

## **PRESIDENT'S LIABILITY IN CENTRAL AND EASTERN EUROPEAN STATES. A COMPARATIVE STUDY OF THE CONSTITUTIONAL PROVISIONS**

**Rafał CZACHOR**

*ORCID ID:* 0000-0002-5929-9719

*E-mail:* [r.czachor@ujw.pl](mailto:r.czachor@ujw.pl)

*Affiliation:* Faculty of Social and Technical Sciences,  
Jan Wyzkownski University Polkowice, Poland

**Abstract:** Presidents, as heads of state, enjoy a special status and legal protection (immunities). Such protection is intended to ensure the full and independent exercise of presidential powers. However, the system of checks and balances provides legal instruments that may be applied when the President abuses their powers or seriously violates the Constitution. As a rule, these instruments of liability may lead to the president's impeachment. This paper focuses on the constitutional provisions governing presidential liability in Central and Eastern European states (Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia). This paper examines the legal foundations, procedures, and consequences of holding presidents accountable in these countries, drawing relevant conclusions.

**Keywords:** comparative constitutional law of Central and Eastern European states; accountability of state organs; liability of the President; impeachment; constitutional torts.

### **Introduction**

The accountability and responsibility of public authorities are crucial issues in a democratic state governed by the rule of law. Without an effective mechanism for enforcing responsibility, the law loses its significance as a regulator of social relations. Constitutional liability is a specific form of responsibility applicable to subjects defined in the

Constitution or other legal acts. It aims to protect constitutional values and norms.

As heads of state, Presidents enjoy special legal protection. At the same time, they are liable for violations of the law. In the case of serious violations, this liability is enforced through impeachment proceedings (Berger, 1974). Presidents of modern states traditionally enjoy immunities that protect them from civil and criminal liability, both under domestic and international law. This reflects the traditional view of the inviolability and non-accountability of monarchs. Immunities should not serve to extend the privileges of the President but rather to safeguard the office from baseless accusations or potential blackmail (Mistygacz, 2021, p. 79). However, the constitutions of modern states provide mechanisms for holding presidents accountable in cases of serious law violations. Three legal approaches are possible: a) an absolute immunity of the President and the lack of any liability during the term of office; b) presidential liability for a precisely defined catalogue of criminal offences; c) full liability of the President for all prohibited acts. The subject of presidential liability may include acts such as: a) violation of constitutional provisions (constitutional tort); b) a common crime.

The legal provisions limiting the immunity of the head of state reflect an effort to maintain a balance between the independence of public authorities and the principles of a democratic state governed by the rule of law. In such cases, the primary sanction is removal from office (impeachment). A model solution, which has been adopted in various forms by other states, is the impeachment process established in the United States Constitution. This procedure is characteristic of Anglo-Saxon parliamentarism, in which the lower house of the Parliament formulates and votes on the impeachment, while the upper house acts as a court adjudicating the case. While in the United States, impeachment can be applied to the President, in England, it is used regarding members of the government, as the British monarch enjoys complete immunity from prosecution.

Another model, widely adopted in contemporary Europe, is one in which the Parliament formulates an indictment against the President,

while the final decision is made by a special judicial body, most commonly the Constitutional Court. This situation should be viewed as an exception to the general principle of equality before the law and the enforcement of responsibility by ordinary courts. The *privilegium fori* reflects the special role of the President as the highest-ranking state official (a head of state).

Constitutional liability differs from criminal or administrative liability not only in terms of the range of subjects it applies to, but also in its purpose. It is not solely intended to punish violations of the law but, above all, to protect the constitution as the supreme legal act and the basis of the state's political system. Therefore, the mechanisms of constitutional liability are of an exceptional nature. Their role is not only to impose sanctions on the incumbent but also to restore constitutional balance and reaffirm the primacy of the constitution as the basis for the functioning of all public authorities.

Overall, presidential liability constitutes a special form of responsibility borne by heads of state for violations of the constitution or statutory laws committed in connection with the exercise of their office. Other prohibited acts do not fall under a specific procedure for presidential accountability and are thus exempt from liability. This primarily means that the President does not bear responsibility for political activity, including decisions or public statements. In this regard, presidential immunity aligns with the immunity granted to members of parliament.

Moreover, the President, like members of parliament, holds a representational mandate and acts as an expression of popular sovereignty (van der Hulst, 2000, p. 6). Properly constructed provisions on presidential accountability serve to realise the principles of a democratic state governed by the rule of law. However, in authoritarian states, such mechanisms often function merely as a façade, concealing the true nature of a regime that violates the principle of the separation of powers (Grabowska, 2017, p. 154; Czachor, 2024, p. 14).

