

The financial independence of the Romanian Parliament¹

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Abstract

Romania⁴ is a unitary state and constitutional democracy⁵ organised under the principle of the separation of powers between the three branches of government – legislative, executive, and judicial – and the checks and balances between them. Since its creation in 1862, the Romanian Parliament has traditionally been a bicameral legislature, except during the communist era, a period during which it only had a single house. The desire to put an end to the top-down policies that characterised the communist era was an impetus for Romanian voters to return the legislature to its former bicameralism by recasting the Romanian Parliament as a legislature composed of two houses, the House of Representatives and the Senate.⁶ Senators and representatives are elected to four-year terms by universal suffrage in free, secret, and equal popular elections. Both representatives and senators are elected via the same voting mechanism, that is, by party-list proportional representation.⁷ The manner in which the two houses are organised and function, as well as their funding, is set out in the Constitution and in a number of legislative and regulatory texts. In a first part (1), this article will analyse the rules for creating, implementing, and auditing the budgets of the two houses – which are the result

¹ The French version of this article was published under the direction of Professors Michel Lascombe et Aurélien Baudu in the French magazine *Gestion et finances publiques*, no. 5, Sept-Oct. 2018, pp. 78-83. Moreover, this article was the subject of an intervention in the framework of an international symposium on "Public funding of parliaments in Europe: financial autonomy in debate (s)", organised by the EU Court of Auditors, Sciences PO Lille and the University of Lille, Luxembourg - Court of Auditors of the EU, on 22 and 23 March 2018.

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⁴ Romania neighbours Bulgaria to the south, the Republic of Moldova to the east, Ukraine to the northeast, Hungary to the northwest, Serbia to the southwest, and the Black Sea to the southeast. Its territorial area measures 238,391 km² (92,043 sq. mi.), and it is home, according to the latest census data from 2011, to a population of 20,121,641 inhabitants. The country's official language is Romanian (a Romance language). Its currency is the "leu" (plural: lei): 1 euro = 4.5 lei (Condurache G., *Le pouvoir local roumain*, 2013, 92 pp., ISSN 2112-5953, online at http://www.ola-europe.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_roumanie_fr_2013.pdf&t=1458126144&hash=9e2729abfe2c954c94e43397bea6d1f4, consulted on 1.09.2018)

⁵ Article 1 of the Romanian Constitution of 8 December 1991 as amended by Law 429 of 23 October 2003 (amendment approved by a national referendum held on 18-19 October 2003).

⁶ After bitter debate as to whether Romania's Parliament should be unicameral or bicameral among members of the Constitutional Assembly tasked with drafting Romania's first post-communist constitution, champions of a bicameral parliament were successful in pleading their cause. Article 58, Paragraph 2 of the Constitution of 8 December 1991 provides that "the Parliament is composed of the House of Representatives and the Senate".

⁷ After the December 2016 elections, Parliament numbered 465 members (329 representatives and 136 senators), down 123 from December 2012 (588 members of Parliament – 394 representatives and 176 senators).

of a patchwork of laws and regulations governing the Romanian Parliament – setting the stage, in a second part (2) for the evaluation of the quantitative change in the two houses' budgets, as well as the different ways of overseeing their spending.

Keywords: *Romanian Parliament, financial independence, budget, financial law.*

JEL Classification: K10, K34

1. The multifarious framework of budgetary rules governing the Romanian Parliament⁸

A first section (1.1) will show that the constitutional and statutory enshrinement of the Parliament's organisational, administrative, and financial independence has not prevented Romanian lawmakers from subjecting the budget implementation of the two houses to a dual oversight mechanism, which will be discussed in a second section (1.2).

1.1 The constitutional and legal scope of threefold independence

The organisational and administrative independence of the two houses – reflected, among other things, by their constitutionally recognised right to establish their own rules governing their organisational structure and manner of operation, provides a guarantee of financial independence (1.1.1.) and of independence in drawing up and implementing the two houses' budgets (1.1.2.).

