in community.

In this respect we formulate four types of strategies that result from the analysis of the four parts of the figure above, namely:

- a) **SO Strategy** (strengths - opportunities), is based on emphasizing strengths to maximize opportunities and can be formulated in the following sense, the shorter version: "Parliament and the government role can support youth work in the Community by implementing laws and educational programs and the facilitation of business conditions for European companies in the field of acting or activity as an important part and logistics department. Take money from the World Bank and the IMF and the law fixed completion time data, we can build the infrastructure / roads that use cheap labor in Romania, part of the energy costs being subsidized by the EU through projects that promote the use renewable energies. "
- b) **WO Strategy** (Weaknesses - Opportunities), is based on eliminating weaknesses and maximizing opportunities can be formulated in the following way, in shorter version: "Schengen accession and establishment of the rule of law and independence of the judiciary can facilitate and methodological reform law enforcement privatization and the creation of new jobs in the Ministry of Environment and Climate Change. Geo-strategic position, along with funding from EU programs can facilitate the administrative-territorial reform / regionalization based energy production from renewable energy sources such as hydro, solar, wind, geo-thermal. "
- c) **ST Strategy** (strengths - risk), is based on emphasizing strengths to minimize or even eliminate the risks and can be formulated in the following sense, the shorter version: "Parliament with the Government and the National Bank can achieve macroeconomic stability strategy to be implemented at national level by clear laws so that the national economy to be encouraged, and the administrative functions, especially those of the National Agency for Fiscal Administration, to be more efficient."
- d) **WT Strategy** (Weaknesses - risks), is based on eliminating weaknesses with minimization and can be formulated in the following sense, the shorter version: "Maintaining trade relations with EU states and the search for new sources of revenue to the state budget to counteract the effects of future weaknesses in conjunction with the risks coming from the external environment of the state. "

This analysis is similar to a company, analyzing internal and external factors, requires a more detailed analysis than we could expose in this article, each of the strategies are made and supported in part by specific documentation. "The company" the state in our case, we need to be competitive in the market and to maintain, if not somehow increase their profit margin, not only from the sale of "goods", especially as they impact have on consumers. Consumers are in our view, all Romanians and foreigners living in Romania or doing business with Romania. Here by "buying products", namely by making laws issued by the Government and approved by Parliament and promulgated / signed by the President and the acceptance of living conditions, work, business, health, safety, social security, freedom of expression and opinion, etc., in turn, can influence other Europeans (as a benchmark), drawing them in Romania and making the legal system and economic default novel (which is in turn governed by the fundamental law, the law of public finance and budgetary responsibility tax), a role model at EU level to increase the state can thus "profit margin".

4. Conclusions

As a conclusion to the above mentioned it can also be mentioned that we are in the presence of a collaboration of the state structures in achieving the will of people. This collaboration involves: clearly defined competencies by the Constitution, organizational and functional autonomy, mutual

control without interference, constitutional guarantees to fulfill mandate and respect for the citizens' rights.

The authors presented a SWOT analysis of the implementation of legal and economic point of view of the Romanian state within the European Union and presented some strategies that emerge from a series of hypothetical scenarios on the vision of economy and of the Romanian state as a juridical personality in the European Union.

The state powers elected through direct and indirect vote controlled by the the citizens of Romania, must adapt to the environment where the community as a opened business environment, interact with other competitors who want to increase in any way the profit margin.

In the European Union of the the twenty-first century, of Robert Schuman, the powers of the Member States should be a bridge between the various currents of nationalism that may arise due to policy decisions at European federalism and the economic situation arising from the Community game with the U.S. and China.

We believe that the doctrine / political ideology is based on economic considerations and for this reason the role and decisions of the powers of the state must be geared towards attracting and supporting foreign and domestic business because it can positively or negatively influence the development of society and thus of politics . The economic growth is done through supporting and encouraging innovation both in the technological and economic field and the state powers must be a link between the national interests on the development of Romanian “products” and state integration in the development of the United States of Europe.

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