In the following text, attention will be focused on the constitutional provisions concerning the liability of Presidents in the countries of

Central and Eastern Europe (Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia). The aim is to identify the similarities and differences in this regard. The paper is primarily based on the constitutions of these states (Constitution of Bulgaria, 1991; Constitution of the Czech Republic, 1993; Constitution of Hungary, 2011; Constitution of Poland, 1997; Constitution of Romania, 1991; Constitution of Slovakia, 1992).

### **Liability of the Presidents in Central and Eastern European states**

In all the countries discussed, the presidents are the highest authority of state power, elected through universal, equal, direct, free, and secret ballot. The only exception is Hungary, where the unicameral parliament elects the President.

According to the Bulgarian Constitution, the President of Bulgaria is “the head of state, embodies the unity of the nation, and represents Bulgaria in international relations” (Art. 92.1 of the Constitution of Bulgaria). The President of the Czech Republic is briefly defined as “the head of state” (Art. 54.1 of the Constitution of the Czech Republic). The President of Hungary “expresses the unity of the Nation and safeguards the democratic functioning of the state system”; he is also the “Commander-in-Chief of the Hungarian Armed Forces” (Art. 9.1 and 9.2 of the Constitution of Hungary). The President of Poland is “the supreme representative of the Republic of Poland and the guarantor of the continuity of state authority. He ensures observance of the Constitution, safeguards the sovereignty and security of the state, as well as the inviolability and indivisibility of its territory” (Art. 126.1 and 126.2 of the Constitution of Poland). The President of Romania “represents the Romanian state, is the guarantor of national independence, unity, and territorial integrity.” Additionally, “he ensures observance of the Constitution and the proper functioning of public authorities” (Art. 80.1 and 80.2 of the Constitution of Romania). The President of Slovakia “is the head of the republic, represents it both externally and internally, and

through his decisions guarantees the proper functioning of constitutional bodies” (Art. 101.1 of the Constitution of Slovakia).

The powers of the Presidents primarily concern foreign policy, security, and states of emergency (Art. 99, 101 of the Constitution of Bulgaria; Art. 62–63 of the Constitution of the Czech Republic; Art. 9 of the Constitution of Hungary; Art. 133–134 of the Constitution of Poland; Art. 91–93 of the Constitution of Romania; Art. 102.1 of the Constitution of Slovakia). In the case of Bulgaria, the President is supported in his activities by the Vice President (Art. 92 of the Constitution of Bulgaria). The Vice President is elected simultaneously and under the same conditions as the President of Bulgaria (Art. 94).

The legal basis for the liability of the President and Vice President of Bulgaria is provided in Article 103 of the 1991 Constitution. In the case of high treason or a violation of the Constitution, one-fourth of the members of the unicameral parliament may bring an indictment. If the indictment is supported by two-thirds of the members of the chamber, the Constitutional Court reviews the accusation within one month. If the Court determines that the President or Vice President has committed the alleged act, their mandate is terminated.

According to Article 65.2 of the Constitution of the Czech Republic, the President may be held accountable only for high treason. The Senate brings the indictment; the upper house of the Czech Parliament subsequently adjudicates the case, and the Constitutional Court reviews the decision. The Court may rule to remove the President from office and to disqualify them from running for office in the future.

The legal basis for the liability of the President of Hungary is provided in Article 13 of the 2011 Constitution. If the President deliberately violates the provisions of the Constitution or other legal acts in connection with the performance of his duties, or if he intentionally commits a criminal offence, a motion to remove him from office may be submitted by one-fifth of the total number of members of parliament. Proceedings are initiated if two-thirds of the voting members of parliament support the motion. The vote is conducted by secret ballot. From the moment the proceedings are initiated, the President is

suspended from performing his duties. The Constitutional Court conducts the proceedings. If the Court finds the President guilty, it may remove him from office.

The legal basis for the accountability of the President in Poland is provided in Article 145 of the 1997 Constitution. The President of Poland may be held accountable for violations of the Constitution and statutes committed in connection with the performance of official duties, as well as for ordinary criminal offences. The procedure for bringing charges against the President is initiated by at least 140 members of the National Assembly—that is, a joint session of both chambers of parliament. In order to bring the President before a tribunal, a two-thirds majority of the total number of National Assembly members is required.