1.1.1 Organisational and administrative independence: a bedrock for financial independence

Article 64 of the Romanian Constitution sets out the general framework both for the organisational and administrative independence (“each house may freely determine the rules governing own its organisation and operation”) and for the financial independence (“financial resources are specified in the budgets approved individually by each house”) of Parliament. Consequently, the rules governing the implementation and boundaries of this independence can be found, among other places, in the provisions of the Romanian House and Senate Rules.

The general framework establishing the organisational independence of the houses is found in Article 64, Paragraph 2 of the Constitution. It provides that once elections for representatives and senators have been authenticated, each house must appoint a president⁹ and a Permanent Bureau. Each Permanent Bureau is composed of 13 members, including the president of the house, four vice-presidents, four secretaries, and four quaestors. Under Article 21 of the Senate Rules and Article 16

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⁹ The presidents of the House of Representatives and Senate serve for the full term of office of both houses.

of the House Rules, parliamentary groups are entitled to the financial resources needed for the secretarial and personnel costs required for their activities to take place under proper conditions, in addition to resources for transport and logistics.

In addition, the Institute of the Romanian Revolution of December 1989 (IRRD) was created and operates under the authority of the Senate, whereas the Romanian Institute for Human Rights (RIHR) operates under the authority of the House of Representatives.¹⁰

The Senate receives most of its funding from the national government, along with some funding from its own resources, such as revenues earned through its “Centre for Organizing and Promoting Events”;¹¹ the House of Representatives, on the other hand, is entirely funded by the national government.

1.1.2 Independence in procedures for setting and implementing budgets

Romania’s budget policy complies with EU requirements for budgetary oversight and avoiding excessive public deficits.¹² With regard to the House of Representatives and Senate budgets, the provisions of Article 34, Paragraph 2 of Law 500 of 11 July 2002, along with the provisions of the Romanian House and Senate Rules, provide that each house, after consulting with the Government, independently determines and approves its own budget. In this regard, the Senate draft budget is prepared by four quaestors, who then, under the terms of Article 40 of the Senate Rules, must send it to the Permanent Bureau for its opinion. The Permanent Bureau then sends the draft budget to the Senate floor for a vote by the senators in full session. In contrast, the House of Representatives draft budget is prepared by its Permanent Bureau, which, before sending it to the House floor for a vote by the House of Representatives in full session, must seek the endorsement of the House Budget, Finance, and Banking Committee.¹³

Once they have approved and passed their budgets, the houses send them to the Government for inclusion in the overall national-government budget. The budget of each house is therefore part of the national government’s overall budget, which is approved in a joint session of the Parliament. Even if the Government theoretically lacks the authority to alter the budgets proposed by the two houses, in

¹⁰ The amount of the House of Representatives’ 2018 budget earmarked for the RIHR is 1,449,000 lei (€322,000).

¹¹ Expenditures for the 2018 financial year financed by own-source revenues amount to a mere 642,000 lei (€142,666).

¹² Boudet (J.-F.) and Condurache (G.), *A critical debate on the budgetary framework of Bulgaria and Romania*, in a special issue of the journal „Gestion et Finances Publiques” dedicated to the publication of the proceedings of the International Symposium on the Golden Rule in Public Finance in Europe and its Impact on National Budget Systems, organised by the University of Lille and the Lille Regional Institute of Administration, October 2014, pp. 21-27.

¹³ The Budget, Finance, and Banking Committee is one of the 21 permanent committees of the House of Representatives under Article 60 of the House Rules.

practice, the Government's real influence – one might even say control – is far from insignificant.¹⁴

The reality is that the legal and constitutional enshrinement of the Romanian Parliament's financial independence in creating, approving, and implementing its budget is not a synonym of independence free from any form of oversight of its spending.

