A CENTURY OF CONSTITUTIONALISM

Cornelia Beatrice Gabriela ENE-DINU[*]

Abstract

In the exceptional framework at the end of the First World War, followed by the union with the Old Kingdom of the Romanian provinces of Bessarabia, Bucovina and Transylvania, the question of a new constitution was raised, to reflect the new political, economic-social, ethnic and institutional conditions. The problem of national minorities had also become more complex, confessions had appeared that previously were not very important from a numerical point of view in the Old Kingdom (Greek-Catholic, Protestant, Catholic), and through the peace treaties Romania was obliged to guarantee their rights. After the war, until January 1922, there were no less than six governments, three of which were led by generals (Arthur Văitoianu, Alexandru Averescu, Constatin Coandă), who did not elaborate such a vast and complicated work. The situation changed with the coming to the head of the government, on January 19, 1922, of the well-known politician Ion I.C. Brătianu, who had the ambition to complete what he had started en 1914 without bringing it to fruition. Becoming prime minister, Ion I.C. Brătianu proposes to the king the organization of elections for the National Constituent Assemblies, a name that wanted to highlight both their representative character for the nation and their role in the construction of the state.

Keywords: *Constitution, civil rights, nation, state, democratic parliamentary regime, unitary national state, political parties.*

1. Introduction

In the matter of constitutional law, in the Kingdom of Romania, the Constitution remained in force from 1866 until 1923, when a new Constitution was adopted. It was promulgated on March 28 and published on March 29, 1923[1].

In the process of drafting the new constitution, it started from the texts of the 1866 Constitution, of which approximately 60% were taken over. That is why, in legal doctrine, it was stated that the Constitution of 1923 is only a modification of the one of 1866.[2] Enshrining the creation of the Romanian unitary national state, the Constitution stipulated that "Romania is a national state, unitary and indivisible" and that "the territory Romania is inalienable".

The constitution enshrined the democratic parliamentary regime[3], recognized the rights and freedoms of citizens, and established the principle of

[*] Lecturer, Ph.D., Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: cdinu@univnt.ro).

[1] Published in the Official Journal no 282 of March 29, 1923.

[2] C. Ionescu, *Dezvoltarea constituțională a României. Acte și documente 1741-1991*, C.H. Beck Publishing House, Bucharest, 2016, p. 529.

[3] I. Muraru (coord), A. Muraru, V. Bărbățeanu, D. Big, *Drept constituțional și instituții politice. Caiet de seminar*, C.H. Beck Publishing House, Bucharest, 2020, p. 66.

separation of powers[4] in the state.[5] According to the Constitution, the legislative activity was to be exercised by the king and the national representation (consisting of the Senate and the Chamber of Deputies), the executive by the king and the Government, and the judicial by the courts.

New provisions were introduced that stemmed from the treaties signed by Romania within the League of Nations.

This new fundamental law was imposed by the reality of the creation of the unitary national state, admitted, in principle, by all political parties. However, the parliament formed after the 1922 elections, as a constituent assembly, was harshly attacked by the opposition parties (National Party, Peasant Party, People's Party) who believed that they were unable to effectively participate in the drafting of the new fundamental law.

In art. 19 it was stipulated that the mining deposits, as well as the wealth of any kind in the subsoil, are the property of the state.

The Constitution also defended the interests of the financial banking system, guaranteed the equality of citizens before the law, regardless of class, individual freedom, the inviolability of the domicile, freedom of education, the press, and the writings. Many of these freedoms took on a formal character.

The Constitution also enshrined the principle of the supremacy of the law and the rule of law, establishing the way of organizing the control of the constitutionality of laws.[6]

The fundamental law of 1923 established the democratic parliamentary regime, recognized the rights and freedoms of citizens, representing a positive factor in the development of Romania.[7]

The third title includes the constitutional provisions that enshrined the separation of powers in the state, the legislative activity to be exercised by the king and the National Representation, the executive activity by the king and the Government, and the judicial activity by the courts.

The national representation consisted of the same two assemblies, respectively the Senate and the Assembly of Deputies.