The body authorised to conduct the proceedings is the State Tribunal (Trybunał Stanu). It is a unique institution in the Central and Eastern European region, established to judge the highest state officials. Besides Poland, similar institutions have existed in Greece and Denmark. The State Tribunal's existence is governed by the Polish Constitution and the Act on the State Tribunal of 1982 (Dz.U. 1982 nr 11 poz. 84, as amended).

The Tribunal consists of a chairperson, two deputy chairpersons, and 16 members. They are elected by the Sejm (the lower house of parliament) for the duration of its term, from outside the deputies of the Polish parliament. They are not required to hold judicial qualifications. In addition to the President of Poland, those subject to constitutional accountability before the State Tribunal include: the Prime Minister, members of the Council of Ministers, members of both houses of parliament, the President of the National Bank of Poland, the President of the Supreme Audit Office (Najwyższa Izba Kontroli), and other high-ranking officials.

Offences considered by the State Tribunal concerning the President of Poland include: violation of the Constitution, violation of statutes, and criminal offences (both those committed in connection with the office of the head of state and others). Scholars view the lack of judicial qualifications among members of the State Tribunal as a questionable

aspect that undermines the judicial nature of this body (Chodorowska, Kuczma, Michalska, 2024, p. 148). However, to date, no President of Poland or other official has been convicted by the State Tribunal.

The legal basis for the accountability of the President of Romania is provided in Articles 95 and 96 of the 1991 Constitution (as amended). The President of Romania may be held accountable for serious violations of the Constitution as well as for high treason.

In the first case, the impeachment procedure applies: the President is suspended from office by a majority vote of both chambers of parliament in a joint session. The vote is held at the request of one-third of the members of parliament. If the motion is adopted by parliament, a national referendum on the removal of the President must be held within 30 days. In the case of high treason, a motion may be submitted by a majority of parliamentarians and must be approved by a two-thirds majority of both chambers of parliament. From the moment of indictment, the President is suspended from office, and the proceedings are conducted before Romania's highest court—the High Court of Cassation and Justice (Înalta Curte de Casație și Justiție). The President is removed from office on the day the court's verdict becomes final and binding.

The Constitution of Slovakia provides for the possibility of removing the President for political reasons, as well as in cases of intentional violation of the Constitution or treason. In the first case, a national referendum is held upon a motion supported by three-fifths of the members of the unicameral parliament. If more than half of the eligible voters do not vote in favour of the President's removal, the parliament is dissolved, and its term begins anew (Articles 106.1–106.4 of the Constitution of Slovakia). The President bears constitutional responsibility as outlined in Article 107 of the Constitution. In the case of an intentional violation of the Constitution or treason, at least three-fifths of the deputies must vote in favour of initiating the removal procedure. In such a case, the parliament submits the motion to the Constitutional Court, which rules on the matter in a full session. If the President is

found guilty, they lose office and are barred from seeking it again in the future.

## **Conclusions**

In conclusion, in all Central and Eastern European countries, the Presidents constitute executive authorities with limited powers. Above all, they serve as heads of state, embodying the unity of the nation and the authority of public institutions. Their powers in the areas of foreign policy and security are shared with the governments. They are afforded immunity, which applies to both civil and criminal matters.

In all Central and Eastern European states, presidential accountability mechanisms reflect commitments declared in their Constitutions to protect the rule of law and democratic principles of governance. Simultaneously, they provide for immunity protection granted to the Presidents. This raises questions about the balance between legal protection and accountability.

The immunity typically encompasses both civil and criminal liability. It is designed to ensure the stability of the office and protect it from potential misuse of legal mechanisms for political purposes. However, the immunity is not absolute—fundamental laws include provisions under which it may be lifted, allowing the president to be held accountable for their actions.

The constitutions of all countries in the region contain provisions regarding the lifting of presidential immunity and the possibility of holding the president accountable. This typically applies to the most serious offences, including violations of the Constitution and high treason. The procedure is initiated by groups of parliamentarians. Any other state authority cannot initiate it.

Decisions regarding the guilt or innocence of the President are made by a judicial body independent of the parliament. As a rule, this is the Constitutional Court, with two exceptions: in Poland, it is the State Tribunal, and in Romania, it is the High Court of Cassation and Justice. If a violation of the law is confirmed, the authorised body may remove

the president from office, thus shortening the term and triggering a new presidential election.

A notable concern is whether the existing procedures effectively discourage abuse of power, or merely serve a declaratory function. Procedural thresholds and the need for political support of the procedure of the President's removal from office condition the credibility of the whole procedure.

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