1.2 The framework for dual oversight of spending

Considering that personnel costs represent a full $\frac{3}{4}$ of a given house's budget expenditures,¹⁵ an overview of the rather strict framework governing expenditures related to compensation for senators' and representatives' constituency-related and legislative duties (**1.2.1.**), will make it possible to better understand the rules governing the oversight of – among other things – the budget implementation of the two houses (**1.2.2.**).

1.2.1 The framework governing constituency-related expenditures and compensation for legislative duties

Personnel-related expenditures for the two houses fall into two main categories. The first (**A**) encompasses expenses related to MPs' representational duties in their constituencies, and the second (**B**) encompasses the compensation paid to those holding the office of senator or representative.

A. Constituency-related expenditures and their justification

For the purposes of carrying out their representational duties in the electoral districts they represent, senators and representatives receive a fixed allowance from the budget of the house to which they belong. The total amount of this allowance is determined by a decision at a joint meeting of the two houses' bureaus, in accordance with available budgetary resources. In this regard, although Article 38 of the Status of Representatives and Senators Act 2006 (Law 96/2006) does not place a maximum limit on the amount of this allowance, it does establish a minimum amount, providing that the "amount of the fixed allowance may not be less than the 1.5 times the gross amount of compensation paid to the representative or senator".¹⁶ In light of this, within the limits of this allowance, Paragraph 2 of the

¹⁴ On this topic, see the remarks of Verginia Vedinas in Part II of this article.

¹⁵ Of the total 195,336,000 lei (approximately €43,408,000) Senate budget approved for 2018, 144,967,000 lei (€32,214,888) represents personal expenditures related to the exercise of their representational and legislative duties. Similarly, in the House of Representatives, 392,800,000 lei (approximately €93,622,222) of the total 2018 budget of 421,300,000 lei (approximately €87,288,888) was earmarked for expenditures related to the exercise of their representational and legislative duties.

¹⁶ For example, the gross monthly compensation for each senator was about 7,700 lei (approximately 1,700 euros) in 2017. It is scheduled to increase (to about 13,050 lei, or €2,900, per month) when

same article entitles senators and representatives to jointly or separately create parliamentary offices in their constituencies.¹⁷ The fixed allowance allocated to the senator or representative covers rent for the facilities used for constituency offices,¹⁸ maintenance costs, the salary paid to the employees working there, and other expenditures for the organisation and operation of these offices.¹⁹

Furthermore, senators and representatives performing parliamentary work who do not reside in Bucharest or in the county of Ilfov are entitled, under the terms of Article 41, Paragraph 1, to a daily travel allowance equal to 2% of the gross monthly compensation set for each representative or senator. In addition to the daily travel allowance, Paragraph 2 of the same article entitles members to a daily housing allowance out of the House of Representatives and Senate budget, proof of which can be furnished via a signed affidavit.

In addition to expenses for senators' and representatives' representational duties in their constituencies, expenses for legislative duties must also be taken into account.

B. Compensation and expenditures for legislative duties and their justification

Under the terms of Article 42 of Status of Representatives and Senators Act 2006 (Law 96/2006), representatives and senators receive monthly compensation for the entire duration of their term of office, the amount of which is determined by law.²⁰

the new Public Sector Remuneration Act (Law 153 of 28 June 2017) enters into force. The full array of its provisions will only take effect at the close of 2018.

¹⁷ The same possibility exists for members of the lower house of Parliament who represent national minority organisations.

¹⁸ When local governments are unable to make such spaces available for senators and representatives, they can be rented from other private individuals or companies, provided that they are not owned by the representatives and senators themselves or by their families, up until the 3rd degree of kinship; or, if they are companies, provided that the representatives and senators own no shares in the company.

¹⁹ The budget allocated to organising and operating a given electoral district considerably varies from one district to the next, often due to the size of the county, its population, and, consequently, the number of representatives. According to the information available on the Senate's website, the highest-spending senate districts in November 2017 included: Bucharest (Romania's capital), with a monthly total of 157,053 lei (€34,900), composed of 88,420 lei (€19,648) in personnel costs and 156,965 lei (€34,881) in goods and services, or Jassy, with a total of 122,192 lei (€27,153), composed of 33,031 lei (€7,340) in personnel costs and 89,161 lei (€19,813) in goods and services. On the opposite end of the spectrum, the lowest-spending district is Ilfov, with a monthly total of 41,528 lei (€9,228), which includes 26,841 lei (€5,964) in personnel costs and 14,687 lei (€3,263) in goods and services.