The legislative initiative belonged either to the king or to one of the two assemblies.

The Assembly of Deputies was made up of deputies elected by Romanian citizens, organized by constituencies.

The Senate was composed of de jure senators and elected senators. Senators could be elected by Romanian citizens from the age of 40, with the right to vote, from the electoral constituencies fixed by law, by the members of the county and communal councils, of the chambers of commerce, industry, labor, agriculture, by the professors at every university in the country. De jure senators were part of clergy representatives (metropolitans, bishops), former heads of government, former ministers, former presidents of legislative bodies, former senators, and deputies.

The king had powers to sanction the laws, the right to convene the parliament, to

[4] For more about the separation of power, see E.E. Ștefan, *Drept administrativ Partea I, Curs universitar*, third edition revised, supplemented and updated, Universul Juridic Publishing House, Bucharest, 2019, pp. 27-32.

[5] E. Focşeneanu, *Istoria Constituțională a României 1859-1991*, Humanitas Publishing House, Bucharest, 1998, pg. 57-58.

[6] N. Popa, E. Anghel, C. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, third edition revised and supplemented, C.H. Beck Publishing House, Bucharest, 2017, p. 115.

[7] For more information, see E. Anghel, *Involvement of the Ombudsman Institution in the Mechanism of Constitutional Justice*, in CKS-eBook, 2021, pp. 559-563.

dissolve one of the two chambers, to appoint a new government.[8]

In the exercise of his powers, the king drew up regulations for the application of laws, appointed or confirmed public positions, could create new state positions, exercise command of the army, confirm military ranks, confer Romanian decorations, and had the right to mint coins.[9]

The Constitution provided for the creation of a Legislative Council, which formulated the bills to be debated in the National Representation.

According to the provisions of Chapter III, the executive power was exercised by the Government, in the name of the king. Ministers were appointed and dismissed by the king. The person of the king was inviolable, and the ministers were responsible for their activities.

The Council of Ministers was chaired by a president, appointed by the king and with the formation of the government.

Another innovation of the 1923 Constitution was the introduction of the control of the constitutionality of laws, which was to be exercised by the High Court of Cassation and Justice.

An innovative concept represented a principle of control of the legality of administrative acts.[10] Thus, the courts could censure documents issued by the state administration and oblige the state to pay compensations.[11]

A provision with important consequences was the one in art. 128, according to which "in case of state danger, a state of general or partial siege could be introduced".

The electoral system crystallized between 1917 and 1926, universal suffrage was introduced, and the first parliamentary elections were organized in November 1919.

A new electoral law was adopted in March 1926, which enshrined the right to vote and be elected, the conduct of elections, the structure of the Assembly of Deputies and the Senate.

The new electoral law ensured the interests of the big political parties, consecrating a comfortable majority in the Parliament, and removed the smaller political groups from the stage of political life.

This law replaced the principle of proportional representation with that of the first majority. This system was applied in the elections for the Assembly of Deputies and was based on the following rules: the totalization of votes for each party at the scale of the entire country; the party that obtained 40% of the total votes in the country benefited from a major premium (the first 50% of mandates); the remaining 50% of mandates are distributed proportionally to the number of votes obtained by all parties that received at least 20% of the total votes; the group that did not obtain 20% of the votes did not receive any mandate, unless it obtained an absolute majority in a county; if none of the parties obtained 40% of the votes, the mandates were distributed proportionally to the number of votes obtained.

[8] I. Muraru, S. Tănăsescu, *Drept constituțional și instituții politice*, Vol. I, C.H.Beck Publishing House, Bucharest, 2015, p. 64.

[9] C. Ene-Dinu, *Istoria statului și dreptului românesc*, second edition, Universul Juridic Publishing House, Bucharest, 2023, p. 296.

[10] For more information about the control of the legality of administrative acts, see E.E. Ștefan, *Drept administrativ Partea a II-a, Curs universitar*, fourth edition revised and supplemented, Universul Juridic Publishing House, Bucharest, 2022, pp.110-177.

[11] E. Cernea, E. Molcuț, *Istoria statului și dreptului românesc*, Universul Juridic Publishing House, Bucharest, 2013, p. 316.

In the Senate elections, all mandates in each constituency went to the party that had obtained the most votes (relative majority principle).

In the period 1927-1930, the constitutional provisions related to the institution of the regency functioned, which was determined by the renunciation of the crown by Charles II, the eldest son of King Ferdinand. In January 1926, the legislative bodies ratified the act of renunciation, proclaiming Mihai, son of Carol II, heir.

The regency was constituted of three persons, who were to exercise their prerogatives if Mihai would have become king before reaching the age of majority. The king began to exercise his powers from June 1929, following the death of King Ferdinand, until 1930, when Carol returned to the country and proclaimed himself king.

2. Innovative legal institutions introduced by the 1923 Constitution

2.1. In the field of administrative law

Administrative law[12] has seen the most important changes. They were carried out for the unification of legal regulations and imposed the unification of the state apparatus at the central and local level.

In Transylvania, Bessarabia and Bucovina, certain powers were exercised by the own governing bodies of the provinces that united with the country. In, the public services were managed by the Governing Council, and in Bessarabia and Bucovina, the attributions were exercised by service directorates and secretariats. These powers were established by the Decree Law of December 26, 1918, in Transylvania and by the one of January 1, 1919, for Bucovina and Bessarabia. Foreign affairs, the army, the railways, the post, the telegraph, the financial circulation, the customs, the public loans, the security of the state came under the competence of the central government.

On April 4, 1920, the Governing Council of Transylvania and the directorates and service secretariats of Bessarabia and Bucovina were dissolved, thus putting an end to the regional forms of leadership. During the reference period, new administrative organization laws were adopted both at the central and local levels.

The Law for the Organization of Ministries was adopted on August 2, 1929, which created the general framework for the organization of ministries in a unitary system. According to this law, the king appointed the person who was to form the Government, appointed and dismissed the ministers. The law also provided for the establishment of local ministerial directorates, in number of seven, for each ministry, as local administration and inspection centers.

On June 14, 1925, the Law for administrative unification was adopted, which established a unitary system of territorial organization of the national state and provided for the establishment of eligible local bodies.

According to the law, the territory of Romania was divided, from an administrative point of view, into counties and communes.

Communes were of two types: rural and urban.

- Rural communes could be formed from one or more villages, depending on the number of inhabitants they had;
- Urban communes were population centers recognized as such by law; in their turn, they were divided into county

[12] Regarding the emergence of administrative law in Romania, please see M.-C. Cliza and C.-C. Ulariu, *Drept administrativ. Partea generală*, C.H. Beck Publishing House, Bucharest, 2023, p. 1.

residence communes and non-county residence communes. Internally, urban communes were divided into sectors. Some urban communes, county seats, of greater importance, could be declared municipalities by law.

At the head of the communal administration is the mayor, who executes the decisions of the local Council and the permanent communal Delegation. The mayor was elected by the Communal Council. The counties were divided into squares. The county administration was under the leadership of the prefect, appointed by royal decree, at the proposal of the Ministry of the Interior. The leadership of the palace was exercised by a praetor, appointed by ministerial decision.

At the level of communes and counties, permanent councils and delegations functioned, competent to decide according to the law.

Through the Law for the organization of local administration of August 3, 1929, a series of changes were made to the system of administrative organization. This law stipulated that all communes, urban or rural, could be divided into sectors and that both counties and communes, as well as communal sectors, enjoyed legal personality.

The villages that were part of a rural commune were sectors of it and had their own leadership.

During the reference period, a series of laws were adopted regarding the creation of the Legislative Council; Superior Administrative Council; Pension Houses; Agricultural Chambers; Chambers of Labor; as well as the reorganization of the Chambers of Commerce and Industry. Also, the Statute of civil servants was adopted.

2.2. In terms of civil law

In the field of civil law, the code adopted in 1864 remained in force, but some special laws were also applied, the adoption of which was imposed by economic and social transformations.