²⁰ The net compensation for a senator in November 2017 was between 9,153 lei (€2,034) and 12,106 lei (€2,690), <https://www.senat.ro/Financiar.aspx>, consulted 28 February 2018.

In addition to their monthly salaries, which are augmented by travel²¹ and housing²² allowances, Article 44 also entitles senators and representatives to so-called “protocol expenses” (gifts, business lunches/dinners, etc.). To this end, the House of Representatives Presidential Fund and the Senate Presidential Fund are annually approved in the budget of each house.²³ In addition, for their entire term of office, senators and representatives benefit from free rail transport,²⁴ and can also receive an official vehicle or, in lieu of an official vehicle, an allowance whose amount is set by the Permanent Bureaus in accordance with, among other factors, the available budgetary resources of each house.²⁵ Transport costs are covered by the budget of the house in question, with a signed affidavit from the representative or senator serving as probative evidence of the expenditure incurred. However, the budget implementation of both houses of the Romanian Parliament remains subject to two forms of oversight – internal and external.

1.2.2 Internal and external oversight of budget implementation

Under the legal and constitutional framework in place in Romania, the budgets of both houses are subject to two forms of oversight: internal and external. Internal oversight for the House of Representatives is carried out by the quaestors of the Permanent Bureau, who are responsible at the same time for overseeing asset management and the efficacy and performance of the different offices of the House of Representatives, as well as for carrying out financial auditing of the House’s expenditures.²⁶ For the Senate, the provisions of Article 41 of the Senate Rules entrust the quaestors with proposing the draft budget and the balance sheet for the prior financial year, as well as with asset management and internal financial auditing of the Senate’s expenditures.

In addition to internal oversight, Romanian law also provides for external auditing by the Court of Audit, under the terms of Article 140 of the Constitution and the Court of Audit Act 1992 (Law 94 of 8 September 1992). As such, the Court of Audit oversees the drafting of each house’s budget and the use of national and public-sector funding. Consequently, pursuant to Article 25 of the Court of Audit Act 1992, the Court of Audit has exclusive jurisdiction to oversee, among other things, the House of Representatives’ and Senate’s budget implementation.

²¹ In November 2017, senators’ travel costs to Bucharest for legislative activities totalled 389,412 lei (€86,536), while travel costs to electoral districts totalled 8,091 lei (€1,798). Representatives’ transport costs in December 2016 reached a total of around 406,784 lei (€90,396).

²² The total amount of which, for November 2017, reached 491,685 lei (€109,257) for senators, compared to 772,923 lei (€171,760) in lodging costs for representatives in December 2016.

²³ Each year, the president informs the Permanent Bureau of the House in question of the amounts actually spent during the course of the prior year.

²⁴ Article 45, Paragraph 1 of the Status of Representatives and Senators Act 2006.

²⁵ Article 45, Paragraph 2 of the Status of Representatives and Senators Act 2006.

²⁶ Article 37 of the House Rules.

An analysis of the quantitative data regarding changes in spending by the two houses of Parliament will render it possible to better grasp the reality of the Romanian Parliament's financial independence and its limitations.

2. The financial independence of the Romanian Parliament in practice (2016-2018)²⁷

A first part (2.1.) will examine the limitations of the financial independence resulting from the implementation of the rules governing the procedures for adopting the budgets of the Romanian Parliament's two houses, followed by a second part (2.2.) on the specificities of Court of Audit's oversight of Parliament's budget implementation.