The unification of civil legislation was achieved gradually and differentiated from one province to another. Thus, if, at the end of the third decade, the same civil law norms were applied in old Romania and Bessarabia, in Transylvania some specific norms continued to be applied until the Second World War.

In certain areas of civil law, new regulations have intervened, and new principles have been introduced. Thus, in the matter of property, if, according to the classical conception, expressed in art. 480 Civil Code, the property right has an absolute character[13], the 1923 Constitution and the special civil legislation established the concept of property as a social function.[14] In this way, the legal basis was created for expropriation for reasons of national utility. Through the Constitution of 1923, the concept of "public utility" was reformulated, giving it a much wider meaning compared to the one established by the Constitution of 1866. On this basis, a series of measures were adopted to limit the right of absolute ownership. These measures were necessary, since, according to the classical Romanian conception, taken over by the bourgeois civil codes, the owner of a plot of land had full rights both over the

[13] C. Bîrsan, *Drept civil. Drepturile reale principale*, Hamangiu Publishing House, Bucharest, 2008, p. 29.

[14] E.T. Danciu, *Privire istorică asupra evoluţiei proprietăţii în context politic*, Journal of Legal Sciences no. 4/2008, pp. 128-132.

basement and over the air space located on that plot.[15]

However, the 1923 constitution provided that the wealth of the underground becomes the property of the state, which is equivalent to a nationalization of the underground. Also, restrictions were brought regarding the right to airspace, in the interest of air navigation companies. At the same time, the nationalization of some armament enterprises and some metallurgical plants was carried out.

In fact, after nationalization, the wealth of the underground and the enterprises were transferred to the use of private individuals, under the pretext that they can be better valued by private individuals than by the state.

About land ownership, a series of laws were adopted to carry out agrarian reform. These laws were distinct for old Romania and for the old provinces. The agrarian reform, legislated in 1921, involved two distinct operations.

The first operation was that of the transfer of the expropriated lands to the state, with the payment of substantial compensations. The redemption price was equal to the regional lease price multiplied by 40 in the old Romania and by 20 for the rest of the country. This first operation could be carried out in a short period of time, especially since the compensations were to be paid by the state.

The second operation consisted in the sale of land by the state to the peasants. This legal formula by which the appropriation was made was intended to give the impression that the lands did not pass from the property of the landlords to that of the peasants but were sold by the state. The appropriation laws provided that the lands distributed to the peasants could not be sold or mortgaged before the debts to the state were paid off.

The legal regime of ownership over the basement was established by the Mining Law of

July 3, 1924. This law reaffirmed the constitutional principle regarding state ownership of underground wealth, with some exceptions. Thus, the law recognized the acquired rights over the underground wealth, known and exploited at that time, which constituted an important limit of the regulation. This is how the provisions of the law were to be fully applied only for the concession of lands in the state reserve and for the lands of private persons, who could not exploit the basement on their own land.

The legal regime of state property underwent a series of changes through the Mining Law of March 29, 1929, and the Law on the Commercialization and Control of State Economic Enterprises of June 6, 1929. The provisions of these laws were formulated in such a way as to favor private capital, including foreign capital. Thus, for example, the proportion of private capital's participation was not fixed, so that, based on a symbolic participation, it acquired access to the exploitation of state assets.

During the reference period, the provisions of the civil law regarding the legal status of the person were supplemented with new regulations.

We mention in this regard:

- Civil Status Act 1928;
- Employment Contracts Act 1929;
- The law of 1932 on lifting the incapacity of married women.

These laws alleviated the inequality between men and women in the field of civil law. Thus, it was provided that the woman no longer must ask for her husband's consent to conclude an employment agreement and

[15] B. Berceanu, *Istoria constituțională a României, în context internațional*, Rosetti Publishing House, Bucharest, 2003, p. 458.

that the woman has the right to collect her salary and dispose of it, as well as the right to alienate her assets without her husband's authorization.

In the matter of legal entities, there have been changes imposed by the transformations in social and economic life. Thus, the Law of May 26, 1921 authorizes the organization of trade unions, on the condition that they concern themselves only with the problems of a strictly professional, economic, social and cultural nature of their members. Trade unions were prohibited from carrying out any political activity, as well as dependence on any political party.