2.1 Procedures for budget adoption and limitations to the principle of financial independence

In line with the principle of financial independence, the Senate and House of Representatives each adopt their own budget in accordance with their rules.²⁸ After adopting their budgets, they are required to send them to the Government for inclusion in the national government's budget, which is in turn sent to Parliament for approval in a joint session.

The result of the foregoing is thus:

- a) both Houses of Parliament have full independence in determining their own budget;
- b) this budget is then sent to the Government, though this is only done to allow it to be integrated into the national government's budget.

This means, were one to subscribe to a literal, logical-mathematical interpretation, that the role of the Government is confined to taking note of the budget determined by each house and simply integrating it into the national government's overall budget. Nowhere is it stated that the Government has any say in the content of either house of Parliament's budget – which more often than not amounts to budget reductions, rather than budget increases. Yet in reality, the Government, in its exclusive, all-powerful decision-making role, sometimes does exercise discretionary authority in its budgetary actions – such as, for example, when it attempts to adjust the amount of different budgets, such as those of the two houses of Parliament.

This article's quantitative analysis takes into account the period from 2016 to 2018, considering that each house of Parliament approves its own budget annually by a majority vote of its members.²⁹

²⁷ Written by Verginia Vedinas, Professor at the Faculty of Law of the University of Bucharest.

²⁸ Article 21 of the Senate Rules and Article 25 of the House Rules.

²⁹ Article 76, Paragraph 2 of the Constitution provides that ordinary laws and parliamentary resolutions, aside from those concerning the House and Senate Rules or the rules governing joint sessions of the two houses of Parliament, must be adopted by a majority in both houses.

For the Senate, the situation is as follows:

- Resolution no. 76 of 23 November 2015 on the 2016 budget;³⁰
- Resolution no. 122 of 27 January 2017³¹ on the approval of the 2017 Senate budget;³²
- Resolution no. 122 of 27 November 2017 on the approval of the 2018 Senate budget.³³

A comparative analysis of the budget over the three-year period shows that the 2017 budget was 45,000 lei (€10,000) lower, probably because it was passed during an election year. It can likely be surmised that Members of Parliament showed a certain degree of prudence and responsibility in drawing up the budgets sent to the Government formed in the wake of the elections. However, this attitude seems to have been abandoned in the 2018 budget, which calls for 75,000 lei in additional spending compared to 2017.

For the House of Representatives budget, the situation is as follows:

- the 2016 House of Representatives budget was approved by Resolution no. 118 of 14 December 2015;³⁴
- the 2017 House of Representatives budget³⁵ was approved by Resolution no. 6 of 16 January 2017;
- the 2018 House of Representatives budget³⁶ was approved by Resolution no. 89 of 29 November 2017.

The analysis of the House of Representatives' budgets for the last three years is similar to the one for the Senate, in that while in 2017, the total budget fell by nearly 105,000 lei, in 2018 it rose again by 174,000 lei. The House of Representatives budget is also nearly twice that of the Senate budget. This

³⁰ The 2016 Senate budget, drawn from the overall national budget, amounted to 165,919,000 lei (€36,870,888), broken down into 159,119,000 lei (€35,359,777) in primary expenditures and 6,800,000 lei (€1,511,111) in capital expenditures.

³¹ 2017 was an election year in Romania, and as such the budget was not adopted until 2017 (after authentication of December's parliamentary elections and the formation of a new Government in January 2017).

³² The 2017 Senate budget, drawn from the overall national budget, was 121,576,000 lei (€27,016,888), broken down into 115,829,000 lei (€25,739,777) in primary expenditures and 5,747,000 lei (€1,277,111) in capital expenditures.

³³ The 2018 Senate budget, drawn from the overall national budget, amounts to 195,336,000 lei (€43,408,000), broken down into 188,681,000 lei (€41,929,111) in primary expenditures and 6,655,000 lei (€1,478,888) in capital expenditures.

³⁴ The 2016 budget for the House of Representatives, drawn from the overall national budget, was 340,772,000 lei (€75,727,111), broken down into 300,717,000 lei (€66,826,000) in primary expenditures and 38,046,000 lei (€8,454,666) in capital expenditures.