Through the Law for Legal Entities of February 6, 1924, the old system, according to which legal personality was granted by law, was replaced by the system of granting legal personality based on a special procedure, which took place before the courts.

The new regulations that intervened in the matter of obligations gave the state the opportunity to direct the relations between creditors and debtors, especially during the economic crisis. In this regard, we mention the Law of August 20, 1929, for the free movement of agricultural goods (Mihalache Law), by which the lots resulting from appropriations could be put up for sale by creditors. To solve the agricultural debts of the peasants, which generated deep dissatisfaction, the state intervened with a series of measures aimed at reducing the debts of the peasants, extending the deadlines for the debts that remained to be paid, organizing the agricultural credit, and suspending the foreclosure on the peasants.

Such provisions include the Law for the Settlement of Agricultural Debts from April 19, 1933, the Law for the Regulation of Agricultural and Urban Debts from April 14, 1932, as well as the Law for the Conversion of Agricultural Debts from April 7, 1934. During the reference period, there were also changes in the appearance of the sale purchase contract. According to the Civil Code, the sale-purchase contract is a transfer of ownership, a fact which, under the crisis conditions, generates serious inconveniences for capitalists.

This is because, at the time of bankruptcy, the goods in the merchants' stores were sold at auction, and the resulting sum was divided proportionally among the bankrupt's creditors. In the practice of commercial relations, the goods were procured periodically through the sales purchase contract, and the payment was to be made at the stipulated deadlines: the big traders became the owners of the goods now of their receipt, even if the price was not paid. And if the goods remained unsold, under the conditions generated by the economic crisis, the retailers went bankrupt, and the creditors put their goods up for sale to compensate.

The result was that the industrialists and wholesalers could no longer capitalize on the claim rights born from the contracts concluded with the small merchants, so they also went bankrupt. To avoid such consequences, it was resorted to the sale of the goods without the transfer of the ownership right, if the price was not paid at the time of the return of the goods.

In the field of labor relations, new regulations were adopted during that period, including legislative unification. A series of laws were adopted that included provisions regarding the resolution of collective labor conflicts, the Sunday rest, the length of the working day, the protection of minors and women, labor contracts, and labor jurisdiction.

2.3. Criminal law

In the field of criminal law, the code adopted in 1864 under the rule of Alexandru Ioan Cuza remained in force. In Romanian

law, the legality of criminalization was enshrined in all previous criminal codes, including the Constitution of 1923.[16]

After the creation of the Romanian unitary national state, a new penal code was drawn up, which was adopted, after long delays, on March 18, 1936, and entered into force on January 1, 1937.

The new Criminal Code was systematized in three parts:

- Part I - General provisions.
- Part II - Provisions regarding crimes and misdemeanors.
- Part III - Provisions regarding contraventions.

During the period we are referring to, a series of special criminal laws were also adopted, which referred to the defense of peace and the country's credit (1930), to the repression of unfair competition (1932), to the repression of crimes against public peace (the Mârzescu Law - 1924), to the defense of the monarchical regime in Romania (1927), to the introduction of the state of siege (1933) and to the defense of order (1934).

2.4. Changes to civil and criminal procedures

Due to the differences that existed in the civil procedure in the provinces united to the old Romania, the state intervened with a series of special laws for the use of the Civil Procedure Code in certain areas. In the field of civil procedure, the Code adopted in 1864 continued to apply. The legislative unification in this matter was achieved both by extending some civil procedure provisions from the old Romania to the new provinces, and by adopting new laws. We mention, in this sense, the Law of May 19, 1925, which aimed at the unification of some provisions of civil and commercial procedure, the facilitation and acceleration of judgments, as well as the competence of judges. The law referred to the trial procedure in civil and commercial cases before the tribunals and the courts of appeal. It is an important step in the unification of the procedure, differences remaining as far as the courts are concerned. The advantage of the law is that it also simplified some procedural forms and shortened some deadlines. Thus, the opposition is abolished, that way of appeal by which the missing party at the first term demanded the restart of the process. Also, the appeal period was shortened from 30 days to 15 days.