³⁵ The 2017 budget for the House of Representatives, drawn from the overall national budget, was 340,109,000 lei (€75,579,777), broken down into 322,615,000 lei (€71,692,222) in primary expenditures and 11,494,000 lei (€2,554,222) in capital expenditures.

³⁶ The 2018 budget for the House of Representatives, drawn from the overall national budget, amounts to 421,300,000 lei (€93,622,222), broken down into 392,800,000 lei (€87,288,888) in primary expenditures and 28,500,000 lei (€6,333,333) in capital expenditures.

difference can be explained by the number of representatives in the lower house, which has more than twice as many members as the Senate.³⁷

As it has already been noted, the Government does not merely “content itself” with integrating the two budgets into the national government’s overall budget bill before sending it to Parliament for approval. Ordinarily, the government adjusts the proposed amounts, more often than not cutting them – even if, during its various modifications to the budget over the course of the year, the Government often reverses its course on reducing Parliament’s funding. These circumstances are, at a minimum, worthy of criticism, because in order to properly plan and organise its activities for a given year, any public or private legal entity must have an idea of the amount of funding at its disposal from the very start of the year. This is why it is preferable for budget adjustments to be exclusively used to cover unforeseen expenses, rather than to cover expenses that were foreseen in initial budgets but deliberately struck from them for reasons that it is difficult to grasp and/or accept.

As for the public perception of expenditures used to cover the day-to-day operation of Parliament, as well as the expenditures of each of its members, it is obviously negative, owing, among other reasons, to citizens’ negative perception of the status of members of Parliament.

2.2 Oversight of the creation and implementation of Parliament’s Budget

Article 61 of the Constitution’s classification of Parliament as the supreme representative body of the Romanian people does not imply, ipso facto, that its activities are free of all forms of oversight. The actual conditions for the yearly implementation of the budget – and, in the end, for public spending – are subject to the oversight of the Court of Audit.

Under Article 140, Paragraph 1 of the Constitution, the constitutional remit of the Court of Audit is to “exercise control over the formation, administration, and use of the financial resources of the State and public sector”. Article 25, Paragraph 1 of the Court of Audit Act 1992 therefore logically provides that “oversight of budget implementation for the House of Representatives and Senate [...] is the exclusive remit of the Court of Audit”. As such, Parliament is one of the institutions whose budget implementation is subject to the exclusive oversight of the Court of Audit.

The Court of Audit carries out an ex post facto review of the prior financial year. Each year, the Court of Audit presents Parliament with the public report for the financial year of the year prior to the one in which a review was just performed.

The latest public report by the Court of Audit, published in 2016, highlights certain “errors and shortfalls” in the Senate’s activities, “primarily in relation to the provision of certain guaranteed employee rights, planning for public

³⁷ The Romanian Parliament currently numbers 329 representatives and 136 senators.

expenditures, the documents required to authorise some expenditures, as well as the obligation to pay taxes for the economic activities of the Centre for Organizing and Promoting Events”.³⁸ For the House of Representatives, the Court of Audit observed “certain shortfalls with no significant impact on its financial affairs in 2016. The Court of Audit’s observations concern non-compliance with income-tax-related provisions of the Tax Code, the lack of a distinct inventory of national-government property in 2016, and non-compliance with the full body of legal decisions related to the organisation, accounting, and transmission of fiscal and legal liabilities.”³⁹

The conclusion that can be drawn from the Court of Audit’s report is that, while certain shortfalls – such as non-compliance with certain income-tax and sales-tax requirements – were observed in both houses’ activities, broadly speaking, the budget implementation of both houses of Parliament is satisfactory, and the issues discovered are of little significance.

In reality, they are due more to a failure to adapt to changes in legislation than to purposeful violations of the law.

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³⁸ The Romanian Court of Audit, Public Report, 2016, p. 53.

³⁹ *Ibid*, p. 54.