Important is the new organization given to the summons. It is stipulated that it should include all the plaintiff's claims, with the means of proof that he understood to be used, being made in as many copies as there are parts, plus one copy for the court. Upon receipt of the action, the court communicated to the defendant and the other parties a copy of the action each, and the defendant was obliged to submit to the court, in a short period of time, before the day fixed for the trial, a written response, which would include all his defenses against the claims the plaintiff, as well as the evidence in combating the claims of the plaintiff. In this way, at the first term, the court could proceed to the settlement of the trial, avoiding those countless postponements, for the communication of the action or the approval of the evidence and their administration, etc.

However, the essential features of the civil process were preserved, maintaining the investigation of the merits of the process both in the first instance and in the appeal. Also, the use of appeals was very expensive due to the stamp duty that had to be paid by the person declaring the appeal.

[16] M.A. Hotca, P. Buneci, M. Gorunescu, N. Neagu, R. Slăvoiu, R. Geamănu, D.G. Pop, *Instituții de drept penal*, Universul Juridic Publishing House, Bucharest, 2014, p. 11.

And in the field of criminal procedural law, the old code remained in force. In 1935, on March 19, a new code of criminal procedure was adopted, which entered into force on January 1, 1937. The new Code took over many provisions from the previous one, but also provided for some new regulations. To create a unitary framework for the application of the law, on January 25, 1924, the Law for the unification of the judicial organization was issued.

According to the provisions of this law, the courts were established in a system consisting of:

judges: rural, urban and mixed;

courts - in each county there was a court, composed of one or more sections;

appeal courts, 14 in number, composed of one or more sections;

courts with juries, which tried only criminal cases;

Court of Cassation.

To unify the composition of the body of lawyers, a special law was passed in 1923, amended in 1925.

3. Conclusions

Beyond the complex political process and the resulting normative text, the adoption of the Constitution of 1923 meant both an exercise and an extraordinary intellectual effort, in which the reunited creative legal forces of the reunited country participated, in an unprecedented and unique context in the history of law from Our country. The gathering, dialogue and valorization of the great European constitutional experiences brought to Bucharest by the representatives of the Romanian multicultural legal horizon of the time - Neo-Latin, Austrian, Austro-Hungarian and Russian - entailed a work of synthesis and extraordinary legal-cultural options, intended to ensure continuity, to satisfy diversity and above all to ensure national state specificity in a Europe founded on the values of Law and Justice.

The 1923 Constitution worked until February 1938, when King Charles II initiated a new Constitution, which strengthened royal power and limited democratic freedoms. After the abdication of Charles II, although theoretically his version of the Constitution remained in force, it returned to customs, and after August 23, 1944 the Constitution was partially amended and revised in 1946. Practically, the Constitution of 1923 was once and for all abandoned with the forced abdication of King Mihai I, on December 30, 1947, being replaced without the expression of popular will by one made according to the Soviet model.

It was the moment when the constitutional monarchy, which laid the foundation of modern Romania, was repealed, and the republic was established - an institution brought to Romania by the recently condemned communist regime, an institution without traditions and without popular support. It was the beginning of the darkest period in Romania's history.

It represented, finally, an adaptation of the constitutional data configured in 1866 in terms of a new synthesis to the reintegrated national framework and to the reorganized European one based on the law and values of cooperation and creative mutual dialogue[17]. The juridical-constitutional work of a century ago was one of synthesis, in which the professors of constitutional law from the

[17] For information on this regional context and on the need for international cooperation, please see L.-C. Spătaru-Negură, *Dreptul Uniunii Europene – o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016, p. 71 and following, as well as L.-C. Spătaru-Negură, *Protecția internațională a Drepturilor Omului – Note de curs*, Hamangiu Publishing House, Bucharest, 2019, pp. 14, 21 and 59.

four law faculties of the country participated, the other renowned specialists in the field, who were joined, from the specific perspectives, by sociologists, historians or economists. All of this has constituted a precious heritage whose cultural-historical essences endure to this day and must be capitalized as such.

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